

TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 609 – Ought to Pass**

**An Act to Ensure an Incarcerated Individual's Right to Make Free  
Telephone Calls Protected by Attorney-Client Privilege**

JOINT STANDING COMMITTEE ON  
JUDICIARY

April 19, 2023

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Meagan Sway, and I am Policy Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I submit this testimony in favor of LD 609.

This bill would require jails and prisons to provide people in their custody with access to free phone calls to their lawyers during business hours. Doing so would support the constitutional right to an attorney protected by the Sixth Amendment. Attorney-client confidentiality is a crucial part of the right to counsel. Unfortunately, several jails throughout Maine have violated this right over the past few years. The Maine Monitor discovered that “[f]our jails recorded nearly 1,000 attorney-client calls in a single year and shared recordings with police and prosecutors before trial.”<sup>1</sup> Defense lawyers were often “not told when their calls are recorded and agencies lack rules about what to do once law enforcement and prosecutors eavesdrop on jailed suspects’ calls to their attorneys.”<sup>2</sup>

While this bill does not address systems or procedures to ensure confidentiality, it does address the ability of incarcerated individuals to access their attorneys, regardless of how much money they make. No one should be denied contact to their attorneys because their attorney does not or cannot accept a collect call.<sup>3</sup>

---

<sup>1</sup> Samantha Hogan, Eavesdropping in Maine Jails, Maine Monitor, available at <https://www.themainemonitor.org/eavesdropping-in-maine-jails/>

<sup>2</sup> *Id.*

Although this bill is specifically aimed at providing free calls to attorneys, we would be remiss if we did not recommend to the committee that it also consider making phone calls between incarcerated defendants and their families available without cost. Connecticut did this in 2021, connecting families with their loved ones and making it more likely that people have successful reentries into their communities when they finish their sentences. Maine should follow this path.

Experts estimate that nationwide, the families of incarcerated people pay nearly \$3 billion every single year on the hidden costs of incarceration.<sup>4</sup> There are commissary costs, costs associated with visitation, legal costs, sometimes the cost of housing a person, and of course, costs for phone calls and text messages. A short prison phone call in Maine costs an average \$5 for 15 minutes. The minimum wage in Maine is \$12.15, so that a person working minimum wage must work for almost twice as long as the phone call itself to pay for it.

The people who bear these costs are often the ones least likely able to do so. People from poorer backgrounds are more likely to be imprisoned.<sup>5</sup> A recent study from the Muskie School found that between 2015 and 2020, there were 2,134 parents incarcerated in Maine's prisons, and 3,403 children with parents in prison.<sup>6</sup> These children bear the cost of prison phone calls. And, because Black people are disproportionately likely to be incarcerated, it is their children who bear a disproportionate burden. There is an enormous gender disparity as well: of people who pay to stay in touch with family members, 87% are women.<sup>7</sup> The cost of calls and visitation are the top barriers for families trying to stay in touch during incarceration.<sup>8</sup>

We urge you to vote ought to pass.

---

<sup>4</sup> See Nicole Lewis & Beatrix Lockwood, The hidden cost of incarceration, The Marshall Project, Dec. 17, 2019, available at <https://www.themarshallproject.org/2019/12/17/the-hidden-cost-of-incarceration>.

<sup>5</sup> See Adam Looney & Nicholas Turner, *Work and opportunity before and after incarceration*, Brookings Institution, Mar. 14, 2018, available at <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>.

<sup>6</sup> Jillian Foley, Erica King & Case Benner, Breaking the Cycle Interrupting Generational Incarceration in Maine, Cutler Institute Muskie School of Public Service, Nov. 2020, available at <https://placemattersmaine.org/wp-content/uploads/2021/01/BreakingtheCycle.pdf>.

<sup>7</sup> Saneta DeVuono-Powell, et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center 2015, available at <http://whopaysreport.org/who-pays-full-report/>.

<sup>8</sup> *Id.*