

CHAPTER 102**INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS****§709. Definitions**

The following words and phrases as used in this chapter, unless the context otherwise indicates, shall have the following meanings. [PL 1973, c. 561 (NEW).]

1. Communication common carrier. "Communication common carrier" means any telephone or telegraph company.

[PL 1973, c. 561 (NEW).]

1-A. Administration of criminal justice.

[PL 2015, c. 470, §5 (RP).]

1-B. Administration of juvenile criminal justice.

[PL 2021, c. 365, §1 (RP); PL 2021, c. 365, §37 (AFF).]

1-C. Administration of juvenile justice. "Administration of juvenile justice" has the same meaning as in section 3003, subsection 1-A.

[PL 2021, c. 365, §2 (AMD); PL 2021, c. 365, §37 (AFF).]

2. Contents. "Contents," when used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport or meaning of that communication.

[PL 1973, c. 561 (NEW).]

3. Intercepting device. "Intercepting device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

A. Any telephone or telegraph instrument, equipment or facility or any component thereof being used by a communication common carrier in the ordinary course of its business or extension telephones used by a subscriber to telephone service; or [PL 1973, c. 561 (NEW).]

B. A hearing aid or similar device being used to correct subnormal hearing to not better than normal. [PL 1973, c. 561 (NEW).]

[PL 1973, c. 561 (NEW).]

4. Intercept. "Intercept" means to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than:

A. The sender or receiver of that communication; [PL 1979, c. 701, §11 (AMD).]

B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or [PL 1973, c. 561 (NEW).]

C. A person given prior authority by the sender or receiver. [PL 1979, c. 701, §11 (AMD).]
[PL 1979, c. 701, §11 (AMD).]

4-A. Investigative officer. "Investigative officer" has the same meaning as in Title 34-A, section 1001, subsection 10-A.

[PL 2013, c. 80, §1 (RPR).]

4-B. Jail investigative officer. "Jail investigative officer" means an employee of a jail designated by the jail administrator as having the authority to conduct investigations of crimes relating to the security or orderly management of the jail and engage in any other activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of

the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act.

[PL 2015, c. 470, §7 (AMD).]

5. Oral communications. "Oral communications" means any oral communications uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

[PL 1973, c. 561 (NEW).]

6. Person. "Person" means any individual, partnership, association, joint stock company, trust or corporation, or any other legal entity, whether or not any of the foregoing is an officer, agent or employee of the United States, a state or a political subdivision of a state.

[PL 1973, c. 561 (NEW).]

7. Wire communication. "Wire communication" means any communication made in whole or in part through the use of facilities for transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception.

[PL 1973, c. 561 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 701, §11 (AMD). PL 1987, c. 680, §1 (AMD). PL 1997, c. 361, §§1,2 (AMD). PL 2011, c. 507, §§1-3 (AMD). PL 2013, c. 80, §1 (AMD). PL 2013, c. 267, Pt. B, §5 (AMD). PL 2015, c. 470, §§5-7 (AMD). PL 2021, c. 365, §§1, 2 (AMD). PL 2021, c. 365, §37 (AFF).

§710. Offenses

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

[PL 2013, c. 80, §2 (AMD).]

2. Editing of tape recordings in judicial proceedings prohibited. Any person who knowingly or intentionally edits, alters or tampers with any tape, transcription or other sound recording, or knows of such editing, altering or tampering, and presents that recording in any judicial proceeding or proceeding under oath, without fully indicating the nature of the changes made and the original state of the recording, is guilty of a Class C crime.

[PL 1979, c. 663, §96 (AMD).]

3. Disclosure or use of wire or oral communications prohibited. A person is guilty of a Class C crime if the person:

A. Intentionally or knowingly discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or
[PL 1979, c. 663, §97 (RPR).]

B. Intentionally or knowingly uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception. [PL 1979, c. 663, §97 (RPR).]

[RR 2023, c. 2, Pt. D, §50 (COR).]

4. Duty to report. Any communications common carrier shall promptly report to the Attorney General any facts coming to its attention in the conduct of its business which may indicate a possible

violation of this section and such carrier shall adopt reasonable rules to assure compliance with this subsection, provided such carrier shall not be liable to any person who may claim an injury arising out of any such report, if made in good faith. Any person violating this subsection shall be subject to a civil penalty not to exceed \$5,000, payable to the State, to be recovered in a civil action.

[PL 1979, c. 663, §98 (AMD).]

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

[PL 2013, c. 80, §3 (AMD).]

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

[PL 1987, c. 680, §4 (AMD).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 663, §§95-100 (AMD). PL 1987, c. 680, §§2-4 (AMD). PL 2013, c. 80, §§2, 3 (AMD). RR 2023, c. 2, Pt. D, §50 (COR).

§711. Civil remedy

Any party to a conversation intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses such communications and shall be entitled to recover from any such persons: [PL 1973, c. 561 (NEW).]

1. Damages. Actual damages, but not less than liquidated damages, computed at the rate of \$100 per day for each day of violation; and

[PL 1979, c. 663, §101 (AMD).]

2. Attorney's fee. A reasonable attorney's fee and other litigation disbursements reasonably incurred.

[PL 1973, c. 561 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 663, §101 (AMD).

§712. Exceptions

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

[PL 1987, c. 680, §5 (NEW).]

