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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 246, L.D. 332, Bill, “An Act Regarding Service of Criminal Process on Electronic Communication Service Providers and Remote Computing Service Providers”

Amend the bill in section 1 in subsection 6 in the 2nd line (page 1, line 18 in L.D.) by striking out the following: "A clerk" and inserting the following: 'A commercial clerk'

Amend the bill in section 1 in subsection 6 by striking out all of paragraph C (page 2, lines 7 to 15 in L.D.) and inserting the following:

'C. For purposes of this subsection, criminal process is properly served if it is:

(1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a commercial clerk or commercial registered agent as provided in section 106; section 107, subsection 4; or this section;

(2) Delivered by specific means identified by the provider for service of criminal process, including, but not limited to, e-mail, facsimile or submission via an Internet web portal; or

(3) Delivered to the provider's place of business within the State.

If service is made pursuant to subparagraph (1) or (3) and the provider promptly notifies the law enforcement agency of the specific means of service identified by the provider pursuant to subparagraph (2) for criminal process, service must be made by the means of service specified by the provider if possible.'

Amend the bill in section 3 in §56 in subsection 1 by striking out all of paragraph L (page 3, line 37 and page 4, lines 1 to 8 in L.D.) and inserting the following:

'L. "Properly served" means that a search warrant or grand jury subpoena has been:

(1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a

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1 commercial clerk or commercial registered agent as provided in Title 5, section
2 106; Title 5, section 107, subsection 4; or this section;

3 (2) Delivered by specific means identified by the provider for service of criminal
4 process, including, but not limited to, e-mail, facsimile or submission via an
5 Internet web portal; or

6 (3) Delivered to the provider's place of business within the State.

7 If service is made pursuant to subparagraph (1) or (3) and the provider promptly
8 notifies the law enforcement agency of the specific means of service identified by the
9 provider pursuant to subparagraph (2) for criminal process, service must be made by
10 the means of service specified by the provider if possible.'

11 Amend the bill in section 3 in §56 by striking out all of subsections 2, 3 and 4 and
12 inserting the following:

13 **2. Requirements applicable to a foreign entity provider.** The following
14 provisions apply to criminal process issued pursuant to this section that requires a search
15 for records that are in the possession or control of a foreign entity provider when those
16 records would reveal the identity of a customer using services, data stored by or on behalf
17 of a customer, a customer's usage of the service, the recipient or destination of
18 communications sent to or from a customer, content information or location information.

19 A. A foreign entity provider served with a search warrant pursuant to this section
20 shall produce to the applicant all records sought, including those records maintained
21 or located outside this State, within 14 days of service. The 14 days may be extended
22 by the court as follows:

23 (1) By the 10th day following service, the foreign entity provider in writing or
24 electronically must notify the law enforcement officer who served the warrant
25 that producing all the records within 14 days is not practicable, the reasons why
26 compliance is not practicable and the date by which the foreign entity provider
27 will complete the production; and

28 (2) The law enforcement officer shall file a notice with the court of the reasons
29 under subparagraph (1).

30 If the court finds that good cause exists for the delay, the court may extend the 14-day
31 period to the date of production specified by the foreign entity provider and the
32 provider is prohibited from asserting that the warrant has expired. For purposes of
33 this paragraph, good cause includes, but is not limited to, impracticability of timely
34 response, difficulty of identifying and retrieving the data requested and the volume of
35 data or number of sources sought.

36 B. A foreign entity provider served with a grand jury subpoena pursuant to this
37 section shall produce to the prosecutor or grand jury all records sought, including
38 those records maintained or located outside this State, by or at the time of the grand
39 jury appearance. The grand jury subpoena must include the address of the prosecutor
40 or grand jury to which the provider must produce the records.

1 C. A foreign entity provider shall verify the authenticity of records that it produces
2 by providing an affidavit that complies with the requirements set forth in the Maine
3 Rules of Evidence, Rule 902(12). Admissibility of these records in a court in this
4 State is governed by the Maine Rules of Evidence, Rule 803(6).

5 D. A foreign entity provider that produces records or testifies pursuant to this
6 subsection is immune from criminal or civil liability for the release of the requested
7 information to the court, attorney for the State or law enforcement agency involved in
8 the investigation.

