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House of Representatives, February 5, 2019

An Act Regarding Portable Electronic Device Content, Location Information and Tracking Devices

Reported by Representative WARREN of Hallowell for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 16 MRSA c. 3, sub-c. 9-A** is enacted to read:

3 **SUBCHAPTER 9-A**

4 **TRACKING DEVICE INFORMATION**

5 **§638. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Adverse result.** "Adverse result" means:

9 A. Immediate danger of death or serious physical injury;

10 B. Flight from prosecution;

11 C. Destruction of or tampering with evidence;

12 D. Intimidation of a potential witness;

13 E. Potentially jeopardizing an investigation;

14 F. Undue delay of a trial; or

15 G. Other significantly detrimental consequence.

16 **2. Law enforcement officer.** "Law enforcement officer" means any person who by
17 virtue of public employment is vested by law with a duty to maintain public order, to
18 prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or
19 is limited to specific crimes, or to perform probation functions or who is an adult
20 probation supervisor.

21 **3. Tracking device.** "Tracking device" means an electronic or mechanical device
22 that permits the tracking of the movement of a person or object.

23 **§639. Authority to install and monitor a tracking device**

24 **1. Application.** This subchapter only applies to tracking devices that are placed by
25 law enforcement officers.

26 **2. Installation and monitoring.** A law enforcement officer may install and monitor
27 a tracking device only in accordance with a valid search warrant issued by a duly
28 authorized justice, judge or justice of the peace using procedures established pursuant to
29 Title 15, section 55 or 56 or as otherwise provided in this subchapter.

30 **3. Authorization of use.** A court empowered to issue a search warrant or other
31 order for the installation of a tracking device may authorize the use of that device within
32 the jurisdiction of the court and outside that jurisdiction if the device is installed within
33 the jurisdiction of the court.

1 **4. Time period.** A justice, judge or justice of the peace may issue a search warrant
2 for the installation and monitoring of a tracking device pursuant to this section for a
3 period of time necessary to achieve the objective of the authorization, but in any case the
4 warrant to install the tracking device is not valid for more than 14 days after issuance. A
5 justice, judge or justice of the peace may grant an extension of the monitoring period for
6 up to 30 days upon a finding of continuing probable cause and a finding that the
7 extension is necessary to achieve the objective of the authorization.

8 **§640. Notice**

9 **1. Service of notice.** Unless the court determines under subsection 3 that no notice
10 is required, within 14 calendar days after the use of the tracking device has ended, the law
11 enforcement officer who executed the warrant shall serve a copy of the warrant on the
12 person who was tracked or whose property was tracked. The time period provided in this
13 subsection may be extended for good cause shown.

14 **2. Means of providing notice.** The notice required under subsection 1 must be
15 made by:

16 A. Delivering a copy to the person who was tracked or whose property was tracked;

17 B. Leaving a copy at the person's residence or usual place of abode with an
18 individual of suitable age and discretion who resides at that location; or

19 C. Mailing a copy to the person's last known address.

20 **3. Notification not required.** A law enforcement officer acting pursuant to section
21 639 may include in the application for a warrant a request for an order to waive the
22 notification required under this section. The court may issue an order waiving notification
23 if the court determines that there is reason to believe that notification will have an adverse
24 result.

25 **Sec. 2. 16 MRSA §641, sub-§6,** as enacted by PL 2013, c. 402, §1, is amended to
26 read:

27 **6. Portable electronic device.** "Portable electronic device" means a portable device
28 that is portable and electric that enables access to, or use of, an electronic communication
29 service or remote computing service.

30 **Sec. 3. 16 MRSA §641, sub-§7-A** is enacted to read:

31 **7-A. Serious physical injury.** "Serious physical injury" means:

32 A. Bodily injury that creates a substantial risk of death, serious, permanent
33 disfigurement or loss or substantial impairment of the function of a bodily member or
34 organ or extended convalescence for recovery of physical health; or

35 B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title
36 17-A, section 282, 301, 302 or 303.

37 **Sec. 4. 16 MRSA §643, first ¶,** as enacted by PL 2013, c. 402, §1, is amended to
38 read:

1 Notice must be given to the owner or user of a portable electronic device whose
2 content information was obtained by a government entity. The notice requirements of
3 this section do not apply if the government entity is unable to identify the owner or user
4 of a portable electronic device.

5 **Sec. 5. 16 MRSA §643, sub-§1**, as enacted by PL 2013, c. 402, §1, is amended to
6 read:

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

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

16 B. The content information of the owner or user that was supplied to or requested by
17 the government entity and the date on which it was provided or requested; and

18 C. ~~If content information was obtained from a provider of electronic communication~~
19 ~~service or other 3rd party, the~~ The identity of the provider of electronic
20 communication service or ~~the 3rd party~~ remote computing service from whom the
21 information was obtained.

