



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 355

S.P. 135

In Senate, February 12, 2013

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

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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.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator GERZOFKY 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3 repealed and the following enacted in its place: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  
10 enforcement officer ~~or~~, an investigative officer as defined in this chapter or another  
11 employee of the Department of Corrections authorized to exercise law enforcement  
12 powers as described in Title 34-A, section 3011, carrying out practices otherwise  
13 permitted by this chapter, who intentionally or knowingly intercepts, attempts to intercept  
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  
20 ~~or~~, an investigative officer as defined in this chapter or another employee of the  
21 Department of Corrections authorized to exercise law enforcement powers as described in  
22 Title 34-A, section 3011, carrying out practices otherwise permitted by this chapter, who  
23 has in ~~his~~ that person's possession any device, contrivance, machine or apparatus  
24 designed or commonly used for intercepting wire or oral communications ~~defined in this~~  
25 ~~chapter~~, is guilty of a Class C crime.

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:

35 A. Either the sender or receiver of that communication is a person residing in an  
36 adult or juvenile correctional facility administered by the Department of Corrections;  
37 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  
6 subject to monitoring; and
- 7 (3) Informing the recipient of a telephone call from the resident by playing a  
8 recorded warning before the recipient accepts the call.

9 This subsection does not authorize any interference with the attorney-client privilege.

10 **Sec. 5. 34-A MRSA §1001, sub-§10-A**, as enacted by PL 1997, c. 102, §1, is  
11 amended to read:

12 **10-A. Investigative officer.** "Investigative officer" means an employee of the  
13 department designated by the commissioner as having the authority to conduct  
14 investigations of ~~offenses~~ crimes or juvenile crimes relating to the security or orderly  
15 management of a facility administered by the department and engage in any other activity  
16 that is related to the administration of criminal justice or the administration of juvenile  
17 criminal justice and who is certified by the Board of Trustees of the Maine Criminal  
18 Justice Academy as a full-time law enforcement officer.

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

36 **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.

