

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document

No. 1825

S.P. 712

In Senate, April 29, 2025

**An Act to Implement the Recommendations of the Maine
Commission on Public Defense Services Regarding the
Confidentiality of Attorney-Client Communications in Jails and
Correctional Facilities**

Reported by Senator CARNEY of Cumberland for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3, paragraph
H.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

A handwritten signature in dark ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 4 MRSA §1804, sub-§3, ¶P**, as enacted by PL 2023, c. 394, Pt. A, §3, is
3 amended to read:

4 P. Develop and maintain a registry of names, telephone numbers, e-mail addresses and
5 other contact information for attorneys who provide legal public defense services to
6 persons who are incarcerated. The commission shall on a weekly basis provide these
7 names, telephone numbers, e-mail addresses and other contact information to all
8 sheriffs' offices and to the Department of Corrections. On the Monday following
9 transmission of the information, the sheriffs' offices and the Department of Corrections
10 have constructive notice that communications to and from these attorneys by residents
11 of jails and correctional facilities are subject to the attorney-client privilege and may
12 not be intercepted. The attorneys' names, telephone numbers, e-mail addresses and
13 other contact information are confidential.

14 **Sec. 2. 15 MRSA §714**, as amended by PL 2023, c. 558, §13 and corrected by RR
15 2023, c. 2, Pt. A, §23, is repealed.

16 **Sec. 3. 15 MRSA §714-A** is enacted to read:

17 **§714-A. Attorney-client communications of jail and correctional facility residents**

18 **1. Interception prohibited.** Notwithstanding any provision of law to the contrary, an
19 oral communication or wire communication may not be intercepted if:

20 A. The sender or the recipient of the communication is, at the time the communication
21 is made, a resident in either a jail or an adult or juvenile correctional facility
22 administered by the Department of Corrections;

23 B. The other party to the communication is an attorney or an employee of the law office
24 of an attorney and the jail or correctional facility has actual or constructive notice at
25 the time the communication is made of the attorney's name; and

26 C. If the communication involves the use of a telephone number, the jail, correctional
27 facility or 3rd-party contractor of the jail or correctional facility has actual or
28 constructive notice at the time the communication is made of the attorney's telephone
29 number and the communication is made directly to or from that telephone number.

30 **2. Fee prohibited.** Notwithstanding any provision of law to the contrary, if a
31 communication may not be intercepted pursuant to subsection 1, a jail, correctional facility
32 or 3rd-party contractor of the jail or correctional facility may not charge the sender or
33 recipient of the communication a fee for the communication.

34 **3. Constructive notice.** For purposes of this section, the inclusion of an attorney's
35 name or telephone number on a list transmitted to a sheriff's office and to the Department
36 of Corrections by the Maine Commission on Public Defense Services pursuant to Title 4,
37 section 1804, subsection 3, paragraph P constitutes constructive notice of the attorney's
38 name or telephone number beginning on the Monday following the transmission of the
39 attorney's name or telephone number to:

40 A. Each correctional facility administered by the Department of Corrections and any
41 jail in the same county as a sheriff's office to which the list was transmitted; and

1 B. Any 3rd party with which a facility or jail described in paragraph A contracts to
2 provide communication services for residents.

3 **4. Procedure.** Upon receipt of a list transmitted by the Maine Commission on Public
4 Defense Services pursuant to Title 4, section 1804, subsection 3, paragraph P, each sheriff's
5 office and the Department of Corrections shall send an electronic communication to each
6 attorney on the list at the e-mail address included in the list. At a minimum, the
7 communication must:

8 A. Confirm that the attorney's name, telephone number and other contact information
9 was included on the list transmitted by the Maine Commission on Public Defense
10 Services;

11 B. If the sender is a sheriff's office, for each jail within the same county as the sheriff's
12 office:

13 (1) Certify that telephone communications between the listed telephone number
14 for the attorney and the jail will not be intercepted and no fee will be charged for
15 the telephone call; and

16 (2) Provide the name, e-mail address and telephone number of the person at the jail
17 who is responsible for ensuring that the telephone calls are not intercepted and no
18 fee is charged as provided in subparagraph (1); and

19 C. If the sender is the Department of Corrections, for each correctional facility:

20 (1) Certify that telephone communications between the listed telephone number
21 for the attorney and the correctional facility will not be intercepted and no fee will
22 be charged for the telephone call; and

23 (2) Provide the name, e-mail address and telephone number of the person at the
24 correctional facility who is responsible for ensuring that the telephone calls are not
25 intercepted and no fee is charged as provided in subparagraph (1).

26 Failure of the Department of Corrections or a sheriff's office to send the communication
27 required by this subsection may not be considered notice to an attorney that the attorney's
28 name and telephone number were not included on the list transmitted by the Maine
29 Commission on Public Defense Services pursuant to Title 4, section 1804, subsection 3,
30 paragraph P or that oral communications or wire communications between that attorney
31 and residents of a jail or a correctional facility may be intercepted or subject to a fee.

32 **5. Monetary penalties.** In addition to any other relief that may be available under
33 subsection 6 or any other law, the following penalties apply to violations of this section.