22 **Sec. 6. 16 MRSA §644, sub-§§1 and 3**, as enacted by PL 2013, c. 402, §1, are
23 amended to read:

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

30 **3. Emergency.** When a government entity cannot, with due diligence, obtain a
31 warrant in time to address an emergency that involves or is believed to involve ~~an~~
32 ~~imminent threat to life or safety~~ danger of death or serious physical injury to any person,
33 a government entity may obtain the content information from a portable electronic device
34 without a warrant, and a provider of electronic communication service or remote
35 computing service may disclose such information to the requesting government entity
36 without a warrant.

37 **Sec. 7. 16 MRSA §646-A** is enacted to read:

1 **§646-A. Application**

2 This subchapter applies to a government entity obtaining portable electronic device
3 content from a provider of electronic communication service or a provider of remote
4 computing service.

5 **Sec. 8. 16 MRSA §647, sub-§1, ¶¶E and F**, as reallocated by RR 2013, c. 1,
6 §28, are amended to read:

7 E. ~~Substantially jeopardizes~~ Potentially jeopardizing an investigation; or

8 F. ~~Undue delay of a trial;~~ or

9 **Sec. 9. 16 MRSA §647, sub-§1, ¶G** is enacted to read:

10 G. Other significantly detrimental consequence.

11 **Sec. 10. 16 MRSA §647, sub-§3**, as reallocated by RR 2013, c. 1, §28, is
12 amended to read:

13 **3. Electronic device.** "Electronic device" means a device that is electric and that
14 enables access to, or use of, an electronic communication service, remote computing
15 service or location information service.

16 **Sec. 11. 16 MRSA §647, sub-§§8-A and 8-B** are enacted to read:

17 **8-A. Serious physical injury.** "Serious physical injury" means:

18 A. Bodily injury that creates a substantial risk of death, serious, permanent
19 disfigurement or loss or substantial impairment of the function of a bodily member or
20 organ or extended convalescence necessary for recovery of physical health; or

21 B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title
22 17-A, section 282, 301, 302 or 303.

23 **8-B. Tracking device.** "Tracking device" means an electronic or mechanical device
24 that permits the tracking of the movement of a person or object.

25 **Sec. 12. 16 MRSA §648**, as amended by PL 2017, c. 144, §5, is repealed and the
26 following enacted in its place:

27 **§648. Application; search warrant needed for acquisition of location information**

28 **1. Application.** This subchapter applies to a government entity obtaining location
29 information from a provider of electronic communication service, remote computing
30 service or location information service. This subchapter does not apply to tracking
31 devices placed by law enforcement officers.

32 **2. Warrant required.** Except as provided in this subchapter, a government entity
33 may not obtain location information from a provider of electronic communication service,
34 remote computing service or location information service without a valid search warrant

1 issued by a duly authorized justice, judge or justice of the peace using procedures
2 established pursuant to Title 15, section 55 or 56.

3 **Sec. 13. 16 MRSA §649**, as reallocated by RR 2013, c. 1, §30 and amended by PL
4 2013, c. 588, Pt. A, §21, is further amended to read:

5 **§649. Notice**

6 Notice must be given to the owner or user of an electronic device whose location
7 information was obtained by a government entity. ~~The government entity's notification~~
8 ~~obligation applies only if the government entity is able~~ from a provider of electronic
9 communication service, remote computing service or location information service. The
10 notice requirements of this section do not apply if the government entity is unable to
11 identify the owner or user.

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

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

21 B. The location information of the owner or user that was supplied to or requested by
22 the government entity and the date on which it was provided or requested; and

23 C. ~~If location information was obtained from a provider of electronic communication~~
24 ~~service or location information service or other 3rd party, the~~ The identity of the
25 provider of electronic communication service, remote computing service or location
26 information service ~~or the 3rd party~~ from whom the information was obtained.

27 **2. Notification not required.** A government entity acting under section 648 may
28 include in the application for a warrant a request for an order to waive the notification
29 required under this section. The court may issue the order if the court determines that
30 there is reason to believe that notification will have an adverse result.

31 **3. Preclusion of notice to owner or user subject to warrant for location**
32 **information.** A government entity acting under section 648 may include in its
33 application for a warrant a request for an order directing a provider of electronic
34 communication service, remote computing service or location information service to
35 which a warrant is directed not to notify any other person of the existence of the warrant.
36 The court may issue the order if the court determines that there is reason to believe that
37 notification of the existence of the warrant will have an adverse result.

38 **Sec. 14. 16 MRSA §650, sub-§§2 and 4**, as reallocated by RR 2013, c. 1, §31,
39 are amended to read:

