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Date: (Filing No. S-)

JUDICIARY

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 425, L.D. 1056, “An Act Restricting State Assistance in Federal Collection of Personal Electronic Data and Metadata ”

Amend the bill by striking out the title and substituting the following:

'An Act to Enhance Regulation of the Grand Jury Subpoena Process and Government Access to Electronic Device Information'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 15 MRSA §58 is enacted to read:

§58. Notice of grand jury subpoena

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Adverse result" means:

- (1) Immediate danger of death or serious physical injury to any person;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;
- (4) Intimidation of a potential witness;
- (5) Seriously jeopardizing an investigation; or
- (6) Undue delay of a trial.

B. "Court" means the Superior Court or the District Court.

C. "Grand jury subpoena" means a subpoena issued by a grand jury pursuant to Rule 17 or 17A of the Maine Rules of Unified Criminal Procedure and pursuant to section 56.

COMMITTEE AMENDMENT

1 D. "Subject of the grand jury subpoena" means the person or persons, if reasonably
2 identifiable by an attorney for the State, about whom any grand jury witness testimony
3 or documentary evidence or tangible objects are sought through a grand jury subpoena.
4 "Subject of the grand jury subpoena" does not include the person upon whom the grand
5 jury subpoena is served.

6 **2. Notice by subpoenaed person.** A person served with a grand jury subpoena may
7 notify any person of the existence of the grand jury subpoena unless a court order
8 prohibiting such action is served with the grand jury subpoena. On application by an
9 attorney for the State, a court may issue an order prohibiting the person served from
10 notifying any other person of the existence of a grand jury subpoena if the attorney for the
11 State demonstrates that there is a reason to believe that notification of the existence of the
12 grand jury subpoena will have an adverse result.

13 **3. Notice by attorney for the State.** An attorney for the State, within one year after
14 service of a grand jury subpoena, shall notify the subject of the grand jury subpoena of the
15 existence of the subpoena unless:

16 A. The subject of the grand jury subpoena was indicted either by the grand jury that
17 issued the subpoena or by another grand jury to which any evidence produced in
18 response to the subpoena was presented; or

19 B. On application by an attorney for the State, a court issues an order waiving the notice
20 required by this subsection. A court may issue an order waiving the notice required by
21 this subsection if the attorney for the State demonstrates that there is a reason to believe
22 that notifying the subject of the grand jury subpoena of the existence of the subpoena
23 will have an adverse result.

24 **PART B**

25 **Sec. B-1. 16 MRSA c. 3, sub-c. 10, headnote** is amended to read:

26 **SUBCHAPTER 10**

27 **PORTABLE ELECTRONIC DEVICE CONTENT INFORMATION**

28 **Sec. B-2. 16 MRSA §641, sub-§2,** as enacted by PL 2013, c. 402, §1, is repealed.

29 **Sec. B-3. 16 MRSA §641, sub-§3-A** is enacted to read:

30 **3-A. Electronic device.** "Electronic device" means an electronic device that enables
31 access to, or use of, an electronic communication service or remote computing service.

32 **Sec. B-4. 16 MRSA §641, sub-§3-B** is enacted to read:

33 **3-B. Electronic device information.** "Electronic device information" means:

34 A. With respect to any wire, oral or electronic communication stored on, generated by
35 or transmitted from or to the electronic device, any information concerning the
36 substance, purport or meaning of that communication as well as information about the
37 sender or a recipient of the communication, including the location of the sender or a
38 recipient at any point during the communication; the format of the communication; the
39 time or date the communication was created, sent or received; or any information

1 relating to a person or an electronic device participating in the electronic
2 communication, such as an Internet protocol address; and

3 B. Any other information stored on, generated by or transmitted through operation of
4 the electronic device.

5 "Electronic device information" does not include location information as defined in section
6 647, subsection 5, except information about the location of a sender or recipient of a wire,
7 oral or electronic communication.

8 **Sec. B-5. 16 MRSA §641, sub-§5**, as enacted by PL 2013, c. 402, §1, is amended
9 to read:

10 **5. Owner.** "Owner" means the person or entity having the legal title, claim or right to
11 a ~~portable~~ an electronic device.

12 **Sec. B-6. 16 MRSA §641, sub-§6**, as amended by PL 2019, c. 489, §5, is repealed.

13 **Sec. B-7. 16 MRSA §641, sub-§7**, as enacted by PL 2013, c. 402, §1, is repealed
14 and the following enacted in its place:

15 **7. Remote computing service.** "Remote computing service" means:

16 A. The provision to the public over the Internet of on-demand computer storage; or

17 B. Processing services provided by means of an electronic communication service.

18 **Sec. B-8. 16 MRSA §641, sub-§8**, as enacted by PL 2013, c. 402, §1, is amended
19 to read:

20 **8. User.** "User" means a person or entity that uses a ~~portable~~ an electronic device.

21 **Sec. B-9. 16 MRSA §642**, as amended by PL 2017, c. 144, §4, is further amended
22 to read:

23 **§642. Authority to obtain and disclose ~~content~~ electronic device information held by**
24 **a provider of electronic communication service or remote computing service**

25 **1. Authority to obtain.** A government entity may obtain ~~portable~~ electronic device
26 ~~content~~ information directly from a provider of electronic communication service or a
27 ~~provider of~~ remote computing service only in accordance with a valid search warrant issued
28 by a duly authorized justice, judge or justice of the peace using procedures established
29 pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.

30 **2. Authority to disclose.** A provider of electronic communication service or remote
31 computing service may disclose ~~portable~~ electronic device content information to a
32 government entity only pursuant to a warrant issued by a duly authorized justice, judge or
33 justice of the peace or as otherwise provided in this subchapter.

