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Testimony of Rep. Tavis Hasenfus introducing
LD 609, An Act to Ensure an Incarcerated Individual's Right to Make Free Telephone Calls Protected by Attorney-Client Privilege
Before the Judiciary Committee

Good morning, Senator Carney, Representative Moonen and distinguished members of the Judiciary Committee. My name is Tavis Hasenfus, and I represent House District 57 and the communities of Readfield and Winthrop. I am here before you today to present **LD 609, An Act to Ensure an Incarcerated Individual's Right to Make Free Telephone Calls Protected by Attorney-Client Privilege**.

Years ago, when I was a young attorney fresh out of law school, I spent some time practicing criminal law and was on the indigent legal services roster doing mostly misdemeanor cases. One day I received a collect call from the Kennebec County jail. At the time, I had no idea who was calling me nor did the message state who was calling. All I knew was that somebody from the county jail was trying to contact me. I called the jail back, but the receptionist was unable to ascertain who it was that was looking for me. It wasn't until a few days later, when I received a letter from the court appointing me to a case, that I learned who was trying to contact me and why.

I use this example primarily to pose a question:

Are we currently doing everything that we can to ensure incarcerated individuals are able to access their attorneys in a timely manner? Consider those residents who are not yet adjudicated and are, by definition, innocent.

The right to counsel is so fundamental to our system of justice that it has been inscribed in the U.S. constitution since its inception. But this right to counsel is meaningless if one cannot freely and confidentially communicate with counsel at all reasonable times, especially in the pre-trial context when all residents of a jail are presumptively innocent.

In its most simple form, this bill seeks to set a standard across state, county and municipal detention facilities to provide free and confidential access for residents to speak with their attorney during normal business hours.

I am sure that you will hear from some opponents of this bill claiming that residents currently have no issue contacting their attorney and that this bill is unnecessary. I wondered that myself as I do not pretend to be an expert in this area as it has been quite some time since I attempted to contact a client in jail. In fact, I wondered if this bill was still necessary given the great work of this committee in past years. It very well may be the case that most of our jails are doing everything they can to provide prompt access for attorney-client contact. However, since the bill's publication I have received comments from attorneys in this state who believe that timely access is still an issue. The most notable of which was an e-mail from a federal public defender named David Breneman. His email is included at the back of my testimony, but a key takeaway from his email reads-

“When our clients want to call us from a Maine jail, they must go through the vendor the jail contracts with, usually Securus. The call comes to us like a “collect call.” We are charged \$5 for accepting the call. It is impossible for the client to leave a voice message, even to leave their name, as the “pay to call” system requires we have someone who can answer the phone and approve accepting the call. This means there is no way for a detained client to leave a message asking me a question or telling me they are ill, or they received my letter, or they need to meet with me. And I have no way of calling them. If a hearing date is scheduled or changed I need to write and mail a letter. If I have a question about something in the case I must either write them a letter or travel to the jail. Contrast this to the NH system at Strafford where I call the jail and in a few minutes my client is on a secure telephone line.”

When an attorney doesn't have reasonable, timely access to a client, it makes providing a quality defense more challenging. It is my hope that through this legislation, we can find a way for all facilities to provide their residents reasonable, prompt phone service to enable access to their attorneys.

I look forward to working with the committee to find a path forward that allows for attorney-client communication in a way that can be accommodated by our overworked and underfunded county jails.

Thank you for your time. I am happy to answer any questions you have for me.

Email from Federal public defender David Breneman

I serve as the Federal public defender for Maine. Many of our clients are detained in Maine state jails while waiting for their cases to resolve. There is no federal detention facility in Maine. It is extremely difficult to reach clients held in Maine's county jails. The jails have refused to add legal telephones within the inmate pods. In comparison, the Strafford NH county jail has legal telephones in every pod. When our clients are held at Strafford, we can call the jail, provide out bar number and the call is transferred to the legal phone in the pod. The calls are not recorded. This is a simple system which could be implemented in Maine's jails.

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The current system is punitive, limits attorney client discussion, is expensive and is one reason there is so much backlog and confusion in Maine criminal cases. Inability to speak with clients by telephone is one of the many unnecessary frustrations and impediments to adequate legal representation. Those in jail are already isolated from their family and friends. Inability to have regular telephone calls with their lawyer adds to their difficulty, depression, and feelings of hopelessness.

Please move forward with LD 609 to require the jails in Maine to allow no cost telephone calls to and from a defendant's lawyer. The cost is low and any "hardship" claim by the jails is hollow. Every jail has telecommunications and adding a lawyer phone line - wired or by Wi-Fi - in each pod can be accomplished at a modest cost.

Thank you for your consideration.