

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 455 - L.D. 627

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

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

Sec. 1. 15 MRSA §56, sub-§1, ¶A, as enacted by PL 2017, c. 144, §3, is amended to read:

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) ~~Potentially~~ Seriously jeopardizing an investigation; or
- (6) Undue delay of a trial; ~~or~~
- ~~(7) Other significantly detrimental consequence.~~

Sec. 2. 15 MRSA §56, sub-§4, as enacted by PL 2017, c. 144, §3, is amended to read:

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

A. The applicant shall demonstrate to the court the specific adverse result or results, as specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6), that delaying production for 14 days is reasonably likely to cause.

B. If the court finds that the delay may cause an adverse result, the court shall state the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6) and may require the provider to produce the records in a specified number of days.

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

D. If the court specifies that the provider has less than 14 days to produce the record and the only adverse result findings are results listed in subsection 1, paragraph A, subparagraphs (5) ~~to (7)~~ and (6), the provider must notify the law enforcement officer serving the warrant that compliance within that period specified by the court is not practicable and must state the date within 14 days from service by which the provider will respond. The law enforcement officer shall file the provider's response with the court, and, upon a demonstration of good cause by the provider, the response period may be extended by the court to no more than 14 days from the date of service of the warrant. As used in this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought.

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

SUBCHAPTER 9-A

TRACKING DEVICE INFORMATION

§638. Definitions

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

1. Adverse result. "Adverse result" means:

A. Immediate danger of death or serious physical injury to any person;

B. Flight from prosecution;

C. Destruction of or tampering with evidence;

D. Intimidation of a potential witness;

E. Seriously jeopardizing an investigation; or

F. Undue delay of a trial.

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

3. Tracking device. "Tracking device" means an electronic or mechanical device the primary purpose of which is to track the movement of a person or object. "Tracking device" does not include devices covered in subchapters 10 and 11.

§639. Authority to install and monitor a tracking device

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

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

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

4. Time period. A justice, judge or justice of the peace may issue a search warrant authorizing the installation and monitoring of a tracking device pursuant to this section. The warrant must require the installation of the tracking device within 14 days of the issuance of the warrant and allow the tracking device to be monitored for a period of 30 days following installation. A justice, judge or justice of the peace may grant an extension of the monitoring period for an additional 30 days upon a finding of continuing probable cause.

§640. Notice

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

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

- A. Delivering a copy to the person who was tracked or whose property was tracked;**
- B. Leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or**
- C. Mailing a copy to the person's last known address.**

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

Sec. 4. 16 MRSA §641, sub-§1, as enacted by PL 2013, c. 402, §1, is amended to read:

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. ~~Potentially~~ Seriously jeopardizing an investigation; or
- F. Undue delay of a trial; ~~or,~~
- G. ~~Other significantly detrimental consequence.~~

Sec. 5. 16 MRSA §641, sub-§6, as enacted by PL 2013, c. 402, §1, is amended to read:

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

Sec. 6. 16 MRSA §641, sub-§7-A is enacted to read:

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

- A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence for recovery of physical health; or
- B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303.

Sec. 7. 16 MRSA §643, first ¶, as enacted by PL 2013, c. 402, §1, is amended to read:

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

Sec. 8. 16 MRSA §643, sub-§1, as enacted by PL 2013, c. 402, §1, is amended to read:

1. Timing and content of notice. Unless the court determines under subsection 2 that no notice is required, the government entity shall provide notice to the owner or user that content information was obtained by the government entity from ~~that owner's or user's portable electronic device~~ a provider of electronic communication service or remote computing service within 3 days of obtaining the content information. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other

means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

- A. The nature of the law enforcement inquiry, with reasonable specificity;
- B. The content information of the owner or user that was supplied to or requested by the government entity and the date on which it was provided or requested; and
- C. ~~If content information was obtained from a provider of electronic communication service or other 3rd party,~~ The identity of the provider of electronic communication service or the 3rd party remote computing service from whom the information was obtained.

Sec. 9. 16 MRSA §644, sub-§§1 and 3, as enacted by PL 2013, c. 402, §1, are amended to read:

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

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

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

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. ~~Substantially~~ Seriously jeopardizes an investigation; or
- F. Undue delay of a trial.

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

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

Sec. 12. 16 MRSA §647, sub-§8-A is enacted to read:

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

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

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

Sec. 13. 16 MRSA §648, as amended by PL 2017, c. 144, §5, is further amended by adding at the end a new paragraph to read:

This subchapter does not apply to tracking devices, as defined in section 638, placed by law enforcement officers.

Sec. 14. 16 MRSA §649, sub-§1, ¶C, as reallocated by RR 2013, c. 1, §30, is amended to read:

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

Sec. 15. 16 MRSA §649, sub-§3, as amended by PL 2013, c. 588, Pt. A, §21, is further amended to read:

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

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

2. Consent of owner or user. With the informed, affirmative consent of the owner or user of the electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party ~~known to~~ authorized to possess the device by the owner or user;

4. Danger of death or serious injury. If the government entity reasonably believes that an emergency involving ~~immediate~~ imminent danger of death or serious physical

injury to a person requires the disclosure, without delay, of location information concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger, and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

Within a reasonable period of time after seeking disclosure pursuant to this subsection, the government entity seeking the location information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose location information was sought is believed to be important in addressing the emergency.

Sec. 17. 16 MRSA §650-A, sub-§1, as reallocated by RR 2013, c. 1, §32, is amended to read:

1. Conditions of use of location information in proceeding. Location information obtained pursuant to this subchapter or evidence derived from that information may be received in evidence or otherwise disclosed in a trial, hearing or other proceeding only if each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the statement of emergency filed under section 650, subsection 4 or the warrant and accompanying application under which the information was obtained.

Sec. 18. Right To Know Advisory Committee; warrants for tracking devices and content and location information. The Right To Know Advisory Committee shall review the law concerning the application for and issuance of search warrants authorizing the installation and monitoring of tracking devices and seeking content and location information under the Maine Revised Statutes, Title 16, chapter 3, subchapters 9-A, 10 and 11 and shall make recommendations concerning the public's right to know aggregate information about warrants, including warrants in which the application for the warrant included a request for an order to waive notice of the issuance of the warrant. The Right To Know Advisory Committee shall include in its report submitted by January 15, 2020, pursuant to Title 1, section 411, subsection 10, a summary of its review and any recommendations.