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In Senate, February 12, 2013

An Act To Amend Provisions Relating to the Department of Corrections To Clarify Certain Enforcement Powers

Submitted by the Department of Corrections pursuant to Joint Rule 204. Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

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DAREK M. GRANT Secretary of the Senate

Presented by Senator GERZOFSKY of Cumberland. Cosponsored by Representative LONG of Sherman and Senators: DUTREMBLE of York, HASKELL of Cumberland, PLUMMER of Cumberland, Representatives: DION of Portland, MARKS of Pittston, PEASE of Morrill, TYLER of Windham, WILSON of Augusta.

- 1 Be it enacted by the People of the State of Maine as follows:
- 2 Sec. 1. 15 MRSA §709, sub-§4-A, as amended by PL 2011, c. 507, §2, is 3 repealed and the following enacted in its place:
- 4 4-A. Investigative officer. "Investigative officer" has the same meaning as in Title
 5 34-A, section 1001, subsection 10-A.
- 6 Sec. 2. 15 MRSA §710, sub-§1, as amended by PL 1987, c. 680, §2, is further 7 amended to read:

8 1. Interception, oral communications prohibited. Any person, other than an 9 employee of a communication common carrier as defined in this chapter, a law enforcement officer or, an investigative officer as defined in this chapter or another 10 employee of the Department of Corrections authorized to exercise law enforcement 11 powers as described in Title 34-A, section 3011, carrying out practices otherwise 12 permitted by this chapter, who intentionally or knowingly intercepts, attempts to intercept 13 14 or procures any other person to intercept or attempt to intercept, any wire or oral 15 communication is guilty of a Class C crime.

16 Sec. 3. 15 MRSA §710, sub-§5, as amended by PL 1987, c. 680, §3, is further 17 amended to read:

18 5. Possession of interception devices prohibited. A person, other than an employee 19 of a communication common carrier as defined in this chapter, a law enforcement officer or, an investigative officer as defined in this chapter or another employee of the 20 Department of Corrections authorized to exercise law enforcement powers as described in 21 22 Title 34-A, section 3011, carrying out practices otherwise permitted by this chapter, who has in his that person's possession any device, contrivance, machine or apparatus 23 24 designed or commonly used for intercepting wire or oral communications defined in this chapter, is guilty of a Class C crime. 25

26 Sec. 4. 15 MRSA §712, sub-§2, as amended by PL 2011, c. 507, §4, is further 27 amended to read:

28 **2. Investigative officers.** It is not a violation of this chapter for an investigative 29 officer, as defined in this chapter, or for an another employee of the Department of 30 Corrections acting at the direction of an investigative officer authorized to exercise law 31 enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use 32 that communication in the normal course of employment while engaged in any activity 33 that is related to the administration of criminal justice or the administration of juvenile 34 criminal justice, if:

A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and

1 B. Notice of the possibility of interception is provided in a way sufficient to make 2 the parties to the communication aware of the possibility of interception, which 3 includes: 4 (1) Providing the resident with a written notification statement; 5 (2) Posting written notification next to every telephone at the facility that is subject to monitoring; and 6 7 (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. 8 9 This subsection does not authorize any interference with the attorney-client privilege. Sec. 5. 34-A MRSA §1001, sub-§10-A, as enacted by PL 1997, c. 102, §1, is 10 amended to read: 11 12 10-A. Investigative officer. "Investigative officer" means an employee of the 13 department designated by the commissioner as having the authority to conduct investigations of offenses crimes or juvenile crimes relating to the security or orderly 14 management of a facility administered by the department and engage in any other activity 15 that is related to the administration of criminal justice or the administration of juvenile 16 criminal justice and who is certified by the Board of Trustees of the Maine Criminal 17 Justice Academy as a full-time law enforcement officer. 18 19 Sec. 6. 34-A MRSA §3011, as amended by PL 2009, c. 142, §16, is further 20 amended to read: 21 §3011. Investigative officers and other law enforcement officers 22 1. Exercise of law enforcement powers. Investigative officers and other employees 23 of the department who are certified by the Board of Trustees of the Maine Criminal

24 Justice Academy as law enforcement officers may exercise the powers of other law enforcement officers with respect to offenses relating to the security or orderly 25 management of a facility or community program administered by the department and 26 engage in any other activity that is related to the administration of criminal justice or the 27 administration of juvenile criminal justice, if authorized to exercise these powers by the 28 29 Investigative officers These employees may issue administrative commissioner. subpoenas with respect to offenses relating to the security or orderly management of a 30 facility administered by the department, if authorized to exercise these powers by the 31 32 commissioner and by the Attorney General or the Attorney General's designee. These powers are in addition to any powers the officers employees may otherwise have as 33 employees of the department. Internal investigations of employees of the department 34 35 must be conducted pursuant to any applicable collective bargaining agreement.

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 2. Working agreement. The commissioner shall negotiate a working agreement
 37 with the Department of the Attorney General concerning procedures and respective
 38 responsibilities for the exercise of law enforcement powers by investigative officers and
 39 other employees pursuant to subsection 1.

- Sec. 7. 34-A MRSA §3035, sub-§1, ¶D, as amended by PL 1991, c. 314, §40, is 1 2 further amended to read: 3 D. Transportation to work release job sites must be arranged by the commissioner approved by the chief administrative officer. 4 (1) Clients participating in the work release program must may be assessed an 5 equitable share of the cost of the transportation. 6 7 (2) Funds received from clients for work release transportation must be placed in 8 the General Fund. 9 Sec. 8. 34-A MRSA §3040-A, sub-§1, as amended by PL 2005, c. 506, §8, is further amended to read: 10 11 1. Payment. Except as provided in subsection 4, if any client under the control in the 12 custody of the department dies, leaving on deposit in the department's general client account and telephone call account an amount not exceeding \$1,000, and no personal 13 representative of the client's estate is appointed, the chief administrative officer may pay 14 15 the balance of the deposits in the accounts client's general client account and telephone call account, up to a maximum of \$1,000, to the surviving spouse or next of kin in 16 accordance with the Probate Code, Title 18-A, sections 2-101 to 2-114, to the funeral 17 director having any bill outstanding for the burial of the decedent or to any other 18 preferred creditor or creditors who may appear to be entitled thereto, and shall deliver 19 personal property in the chief administrative officer's custody to the surviving spouse or 20 next of kin in accordance with the Probate Code, Title 18-A, sections 2-101 to 2-114. 21
- 22 SUMMARY

The bill allows employees of the Department of Corrections who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers to exercise the same law enforcement powers as investigative officers. This change allows department employees who have completed the academy's part-time law enforcement officer training to exercise those powers when authorized by the Commissioner of Corrections. The bill amends the laws governing the interception of prisoner wire and oral communications to reflect these changes.

The bill requires transportation to work release job sites to be approved by a correctional facility's chief administrative officer instead of arranged exclusively by the commissioner as in current law.

The bill permits a correctional facility to use the first \$1,000 in any deceased prisoner's facility-administered accounts to pay the funeral director and specified others. Current law allows the facility to make such payments only for those prisoners with no more than \$1,000 in their accounts.