



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
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AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

**RANDALL A. LIBERTY, COMMISSIONER
DEPARTMENT OF CORRECTIONS**

Neither for nor against:

LD 2159, An Act to Protect the Confidentiality of Attorney-Client E-mail Communications for Residents of Jails and Correctional Facilities

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, I am Randall Liberty, Commissioner of the Maine Department of Corrections (DOC) providing testimony neither for nor against LD 2159, An Act to Protect the Confidentiality of Attorney-Client E-mail Communications for Residents of Jails and Correctional Facilities.

Currently, DOC only allows attorney-client communications over phone and paper mail and has robust practices in place to ensure the confidentiality of those communications. Our team at DOC takes the confidentiality of attorney-client communications very seriously and for that reason we have no opposition to the concept of this bill. However, as explained below, we have serious concerns with the bill as drafted.

Our concerns stem primarily from attempting to incorporate email into the provisions of Title 15, chapter 102, which were designed to focus on the interception of telecommunications. Title 15, §710 makes the intentional or knowing interception of attorney-client communications a Class C crime. Within the bill as printed the definition of “intercept” under §709(4) would mean, in part, “to hear, view, read or record or aid another to hear”. Due to the fact that emails are recorded by design, these provisions create a situation where both our employees, and our department as a whole, would be vulnerable if a resident were to attempt to communicate with an attorney via email, because we could not avoid or cease the recording of that communication and therefore would automatically be in violation of the prohibition on interception. That fact could also be used to exploit the provisions under §714(1), (1-A), and (1-B) to disqualify our employees from participating in an investigation of a resident and from appearing as a witness in a criminal proceeding in which that resident is a defendant.

Unfortunately, the exception under §710 for an employee of DOC “authorized to exercise law enforcement powers” does not provide adequate protection against these problems because it does not address the disqualification provisions under §714, and not all employees who review resident emails are “authorized to exercise law enforcement powers.” Further, we are concerned about violation of §710 even if no employee were to view actually view the email, given that emails are automatically recorded upon delivery.

With few exceptions, email is only made accessible to residents in our system who are pursuing certain programming, such as education. Upon receiving access to electronic devices and internet for programming purposes, residents are provided written notice that their access is monitored to ensure appropriate usage. For this reason, a majority of resident email communication review is actually conducted by our educational staff, as they are best suited to evaluate whether access is being used for approved purposes. Our investigative teams only get involved when there is concern that email is being used to pursue illicit or criminal activity.



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We are particularly proud of the educational programming opportunities within our system, as education is one of the key components to reducing recidivism. To provide a brief overview, here is some data looking back at 2023: we have 400 seats available for students working on their HiSET, with 50 residents earning HiSET diplomas last year; we had 280 students enrolled in college programs – that number includes students who have graduated, discontinued, or have been released; and we currently have 257 students enrolled in post-secondary programs (both matriculated and non-matriculated) and that includes 6 master’s degree students and 2 doctoral students. As you might expect, most of the educational opportunities within our system require the ability to pursue that work remotely, and access to email is an essential component of remote access. The bill as printed would make it extremely difficult, if not impossible, to provide residents with access to email and therefore is likely to have a significant impact on these opportunities within our system.

For these reasons we have serious concerns with the bill as printed, but want to reiterate that we are not opposed to the concept. We take the confidentiality of attorney-client communications very seriously, and although we have no plans to allow such communications over email at this time, we understand the need for robust confidentiality protections if that were to be allowed. If the committee decides to move forward with such a proposal, we’d be more than happy to work collaboratively to ensure it is done in a way that does not compromise our ability to provide these programs.

This concludes my testimony. I am happy to answer any questions.

Randall A. Liberty
Commissioner
Maine Department of Corrections