

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 415

S.P. 157

In Senate, February 14, 2013

**An Act To Require a Warrant To Obtain the Location Information
of a Cell Phone or Other Electronic Device**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative KRUGER of Thomaston and
Senator: WOODBURY of Cumberland, Representatives: CAREY of Lewiston, FREDETTE of
Newport, HICKMAN of Winthrop, KESCHL of Belgrade.

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

2 **Sec. 1. 16 MRSA c. 3, sub-c. 10** is enacted to read:

3 **SUBCHAPTER 10**

4 **ELECTRONIC DEVICE LOCATION INFORMATION**

5 **§641. 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. Substantially jeopardizes an investigation; or

14 F. Undue delay of a trial.

15 **2. Electronic communication service.** "Electronic communication service" means a
16 service that provides to users the ability to send or receive wire or electronic
17 communications.

18 **3. Electronic device.** "Electronic device" means a device that enables access to, or
19 use of, an electronic communication service, remote computing service or location
20 information service.

21 **4. Government entity.** "Government entity" means a state or local agency,
22 including but not limited to a law enforcement entity or any other investigative entity,
23 agency, department, division, bureau, board or commission or an individual acting or
24 purporting to act for or on behalf of a state or local agency.

25 **5. Location information.** "Location information" means information concerning the
26 location of an electronic device, including both the current location and any prior location
27 of the device, that, in whole or in part, is generated, derived from or obtained by the
28 operation of an electronic device.

29 **6. Location information service.** "Location information service" means a global
30 positioning service or other mapping, locational or directional information service.

31 **7. Owner.** "Owner" means the person or entity having the legal title, claim or right
32 to an electronic device.

1 **8. Remote computing service.** "Remote computing service" means computer
2 storage or processing services provided by means of an electronic communication
3 service.

4 **9. User.** "User" means a person or entity that uses an electronic device.

5 **§642. Warrant needed for acquisition of location information**

6 Except as provided in this subchapter, a government entity may not obtain location
7 information without a valid warrant issued by a duly authorized judge or justice using
8 procedures established pursuant to Title 15, section 55.

9 A judge or justice may issue a warrant for the location information of an electronic
10 device pursuant to this section for a period of time necessary to achieve the objective of
11 the authorization, but in any case the warrant is not valid for more than 10 days after the
12 issuance. A judge or justice may grant an extension of a warrant upon a finding of
13 continuing probable cause and a finding that the extension is necessary to achieve the
14 objective of the authorization. An extension may not exceed 30 days.

15 **§643. Notice**

16 Notice must be given to the owner or user of an electronic device whose location
17 information was obtained by a government entity.

18 **1. Timing and content of notice.** Unless delayed notice is ordered under subsection
19 2, the government entity shall provide notice to the owner or user that location
20 information was obtained by the government entity from that owner's or user's electronic
21 device within 3 days of obtaining the location information. The notice must be made by
22 service or delivered by registered or first-class mail, e-mail or any other means
23 reasonably calculated to be effective as specified by the court issuing the warrant. The
24 notice must contain the following information:

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

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

28 C. If location information was obtained from a provider of electronic communication
29 service or location information service or other 3rd party, the identity of the provider
30 of electronic communication service or location information service or the 3rd party
31 from whom the information was obtained; and

32 D. Whether the notification was delayed pursuant to subsection 2 and, if so, the court
33 that granted the delay and the reasons for granting the delay.

34 **2. Delay of notification.** A government entity acting under section 642 or section
35 645 may include in the application for a warrant a request for an order to delay the
36 notification required under this section for a period not to exceed 90 days. The court shall
37 issue the order if the court determines that there is reason to believe that notification may
38 have an adverse result. Upon expiration of the period of delay granted under this
39 subsection and any extension granted under subsection 4, the government entity shall

1 provide the owner or user a copy of the warrant together with a notice pursuant to
2 subsection 1.

3 **3. Preclusion of notice to owner or user subject to warrant for location**
4 **information.** A government entity acting under section 642 or section 645 may include
5 in its application for a warrant a request for an order directing a provider of electronic
6 communication service or location information service to which a warrant is directed not
7 to notify any other person of the existence of the warrant for a period of not more than 90
8 days. The court shall issue the order if the court determines that there is reason to believe
9 that notification of the existence of the warrant may have an adverse result.

10 **4. Extension.** The court, upon application, may grant one or more extensions of
11 orders granted under subsection 2 or 3 for up to an additional 90 days.

12 **§644. Exceptions to warrant requirement**

13 When disclosure of location information is not prohibited by federal law, a
14 government entity may obtain the location information without a warrant:

15 **1. Emergency services.** To respond to the user's call for emergency services;

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

19 **3. Consent of family member.** With the informed, affirmative consent of the legal
20 guardian or next of kin of the owner or user, if the owner or user is believed to be
21 deceased or reported missing and unable to be contacted; or

22 **4. Immediate danger of death or serious injury.** If the government entity
23 reasonably believes that an emergency involving immediate danger of death or serious
24 physical injury to a person requires the disclosure, without delay, of location information
25 concerning a specific person and that a warrant cannot be obtained in time to prevent the
26 identified danger, and the possessor of the location information, in good faith, believes
27 that an emergency involving danger of death or serious physical injury to a person
28 requires the disclosure without delay.

