

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2528

H.P. 1846 House of Representatives, March 15, 1988
Submitted by the Department of Corrections pursuant to
Joint Rule 24.

Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MARSANO of Belfast.

Cosponsored by Senator PERKINS of Hancock,
Representatives CARROLL of Gray and MANNING of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 **AN ACT** Relating to Exceptions to Prevent
2 Escapes and Other Offenses under the Interception
3 of Wire and Oral Communications Law.
4

5 Be it enacted by the People of the State of Maine as
6 follows:

7 Sec. 1. 15 MRSA §709, sub-§§1-A and 4-A are
8 enacted to read:

1 1-A. Administration of criminal justice.
2 "Administration of criminal justice" has the same
3 meaning as in Title 16, section 611, subsection 1.

4 4-A. Investigative officer. "Investigative
5 officer" means a corrections officer employed by the
6 Department of Corrections and designated by the
7 Commissioner of Corrections as having the authority to
8 conduct investigations of offenses relating to the
9 security or orderly management of a correctional
10 facility administered by the department.

11 Sec. 2. 15 MRSA §710, sub-§1, as repealed and
12 replaced by PL 1979, c. 663, §95, is amended to read:

13 1. Interception, oral communications prohibited.
14 Any person, other than an employee of a common carrier
15 as defined in this chapter or, a law enforcement
16 officer or an investigative officer as defined in this
17 chapter, carrying out practices otherwise permitted by
18 this chapter, who intentionally or knowingly
19 intercepts, attempts to intercept or procures any
20 other person to intercept or attempt to intercept, any
21 wire or oral communication is guilty of a Class C
22 crime.

23 Sec. 3. 15 MRSA §710, sub-§5, as amended by PL
24 1979, c. 663, §99, is further amended to read:

25 5. Possession of interception devices prohibited.
26 A person, other than an employee of a common carrier
27 as defined in this chapter or, a law enforcement
28 officer or an investigative officer as defined in this
29 chapter, carrying out practices otherwise permitted by
30 this chapter, who has in his possession any device,
31 contrivance, machine or apparatus designed or commonly
32 used for intercepting wire or oral communications
33 defined in this chapter, is guilty of a Class C crime.

34 Sec. 4. 15 MRSA §710, sub-§6, as repealed and
35 replaced by PL 1979, c. 663, §100, is amended to read:

36 6. Sale of interception devices prohibited. A

1 person who sells, exchanges, delivers, barter, gives
2 or furnishes or possesses with an intent to sell any
3 device, contrivance, machine or apparatus designed or
4 commonly used for the interception of wire or oral
5 communications as defined in this chapter is guilty of
6 a Class B crime. This subsection shall not include
7 devices manufactured under written contract for sale
8 to common carriers and, law enforcement agencies
9 and the Department of Corrections, provided that the
10 production of any such device shall not have commenced
11 prior to the signing of the contract by both parties.

12 Sec. 5. 15 MRSA §712, as amended by PL 1979, c.
13 701, §12, is repealed and the following enacted in its
14 place:

15 §712. Exceptions

16 1. Switchboard operators, communication common
17 carrier agent. It is not a violation of this chapter
18 for an operator of a switchboard or an officer,
19 employee or agent of any communication common carrier,
20 as defined in this chapter, to intercept, disclose or
21 use that communication in the normal course of
22 employment while engaged in any activity which is a
23 necessary incident to the rendition of service or to
24 the protection of the rights or property of the
25 carrier of the communication, provided that the
26 communication common carriers shall not utilize
27 service for observing or random monitoring, except for
28 mechanical or service quality control checks, nor
29 shall any such officer, employee or agent use or
30 disclose to another the contents as defined in this
31 chapter of the communication so intercepted.

32 2. Investigative officers. It is not a violation
33 of this chapter for an investigative officer, as
34 defined in this chapter, to intercept, disclose or use
35 that communication in the normal course of employment
36 while engaged in any activity which is a necessary
37 incident to the administration of criminal justice,
38 provided that either the sender or receiver of that
39 communication is a person committed to the custody of
40 the Department of Corrections under a term of
41 imprisonment which is being served in a correctional

1 facility administered by the department and provided
2 that notice of the possibility of interception is
3 posted in a place and in a way sufficient to make that
4 person aware of the possibility of interception, and
5 further provided that reasonable suspicion exists that
6 a criminal offense related to the security or the
7 orderly management of a correctional facility
8 administered by the department has been, is in the
9 process of being or is about to be committed by a
10 party to the conversation with the grounds for that
11 reasonable suspicion being documented in a written,
12 notarized statement prior to the interception.

13 Sec. 6. 15 MRSA §713, as amended by PL 1983, c.
14 379, is further amended to read:

15 §713. Evidence

16 The contents of an interception shall not be
17 admissible in court, except that the contents of an
18 interception of any oral or wire communication which
19 has been legally obtained under the laws of another
20 jurisdiction in which the interception occurred or
21 which has been obtained pursuant to section 712,
22 subsection 2, shall be admissible in the courts of
23 this State, subject to the Maine Rules of Evidence.

24 STATEMENT OF FACT

25 This bill is necessary because the Department of
26 Corrections recently learned of the possibility of an
27 escape plot being planned between certain Maine State
28 Prison prisoners and persons on the outside. When the
29 department inquired of the Attorney General's office
30 about the possibility of monitoring phone
31 conversations between the prisoners and the outsiders,
32 the department was advised that the Maine Revised
33 Statutes, Title 15, chapter 102, prohibits such
34 monitoring without the consent of one of the parties
35 having the conversation. Obtaining that consent was
36 impossible as there were no innocent parties to the
37 conversation. The inability to monitor the
38 conversations in the recent case prevented the

1 gathering of evidence sufficient to bring charges.
2 There is a substantial risk that, in a future case,
3 the inability to monitor those conversations between
4 prisoners and outsiders would mean that an escape plot
5 might not even be uncovered, resulting in the
6 possibility of injury to innocent persons within and
7 outside the correctional system.

8 Federal laws allow the monitoring of phone
9 conversations to which prisoners are a party as long
10 as notice is prominently posted next to the phones
11 prisoners use warning them of the possibility that
12 their conversations might be intercepted. There
13 appear to be no constitutional problems with such a
14 law as it has been held by the courts that prisoners
15 do not enjoy the same privacy rights as other
16 persons. There are some right-to-counsel limits that
17 would prohibit monitoring of conversations between
18 prisoners and their attorneys, but those limits would
19 be adhered to in the implementation of this bill.

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