

**OFFICE OF POLICY AND LEGAL ANALYSIS
UPDATED BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: January 11, 2022

LD: 1175 An Act To Prohibit Excessive Telephone, Video and Commissary Charges in Maine Jails and Prisons

Bill Status:

LD 1175, sponsored by Rep Kinney, was heard on April 14, 2021 and was worked on April 23 and May 6, 2021. The bill was carried over to the Second Regular Session.

At the work session on April 23 committee members discussed the bill with Rep Kinney, York County Sheriff King and DOC Commissioner Liberty. In addition to testimony submitted for the public hearing, CJPS members received the following information, which is posted with testimony on the bill at

<https://legislature.maine.gov/ctl/CJPS/04-14-2021?panel=0&time=0&sortdir=0&sortby=2>.

1. From attorney Robert Ruffner, a request for free phone calls to counsel and information on free calls to counsel in Minnesota, to public defender offices in Wisconsin, and to counsel in select counties in California, Texas, South Carolina, and Washington State, sometimes limited to public defender offices. A copy of this email was included in the original bill analysis for this bill and so reappears at the end of this updated bill analysis.
2. From Courtney Allen, Maine Recovery Advocacy Project, a chart of costs of phone calls in 14 Maine jails and prisons completed in 2021, a graph of advance commission payments from 9 jails and background materials on telephone contracts. The costs for phone calls includes connection fees from \$1.30 to \$1.75, first minute charges from \$.14 in Cumberland and Hancock to \$.29, and the jails' shares ran from 5% in Oxford to 83% Cumberland and York.
3. From Anna Black, DOC, a chart showing balances in DOC resident trust accounts as of 4/22/21 and population by facility as of that date in Bolduc Correctional Facility, Maine Correctional Center (men, women and Women's Reentry Center), Maine State Prison, Mountain View Correctional Center and Long Creek Youth Development Center.

At the work session on May 6 committee members discussed the bill and work that could be done to develop options for presentation to the committee. CJPS members voted to request carryover of the bill.

Prior to the work session on January 12 the committee received information from Jan Collins, Maine Prisoner Advocacy Coalition, on free phone access in other states and from Sandra Katz of Saco. In addition, Olland Reese, a resident at the Maine State Prison, submitted a letter,

accompanied by signatures of 300 residents of the Maine State Prison, asking that no changes be made to the Inmate benefit Fund at the Maine State Prison and agreeing that some changes need to be made at the county jails. Mr. Reese stated that MSP residents pay 9 cents a minute, 4 cents of which goes to the phone service provider and 5 cents of which goes to the Inmate Benefit Fund. There is no connection fee. Residents may make one free 10-minute call per week.

On January 6th I forwarded to committee members an email from Anna Black, DOC, that included the DOC commissary contract with Keefe Commissary Network, the information on resident trust accounts from 4/22/21 and a chart titled “CY 2020 Benefit Expenses by Category” showing expenses from the Inmate Benefit Fund for 2020. On January 11th Anna Black provided a listing of expenses for calendar year 2021, a copy of which has been sent to committee members.

Also prior to the January 12th work session I forwarded the survey done in 2019 by Mary-Anne LaMarre, Maine Sheriffs Association, providing information on telephone, video and texting services in the county jails. This information is posted with the testimony and other information on this bill. Of the 15 jails reporting on the survey per minute charges varied from 5 to 7 cents per minute in Penobscot and Oxford to 35 cents in Penobscot and Somerset. Connection fees ranged from none to \$1.75 in Penobscot. All jails reported dedicating their portions of charges to their inmate benefit funds. The jails portions ranged from \$1000 per month in Hancock, to 5% in Oxford, 25% in Waldo, 70% in Somerset and 83% in York.

Summary

This bill prohibits the Department of Corrections (DOC), county jails and municipal detention facilities (the jails) from accepting a commission or charging a fee for telephone, video or commissary services that an outside provider makes available to persons who are incarcerated.

This bill requires DOC to negotiate contracts for services at the lowest cost to the client and allows jails to opt in. The contract may not include a connection fee and telephone services may not cost a resident more than 11¢ per minute. The contract must allow residents to receive 2 free 15-minute telephone calls per week.

Testimony

Proponents:

1. Representative Kinney sponsored the bill and testified in support.
2. Michael Kebede, representing the ACLU, testified in support and submitted testimony. Mr. Kebede stated that a 15-minute call costs \$5, stressing the importance of a resident’s maintaining communications with the outside world as crucial to family and community bonds, mental, physical and community health and community safety.
3. Courtney Allen, representing the Maine Recovery Advocacy Project, spoke in support, stating that calls to out-of-state are less expensive than calls to in-state.
3. Rebecca Graham, Maine Municipal Association, spoke in favor and suggested amending the jail funding formula to include “communications” in the calculation of prisoner support.
4. Douglas Dunbar, who works assisting people with recovery and re-entry through Eastern Maine Development Corporation spoke in support.
5. Aliza Anderson read testimony for Wendy Smith. Similarly, Ketty Stinson read for Glen Ingalls and Molly Higgins read for Mike Ward.
6. Peter Lehman and Jan Collins testified in support for the Maine Prisoner Advocacy Coalition. They questioned why Maine State Prison charges 9 cents for a call that costs them 2.5 cents, the

basis for commissary markups, the current pricing for calls that places a burden on families, and whether the State should be paying for the supplies and services now paid for by the Inmate Benefit Fund (IBF).

