

STATE OF MAINE

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MAINE PROSECUTORS ASSOCIATION SHIRA BURNS, EXECUTIVE DIRECTOR

“An Act to Implement the Recommendations for the Maine Commission on Public Defense Services Regarding the Confidentiality of Attorney-Client Communications in Jails and Correctional Facilities”

Before the Joint Standing Committee on Judiciary

Public Hearing Date: May 2, 2025

Testimony in Opposition of LD 1825

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here testifying in opposition of LD 1825.

This bill provides for newly created civil violations that would be the responsibility of the local prosecutor offices to represent the State of Maine in the following ways:

- Against a jail, correctional facility or 3rd party contractor who fails to designate the attorney's name and telephone number as ineligible;
- Against a jail, correctional facility or 3rd party contractor who intercepts a confidential communication;
- Against a jail, correctional facility or 3d party contractor for charging a fee for a confidential telephone call; and
- Against the sheriff or Commissioner of Corrections if their facility fails to follow procedures outlined in the bill.

These civil violations have no *mens re* (intentionally, knowingly, or recklessly) and could be read as strict liability violations. That means if anything happens accidental, including a number entered wrong or someone accidentally be billed for a call, the facility would be accountable through a civil violation process that would need to be initiated by a prosecutor. It is rare, if ever, that prosecutors charge entities instead of people. This would be outside our normal scope of practice.

There would be inherit conflicts of interest for the local district attorney's office in representing the State of Maine on a civil violation against a party they work closely with. Any cases would need to be referred out to other offices which is very resource intense.

Last session, P.L. 2023, ch. 394 was passed that dealt with this topic. We had a stakeholders group that met regularly to come up with best practices and discuss issues on this topic. Since that time, the Maine Prosecutors Association does not know of anything that has happened that would be the impetus for this bill. If something did happen, it would be worth convening the stakeholders again to understand the circumstances and see if this language would have improved the situation.

For all these reasons, the Maine Prosecutors Association is in opposition to LD 1825.