9 **3. Requirements applicable to a domestic entity provider.** The following
10 provisions apply to criminal process issued pursuant to this section that requires a search
11 for records that are in the possession or control of a domestic entity provider when those
12 records would reveal the identity of a customer using services, data stored by or on behalf
13 of a customer, a customer's usage of the service, the recipient or destination of
14 communications sent to or from a customer, content information or location information.

15 A. A domestic entity provider, when served with criminal process issued by another
16 state to produce records that would reveal the identity of a customer using services,
17 data stored by or on behalf of a customer, a customer's usage of the service, the
18 recipient or destination of communications sent to or from a customer, content
19 information or location information, shall produce those records as if that criminal
20 process had been issued by a court in this State.

21 B. A domestic entity provider served with a search warrant pursuant to this section
22 shall produce to the applicant all records sought, including those records maintained
23 or located outside this State, within 14 days of service. The 14-day period may be
24 extended by the court as follows:

25 (1) By the 10th day following service, the domestic entity provider in writing or
26 electronically must notify the law enforcement officer who served the warrant
27 that producing all the records within 14 days is not practicable, the reasons why
28 compliance is not practicable and the date by which the domestic entity provider
29 will complete the production; and

30 (2) The law enforcement officer shall file a notice with the court of the reasons
31 under subparagraph (1).

32 If the court finds that good cause exists for the delay, the court may extend the 14-day
33 period to the date of production specified by the domestic entity provider and the
34 provider is prohibited from asserting that the warrant has expired. For purposes of
35 this paragraph, good cause includes, but is not limited to, impracticability of timely
36 response, difficulty of identifying and retrieving the data requested and the volume of
37 data or number of sources sought.

38 C. A domestic entity provider served with a grand jury subpoena pursuant to this
39 section shall produce to the prosecutor or grand jury all records sought, including
40 those records maintained or located outside this State, by or at the time of the grand
41 jury appearance. The grand jury subpoena must include the address of the prosecutor
42 or grand jury to which the provider must produce the records.

1 D. A domestic entity provider shall verify the authenticity of records that it produces
2 by providing an affidavit that complies with the requirements set forth in the Maine
3 Rules of Evidence, Rule 902(11) or on a form provided by the requesting jurisdiction.
4 Admissibility of these records in a court in this State is governed by the Maine Rules
5 of Evidence, Rule 803(6).

6 E. A domestic entity provider that produces records or testifies pursuant to this
7 subsection is immune from criminal or civil liability for the release of the requested
8 information to the court, attorney for the State or law enforcement agency involved in
9 the investigation.

10 **4. Application for expedited production of records.** Notwithstanding the 14-day
11 period specified in subsection 2 or 3 for production of the records, if an applicant for a
12 search warrant believes that delaying production is reasonably likely to cause an adverse
13 result, the applicant may request that the court require the production of the records
14 sooner than 14 days after service pursuant to this subsection.

15 A. The applicant shall demonstrate to the court the specific adverse result or results,
16 as specified in subsection 1, paragraph A, subparagraphs (1) to (7), that delaying
17 production for 14 days is reasonably likely to cause.

18 B. If the court finds that the delay may cause an adverse result, the court shall state
19 the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to (7) and
20 may require the provider to produce the records in a specified number of days.

21 C. If the court specifies that the provider has less than 14 days to produce the record
22 and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs
23 (1) to (4), the provider must respond within the time specified by the court.

24 D. If the court specifies that the provider has less than 14 days to produce the record
25 and the only adverse result findings are results listed in subsection 1, paragraph A,
26 subparagraphs (5) to (7), the provider must notify the law enforcement officer serving
27 the warrant that compliance within that period specified by the court is not
28 practicable and must state the date within 14 days from service by which the provider
29 will respond. The law enforcement officer shall file the provider's response with the
30 court, and, upon a demonstration of good cause by the provider, the response period
31 may be extended by the court to no more than 14 days from the date of service of the
32 warrant. As used in this paragraph, good cause includes, but is not limited to,
33 impracticability of timely response, difficulty of identifying and retrieving the data
34 requested and the volume of data or number of sources sought.'

35 **SUMMARY**

36 This amendment makes the following changes to the bill.

37 1. It specifies that the clerk who is authorized to receive service of a grand jury
38 subpoena or search warrant is the commercial clerk.

39 2. It prioritizes the method of service of criminal process, specifying first priority as
40 through the specific means identified by the electronic service provider or remote
41 computing service provider.