7. Ron Korobkin, Courage House, Gorham, testified in support, mentioning the \$4 cost of calling collect and the \$2 connection charge. Numerous other residents of Courage House submitted testimony online.

8. Winifred Tate, Maine Drug Policy Lab at Colby College, testified in support, stating that strengthening communications strengthen recovery and that Securus is making money on phone services at the expense of Maine prisoners and their families.

9. Ben Martineau from Homeless Voices for Justice spoke in support and criticized the \$3.40 transaction fee when money is added to a resident's account.

10. Breann Bear testified in support, speaking of the importance of love and connections and saying that because talking with one's lawyer is difficult residents need to make multiple calls through family to reach the lawyer. Sadie Donovan, USM School of Social Work testified in support, as did Matthew Dunn of Portland, Amanda McCarthy of Augusta, Urica Pelletier of Waterville, Janet Drew of York, and Marshall Mercer of Downeast Recovery Support Center.

11. Robert Ruffner, Esq, of Yarmouth, testified in support and suggested amending the bill to allow free calls to a resident's lawyer. Mr. Ruffner offered to try to find out how other states provide access to telephone calling. See entry below and email printed into this document.

Opponents:

1. Commissioner of Corrections Randall Liberty testified in opposition and submitted written testimony. Commissioner Liberty spoke of the increased communication services that DOC has provided to residents during the pandemic, of free stamps and phone calls provided to indigent residents and of programming provided to strengthen families including education, behavioral health treatment and job readiness programs. Commissioner Liberty mentioned that DOC does take a commission on phone calls of 5 cents per minute out of 9 cents per minute charge, depositing all proceeds into the Inmate Benefit Fund at the correctional facility, which pays for a range of services, supplies and materials and programming and case manager arranged expenses for residents being released as detailed in the written testimony. Commissioner Liberty said that last year 11 million phone minutes for 1700 residents, yielded \$521,000 for the Inmate Benefit Fund. Commissioner Liberty was asked for the Inmate Benefit Fund revenues and expenses and for a copy of the contract with Securus.

2. York County Sheriff King, speaking for the Maine Sheriffs' Association, spoke in opposition and submitted testimony. Sherriff King provided written testimony about the different communications fees in different jails, including the varying practice of charging a connection fee, the provision of tablets and varying costs per minute and per first and subsequent minutes. Sheriff King was asked for the following information:

- A. How much is generated at York County Jail annually from phone calls?
- B. Whether York County Jail uses Securus or another company?
- C. A copy of the contract that York County Jail has for telephone services.
- D. The revenues from and expenses from Inmate Benefit Fund accounts.
- E. Whether there is a transaction fee for adding money to an inmate's phone account.

Neither for nor against:

None

Possible Amendments:

1. Attorney Robert Ruffner suggested adding a resident having a right to free phone calls to the resident's attorney. An email to the committee from Attorney Ruffner follows.

From: RJR <rjr@mainecriminaldefense.com>

Sent: Monday, April 19, 2021 11:56 AM

To: CJPS <CJPS@legislature.maine.gov>; Warren, Charlotte <Charlotte.Warren@legislature.maine.gov>; Deschambault, Susan <Susan.Deschambault@legislature.maine.gov>

Subject: LD-1175/HP-853

This message originates from outside the Maine Legislature.

Ms. Fahy, Representative Warren and Senator Deshambault:

My name is Robert Ruffner and I testified in favor of LD-1175 on April 14, 2021. I also proposed amending 1175 to prohibit charging for calls from incarcerated individuals to attorneys.

During my testimony I made reference to conversations I had with other defender organizations around the country in the past. In response to a question posed during my testimony I indicated I would enquire again on the issue of collect calls from inmates to their attorneys.

I have included the responses from 2015 as well as the response from 2021. I have included the actual email responses and summarized them here:

2021:

Minnesota responded by email from the State Public Defender, William Ward, and with a phone call from Professor Fred Friedman from University of Minnesota Duluth.

Mr. Ward provided Minnesota's statute, also included, which prohibits charging for calls from jails or prisons to attorneys. Professor Friedman in his phone call emphasized that MN 481.10 was passed with broad bipartisan support after efforts to negotiate with the phone providers failed time and time again. Professor Friedman also noted that the free calls made may jail administrators happy in that they eliminated frequent but brief jail visits to simply answer "2 minute yes or no questions". [In Maine, this would also result in a direct savings to the State by replacing inefficient jail visits with shorter telephone calls.]

2015:

Ventura County, CA - Inmates can call for free. They can call the main number or the number for the specific attorney.

Harris County, TX - Inmates can call the office on a toll free number from the jail. Securus was the provider in Harris County. Harris County Public Defender Alex Bruin notes that a single number solution would not work in a system, such as Maine, where there is no central office and multiple jails.

Greenville County (13th Judicial Circuit), SC - Inmates can call a dedicated line "jail line" from the county jail. The switchboard then transfers to the appropriate attorney.

WI- Has been able to negotiate free calls to defender offices, but not to private attorneys who also take cases (Maine would be 100% individual attorneys). The Deputy State Public Defender, Mike Tobin, also echoed the testimony of many of the individuals who testified last week noting "On the broader question of the wisdom of requiring calls to family to be collect, there may be research regarding the adverse effect upon pro-social relationships that tend to prevent recidivism."

King County, WA - All calls from the jail to defender offices are without charge.

I hope that this answers the questions raised during my testimony. Please let me know if there is any additional information the Committee would like before the work session. I would be more than happy to make myself available if there are further questions during the work session.