34 **Sec. B-10. 16 MRSA §643**, as amended by PL 2019, c. 489, §§7 and 8, is further
35 amended to read:

36 **§643. Notice**

37 Notice must be given to the owner or user of a ~~portable~~ an electronic device whose
38 ~~content~~ electronic device information was obtained by a government entity. The notice
39 requirements of this section do not apply if the government entity is unable to identify the
40 owner or user of a ~~portable~~ an electronic device.

1 **1. Timing and content of notice.** Unless the court determines under subsection 2 that
2 no notice is required, the government entity shall provide notice to the owner or user that
3 ~~content~~ electronic device information was obtained by the government entity from a
4 provider of electronic communication service or remote computing service within 3 days
5 of obtaining ~~the content~~ that information. The notice must be made by service or delivered
6 by registered or first-class mail, e-mail or any other means reasonably calculated to be
7 effective as specified by the court issuing the warrant. The notice must contain the
8 following information:

9 A. The nature of the law enforcement inquiry, with reasonable specificity;

10 B. The ~~content~~ electronic device information of the owner or user that was supplied to
11 or requested by the government entity and the date on which it was provided or
12 requested; and

13 C. The identity of the provider of electronic communication service or remote
14 computing service from ~~whom~~ which the information was obtained.

15 **2. Notification not required.** A government entity acting under section 642 may
16 include in the application for a warrant a request for an order to waive the notification
17 required under this section. The court may issue the order if the court determines that there
18 is reason to believe that notification will have an adverse result.

19 **3. Preclusion of notice to owner or user subject to warrant for content electronic**
20 **device information.** A government entity acting under section 642 may include in its
21 application for a warrant a request for an order directing a provider of electronic
22 communication service or remote computing service to which a warrant is directed not to
23 notify any other person of the existence of the warrant. The court may issue the order if the
24 court determines that there is reason to believe that notification of the existence of the
25 warrant will have an adverse result.

26 **Sec. B-11. 16 MRSA §644**, as amended by PL 2019, c. 489, §9, is further amended
27 to read:

28 **§644. Exceptions**

29 **1. Consent of owner or user.** When disclosure of ~~portable~~ electronic device ~~content~~
30 information is not prohibited by federal law, a government entity may obtain the
31 information without a warrant with the informed, affirmative consent of the owner or user
32 of the ~~portable~~ electronic device concerned, except when the device is known or believed
33 by the owner or user to be in the possession of a 3rd party authorized to possess the device
34 by the owner or user.

35 **2. Consent of owner or user not required if content electronic device information**
36 **public.** Notwithstanding subsection 1, a government entity may obtain ~~content~~ electronic
37 device information without a warrant if the ~~content~~ electronic device information is
38 otherwise disclosed by anyone in a publicly accessible domain, including, but not limited
39 to, on the Internet.

40 **3. Emergency.** When a government entity cannot, with due diligence, obtain a warrant
41 in time to address an emergency that involves or is believed to involve imminent danger of
42 death or serious physical injury to any person, a government entity may obtain the ~~content~~
43 electronic device information ~~from a portable electronic device~~ without a warrant, and a

1 provider of electronic communication service or remote computing service may disclose
2 such information to the requesting government entity without a warrant.

3 **Sec. B-12. 16 MRSA §645**, as enacted by PL 2013, c. 402, §1, is amended by
4 amending the section headnote to read:

5 **§645. Use of ~~content~~ electronic device information obtained in violation of this**
6 **subchapter not admissible**

7 **Sec. B-13. 16 MRSA §648, first ¶**, as amended by PL 2017, c. 144, §5, is further
8 amended to read:

9 Except as provided in subchapter 10 or this subchapter, a government entity may not
10 obtain location information without a valid warrant issued by a duly authorized justice,
11 judge or justice of the peace using procedures established pursuant to Title 15, section 55
12 or 56.

13 **Sec. B-14. 16 MRSA §649, first ¶**, as reallocated by RR 2013, c. 1, §30, is
14 amended to read:

15 Notice must be given to the owner or user of an electronic device whose location
16 information was obtained by a government entity pursuant to this subchapter. The
17 government entity's notification obligation applies only if the government entity is able to
18 identify the owner or user.'

19 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
20 number to read consecutively.

21 SUMMARY

22 This amendment, which is the minority report of the committee, strikes and replaces
23 the bill.

24 Part A of the amendment clarifies that a person upon whom a grand jury subpoena is
25 served may notify others of the existence of the subpoena unless a court issues an order
26 prohibiting notice to any person on the basis that there is a reason to believe such notice
27 will have an adverse result. It also requires an attorney for the State, within one year after
28 service of a grand jury subpoena, to notify the subject of the subpoena against whom an
29 indictment has not been issued of the existence of the subpoena unless a court enters an
30 order waiving the notice requirement on the basis that there is a reason to believe such
31 notice will have an adverse result. For purposes of these provisions, the amendment defines
32 "adverse result" as immediate danger of death or serious physical injury to any person;
33 flight from prosecution; destruction of or tampering with evidence; intimidation of a
34 potential witness; seriously jeopardizing an investigation; or undue delay of a trial.

35 Part B of the amendment amends the provisions of law that require state and local
36 government entities to obtain a search warrant, unless certain enumerated circumstances
37 exist, before accessing information regarding the content of portable electronic device
38 communications. Part B expands the scope of these laws to apply when state or local
39 government entities seek to obtain not only information about the content of
40 communications but also metadata about those communications and any other information
41 stored on, generated by or transmitted through operation of an electronic device, regardless
42 of whether it is portable. Part B also clarifies that these provisions of law apply when state

1 and local government entities seek to obtain electronic device information stored by remote
2 computing services that provide Internet storage to the public, commonly referred to as
3 "cloud storage services."