29 No later than 48 hours after seeking disclosure pursuant to this subsection, the
30 government entity seeking the location information shall file with the appropriate court a
31 written statement setting forth the facts giving rise to the emergency and the facts as to
32 why the person whose location information was sought is believed to be important in
33 addressing the emergency.

34 **§645. Designated law enforcement officer**

35 On a case-by-case basis and in accordance with this section, the Attorney General
36 may designate an investigative or law enforcement officer who may acquire location
37 information before obtaining a warrant.

1 **1. Conditions.** A designated investigative or law enforcement officer may acquire
2 location information only if the following conditions are met:

3 A. The officer cannot, with due diligence, obtain a warrant in time to address an
4 emergency that involves immediate danger of death or serious physical injury or an
5 imminent threat to national security; and

6 B. At the time the officer acquires location information, there exist grounds, known
7 to or in the possession of the officer, upon which a warrant could be entered under
8 this subchapter to authorize the acquisition.

9 **2. Warrant after acquisition of location information.** A designated investigative
10 or law enforcement officer who acquires location information before obtaining a warrant
11 authorizing the acquisition must, within 48 hours after the acquisition occurs or begins to
12 occur, obtain a warrant authorizing acquisition of the location information.

13 **3. Termination of search.** In the absence of a warrant, acquisition of location
14 information under this section must cease when the location information sought is
15 obtained or when the application for a warrant is denied, whichever is earlier.

16 **4. Denial of warrant.** In the event an application for a warrant under this section is
17 denied, or in any other case in which the acquisition of location information is terminated
18 without a warrant having been issued, the location information acquired must be treated
19 as having been obtained in violation of this subchapter. Notice must be served on the
20 owner or user of an electronic device about which location information was acquired in
21 accordance with section 643.

22 **§646. Reporting requirements**

23 **1. Report by judge or justice.** No later than January 31st each year, a judge or
24 justice who issues or denies a warrant under section 642 or section 645 during the
25 preceding calendar year must report on each warrant to the Administrative Office of the
26 Courts. The report must include, but is not limited to:

27 A. The fact that the warrant was applied for;

28 B. The identity of the government entity that made the application;

29 C. The offense specified in the warrant or warrant application;

30 D. The nature of the facilities from which, the place where or the technique by which
31 location information was to be obtained;

32 E. The expected number of electronic devices about which location information was
33 to be obtained;

34 F. Whether the warrant was granted as applied for or was modified or denied; and

35 G. The period of disclosures authorized by the warrant, and the number and duration
36 of any extensions of the warrant.

37 **2. Report by Administrative Office of the Courts to Legislature.** In June of each
38 year, beginning in 2014, the Administrative Office of the Courts shall submit to the
39 Legislature a full and complete report concerning the number of applications for warrants

1 authorizing or requiring the disclosure of location information pursuant to this
2 subchapter, the number of times access to location information was obtained pursuant to
3 section 644, subsection 4 and the number of warrants granted or denied pursuant to
4 section 645 during the preceding calendar year. The full and complete report must
5 include a summary and analysis of the data required under this subsection.

6 **3. Report publicly accessible.** In June of each year, beginning in 2014, the report
7 summary under subsection 2 must be made publicly available on the judicial branch's
8 publicly accessible website.

9 The Administrative Office of the Courts may prescribe the content and form of the
10 reports under this section.

11 **§647. Conditions of use of location information**

12 **1. Use of location information obtained in violation of this subchapter not**
13 **admissible.** Except as proof of a violation of this subchapter, evidence obtained in
14 violation of this subchapter is not admissible in a criminal, civil, administrative or other
15 proceeding.

16 **2. Conditions of use of location information in proceeding.** Location information
17 obtained pursuant to this subchapter or evidence derived from that information may be
18 received in evidence or otherwise disclosed in a trial, hearing or other proceeding only if
19 each party, not less than 10 days before the trial, hearing or proceeding, has been
20 furnished with a copy of the warrant and accompanying application under which the
21 information was obtained.

22 **3. Ten-day requirement; exception.** The 10-day requirement under subsection 2
23 may be waived if a judge makes a finding that it was not possible to provide a party with
24 the warrant and accompanying application 10 days prior to a trial, hearing or proceeding
25 and that the party will not be prejudiced by the delay in receiving the information.

26 **§648. Action against a corporation**

27 This subchapter may not be construed to create a cause of action against a
28 corporation or its officers, employees or agents for providing location information.

29 **SUMMARY**

30 This bill prohibits a government entity from obtaining the location information of a
31 cellular telephone or other electronic device without a valid warrant, except that a
32 government entity may obtain such information with the consent of the owner or user of
33 the electronic device, to respond to the user's call for emergency services or to respond to
34 certain emergency situations when a warrant cannot be issued in time to avert death or
35 serious physical injury. It also authorizes the Attorney General to designate a law
36 enforcement officer to obtain location information without a warrant in cases where there
37 is an imminent threat of serious physical injury or a threat to national security.

1 This bill requires a government entity to inform the owner or user of an electronic
2 device that location information was obtained from that person's device within 3 days of
3 obtaining the location information, unless the court determines there is good cause to
4 delay this notification.

5 This bill also requires judges involved with granting warrants to obtain location
6 information to report their activities regarding the warrants to the Administrative Office
7 of the Courts annually. It directs the Administrative Office of the Courts to provide a
8 summary of those reports to the Legislature.