34 A. A jail, correctional facility or 3rd-party contractor providing communication
35 services to a jail or correctional facility that, upon receiving constructive notice of an
36 attorney's name and telephone number as provided in subsection 3, fails to designate
37 the attorney's name and telephone number as ineligible for interception commits a civil
38 violation for which a fine of \$5,000 must be adjudged, regardless of whether any oral
39 communication or wire communication is intercepted in violation of subsection 1.

40 B. A jail, correctional facility or 3rd-party contractor providing communication
41 services to a jail or correctional facility that intercepts a communication in violation of
42 subsection 1 commits a civil violation for which a fine of \$5,000 must be adjudged.

1 C. A jail, correctional facility or 3rd-party contractor providing communication
2 services to a jail or correctional facility that charges a fee for a telephone call in
3 violation of subsection 2 commits a civil violation for which a fine of \$500 must be
4 adjudged.

5 D. If a sheriff's office or the Department of Corrections violates subsection 4, the sheriff
6 or the Commissioner of Corrections commits a civil violation for which a fine of \$250
7 must be adjudged.

8 **6. Additional consequences of unlawful interception.** If an oral communication or
9 wire communication is intercepted in violation of subsection 1:

10 A. The contents of the intercepted communication and the fact and circumstances of
11 the intercepted communication are not admissible in a criminal proceeding, including
12 a proceeding under chapter 305-A;

13 B. A person who viewed or listened to the intercepted communication and did not
14 immediately discontinue viewing or listening to the intercepted communication as soon
15 as the person had sufficient information to determine that the sender or the recipient of
16 the communication was, at the time the communication was made, a resident in a jail
17 or correctional facility and the other party was an attorney, is disqualified from
18 participating in an investigation of the resident and from appearing as a witness in a
19 criminal proceeding in which the resident is a defendant, including a proceeding under
20 chapter 305-A; and

21 C. A person who viewed or listened to the intercepted communication and saw or heard
22 information that may be relevant to a pending or anticipated charge against the resident
23 or a defense the resident may assert, or may lead to the discovery of that evidence, is
24 disqualified from participating in the investigation of the resident and from appearing
25 as a witness in the pending or anticipated criminal proceeding in which the resident is
26 a defendant, including a subsequent proceeding under chapter 305-A on the pending or
27 anticipated charge.

28 **7. Application of other law or rule.** This section does not limit the applicability of
29 any other provision of law or of the Maine Rules of Evidence regarding the admissibility
30 or inadmissibility in evidence of attorney-client communications.

31 **Sec. 4. 30-A MRSA §1566, sub-§3** is enacted to read:

32 **3. Calls protected by attorney-client privilege.** Neither a jail nor a service provider
33 may charge a fee for a telephone call by or to a resident that is protected by the attorney-
34 client privilege.

35 **Sec. 5. 34-A MRSA §3015, sub-§2, ¶B,** as enacted by PL 2021, c. 615, Pt. A, §1,
36 is amended to read:

37 B. The department shall provide a resident with a reasonable opportunity to make
38 telephone calls protected by the attorney-client privilege. The department shall provide
39 to a resident who has less than \$10 in the resident's facility account a free telephone
40 call allowance for 30 minutes of telephone calls per week may not charge the resident
41 or the resident's attorney a fee for calls protected by the attorney-client privilege under
42 this paragraph.

SUMMARY

This bill is reported out by the Joint Standing Committee on Judiciary to implement recommendations of the Maine Commission on Public Defense Services. The committee has not taken a position on the substance of this bill. By reporting this bill out, the committee is not suggesting and does not intend to suggest that it agrees or disagrees with any aspect of this bill; instead, the committee is reporting the bill out for the sole purpose of having a bill printed that can be referred to the committee for an appropriate public hearing and subsequent processing in the normal course. The committee is taking this action to ensure clarity and transparency in the legislative review of the proposals contained in the bill.

Current law requires the Maine Commission on Public Defense Services to send a list of names and contact information for attorneys who provide legal services to persons who are incarcerated to all sheriff's offices and to the Department of Corrections on a weekly basis and provides that each jail or correctional facility has constructive notice of the attorneys' names, telephone numbers and other contact information on the list on the Monday following transmission of the information. Current law further provides that if an oral or wire communication between an incarcerated person and one of the attorneys on the list is intercepted, the contents and existence of the communication are not admissible in a criminal proceeding, including a post-conviction review proceeding, and a person who viewed or listened to the intercepted communication is prohibited from participating in certain criminal investigations involving the defendant and appearing as a witness in certain criminal proceedings against the defendant. The bill amends these provisions of law in the following ways.

1. It clarifies that the commission is required to send the names and contact information only of attorneys who provide public defense services to persons who are incarcerated.

2. It prohibits a jail, correctional facility or 3rd-party contractor providing communication services to a jail or correctional facility from intercepting oral or wire communications between these attorneys or employees of the attorneys' law offices or from charging a fee for such communications. It also provides that unlawful interception of such communications is a civil violation for which a penalty of \$5,000 must be imposed and unlawful charging of a fee for such communications is a civil violation for which a penalty of \$500 must be imposed.

3. It requires each jail or correctional facility to send an electronic communication to each attorney whose name and contact information is included on the commission's list certifying that communications between the listed telephone number for the attorney and the jail or correctional facility will not be intercepted and that no fee will be charged for those communications and providing the name and contact information of the person at the jail or correctional facility responsible for implementing these requirements. It further provides that failure to send such an electronic communication is a civil violation for which a penalty of \$250 must be imposed.