

Comparison of LD 1576 to Current State Laws
Governing State and Local Government Access to Certain Electronic Data

	Current State Law		LD 1576
Citation	16 M.R.S. §641-§646 (subch. 10)	16 M.R.S. §647-§650-B (subch. 11)	Amends only §641-§647 (subch. 10)
Type of device	<ul style="list-style-type: none"> • <i>Portable</i> electronic device 	<ul style="list-style-type: none"> • Electronic device 	<ul style="list-style-type: none"> • Electronic device (defined more broadly)
Type of information	<ul style="list-style-type: none"> • Content information (substance or meaning of a wire, oral or electronic communication) 	<ul style="list-style-type: none"> • Location information (info. on current or prior location of device generated by operation of the device) 	<ul style="list-style-type: none"> • Content information • Communication info. (location and IP address of sender or recipient, message format, time and date, etc.) • Location information • Other information stored, generated or transmitted by the electronic device
Holder of the requested information	<ul style="list-style-type: none"> • Electronic communication service (ex: cell phone, email, or social media company); • Remote computing service (ex: cloud storage company) 	Anyone (including electronic communication service; remote computing service; or location information service)	<ul style="list-style-type: none"> • Anyone not the owner of the device, Also applies to government access by physical interaction or electronic communication with the electronic device
Warrant required?	Yes – warrant generally required	Yes – warrant generally required <ul style="list-style-type: none"> • Duration: ≤14 days • May extend ≤30 days based on probable cause 	Yes – warrant generally required
Exceptions to warrant requirement	<p>Warrant <u>not</u> required if:</p> <ul style="list-style-type: none"> • Consent of owner/user (unless device possessed by different authorized owner/user) • Emergency believed to involve imminent danger of death/serious physical injury to any person • Info. in a publicly accessible domain 	<p>Warrant <u>not</u> required if:</p> <ul style="list-style-type: none"> • Consent of owner/user (unless device possessed by different authorized owner/user) • Emergency believed to involve imminent danger of death/serious physical injury to any person – <i>within a reasonable time, government must notify court in writing of facts giving rise to emergency need for location info.</i> • Responding to user’s call for emergency services 	<p>Warrant <u>not</u> required if:</p> <ul style="list-style-type: none"> • Consent of owner/user (unless device possessed by different authorized owner/user) • Emergency believed to involve imminent danger of death/serious physical injury to any person • Info. in a publicly accessible domain

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		<ul style="list-style-type: none"> Consent of owner/user guardian or next of kin if owner/user believed to be dead or reported missing 	
			<ul style="list-style-type: none"> Voluntary disclosure by recipient of content and communication info.
Notice of warrant <i>(same requirements under both current laws)</i>	<p>Notice to owner/user required within 3 days of obtaining information with a search warrant. Notice must include: (a) the specific nature of law enforcement inquiry; (b) identify information requested & supplied and on what dates; and (c) identity of company providing the information.</p> <p>Court may waive notice by government & prohibit notice by company if reason to believe notification of warrant existence will cause:</p> <ul style="list-style-type: none"> immediate danger of death or serious physical injury; flight from prosecution; destruction of or tampering with evidence; potential witness intimidation; seriously jeopardizing an investigation; or undue delay of a trial. 		Same as current law
Exclusionary rule apply to violations?	Yes (all types of proceedings)	Yes (all types of hearings/trials) To be admissible: party introducing validly obtained location information must provide 10-days' pre-trial notice (unless impossible & no prejudice to other party)	Yes (all types of proceedings)
Remedy for violation?	<ul style="list-style-type: none"> Injunctive relief against government 	Not stated. [But law explicitly does not create a cause of action against a corporation, its officers or its employees for providing location information.]	<ul style="list-style-type: none"> Injunctive relief against government