2. Investigative officers. It is not a violation of this chapter for an investigative officer, or for another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; or while engaged in any activity that is related to the administration of juvenile 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 [PL 2009, c. 93, §1 (AMD).]
- B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:
 - (1) Providing the resident with a written notification statement;
 - (2) Posting written notification next to every telephone at the facility that is subject to monitoring; and
 - (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [PL 1997, c. 361, §3 (AMD).]
- C. [PL 1997, c. 361, §3 (RP).]

This subsection does not authorize any interference with the attorney-client privilege.
[PL 2021, c. 365, §3 (AMD); PL 2021, c. 365, §37 (AFF).]

3. Jail investigative officer. It is not a violation of this chapter for a jail investigative officer, as defined in this chapter, or for a jail employee acting at the direction of a jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act if:

- A. Either the sender or the receiver of that communication is a person residing in an adult section of the jail; and [PL 2011, c. 507, §5 (AMD).]
- B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:
 - (1) Providing the resident with a written notification statement;
 - (2) Posting written notification next to every telephone at the jail that is subject to monitoring; and
 - (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [PL 1997, c. 361, §4 (NEW).]

This subsection does not authorize any interference with the attorney-client privilege.
[PL 2015, c. 470, §9 (AMD).]

4. Disclosure to another state agency. It is not a violation of this chapter for the contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to subsection 2 or 3 to be disclosed to a state agency if related to the statutory functions of that agency.
[PL 2011, c. 507, §6 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1973, c. 788, §61 (AMD). PL 1979, c. 701, §12 (AMD). PL 1987, c. 680, §5 (RPR). PL 1995, c. 182, §1 (AMD). PL 1997, c. 361, §§3,4 (AMD). PL 2009, c. 93, §1 (AMD). PL 2011, c. 507, §§4-6 (AMD). PL 2013, c. 80, §4 (AMD). PL 2015, c. 470, §§8, 9 (AMD). PL 2021, c. 365, §3 (AMD). PL 2021, c. 365, §37 (AFF).

§713. Evidence

The contents of an interception are not admissible in court, except that: [PL 2011, c. 507, §7 (RPR).]

1. Contents obtained under the laws of another jurisdiction. The contents of an interception of any oral communication or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred are admissible in the courts of this State, subject to the Maine Rules of Evidence; and [PL 2011, c. 507, §7 (NEW).]

2. Contents obtained under this chapter. The contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the Maine Rules of Evidence, if related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; the administration of juvenile justice; or the statutory functions of a state agency. [PL 2021, c. 365, §4 (AMD); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 1979, c. 701, §13 (NEW). PL 1983, c. 379 (AMD). PL 1995, c. 182, §2 (AMD). PL 1997, c. 361, §5 (AMD). PL 2011, c. 507, §7 (RPR). PL 2015, c. 470, §10 (AMD). PL 2021, c. 365, §4 (AMD). PL 2021, c. 365, §37 (AFF).

§714. Intercepted attorney-client communications of jail and correctional facility residents

1. Intercepted attorney-client communications of jail and correctional facility residents. If the sender or the recipient of an intercepted oral communication or wire communication was, at the time the communication was made, a resident in either a jail or an adult or juvenile correctional facility administered by the Department of Corrections and the other party was an attorney and if the resident demonstrates that the jail or correctional facility had actual or constructive notice at the time the communication was made of the attorney's name and, if the communication involved the use of a telephone, the jail or correctional facility had actual or constructive notice at the time that the communication was made of the attorney's telephone number and the communication was made directly to or from that telephone number:

A. The contents of the intercepted oral communication or wire communication and the fact and circumstances of the communication are not admissible in a criminal proceeding, including a proceeding under chapter 305-A; [PL 2023, c. 394, Pt. A, §5 (NEW).]

B. A person who viewed or listened to the intercepted communication and did not immediately discontinue viewing or listening to the communication as soon as the person had sufficient information to determine that the sender or the recipient of the communication was, at the time the communication was made, a resident in a jail or correctional facility and the other party was an attorney, is disqualified from participating in an investigation of the resident and from appearing as a witness in a criminal proceeding in which the resident is a defendant, including a proceeding under chapter 305-A; and [RR 2023, c. 2, Pt. A, §23 (COR).]

C. A person who viewed or listened to the intercepted communication and saw or heard information that may be relevant to a pending or anticipated charge against the resident or a defense the resident may assert, or may lead to the discovery of that evidence, is disqualified from participating in the investigation of the resident and from appearing as a witness in the pending or anticipated criminal proceeding in which the resident is a defendant, including a subsequent proceeding under chapter 305-A on the pending or anticipated charge. [PL 2023, c. 394, Pt. A, §5 (NEW).]

For purposes of this subsection, the inclusion of the attorney's name and telephone number on a list transmitted by the Maine Commission on Public Defense Services pursuant to Title 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of Corrections constitutes constructive notice to a jail in the same county as the sheriff's office or to all correctional facilities administered by the Department of Corrections, respectively, beginning on the Monday following the transmission.

[RR 2023, c. 2, Pt. A, §23 (COR).]

2. Application of other law or rule. This section does not limit the applicability of any other provision of law or of the Maine Rules of Evidence regarding the admissibility or inadmissibility in evidence of attorney-client communications that do not meet the requirements of this section.

[PL 2023, c. 394, Pt. A, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 394, Pt. A, §5 (NEW). PL 2023, c. 558, §13 (REV). RR 2023, c. 2, Pt. A, §23 (COR).

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