

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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No. 1316

H.P. 941

House of Representatives, April 2, 2013

An Act Regarding Computers Used To Commit a Crime or Facilitate the Commission of a Crime

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered
printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TYLER of Windham.
Cosponsored by Senator PLUMMER of Cumberland and
Representatives: LAJOIE of Lewiston, LONG of Sherman, MARKS of Pittston, PEASE of
Morrill, PLANTE of Berwick, Senators: DUTREMBLE of York, GERZOFSKY of
Cumberland.

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

2 **Sec. 1. 17-A MRSA §431, sub-§2**, as enacted by PL 1989, c. 620, is amended to
3 read:

4 **2.** "Computer" means an electronic, magnetic, optical, electrochemical, or other
5 high-speed data processing device performing logical, arithmetic, or storage functions,
6 and includes any data storage ~~facility~~ device or communications facility directly related to
7 or operating in conjunction with ~~such~~ the device.

8 **Sec. 2. 17-A MRSA §431, sub-§10-A** is enacted to read:

9 **10-A.** "Data storage device" means any computer or accessory device, designed for
10 or capable of storing digital media or data, including, but not limited to, installed or
11 transportable hard drives, memory cards and servers.

12 **Sec. 3. 17-A MRSA §§436 and 437** are enacted to read:

13 **§436. Permanent destruction of computer data on a computer used in the**
14 **commission of a crime**

15 **1.** If a person is found guilty of a violation of this Title, the State shall permanently
16 destroy the computer data on any computer that was used to commit or facilitate the
17 commission of that violation or cause the computer data to be permanently destroyed
18 through the removal and destruction of any part of the computer in the possession of the
19 State on which that computer data are stored.

20 **2.** Notwithstanding subsection 1, a criminal justice agency, prior to the destruction
21 of computer data, may extract and provide computer data to a person if:

22 **A.** Prior to the conclusion of criminal prosecution in the matter involving the
23 computer data, the person provides written notification to the criminal justice agency
24 having custody of the computer on which the computer data are stored that the person
25 is interested in obtaining that computer data;

26 **B.** The person either has an ownership interest in the computer data or wants the
27 computer data only for the sentimental value of the data. When computer data are
28 requested only for the sentimental value of the data, the person must state such in a
29 written affidavit;

30 **C.** The computer data that are the subject of the person's request may be lawfully
31 disseminated;

32 **D.** The computer data that are the subject of the person's request are not confidential
33 by law;

34 **E.** The computer data that are the subject of the request are specifically identified by
35 the person making the request. For the purposes of this paragraph, "specifically
36 identified" means identified with reasonable precision and not merely categorically;

37 **F.** The criminal justice agency, in the judgment of the chief officer of the agency,
38 determines the agency has the technological expertise, resources and personnel

1 available to accommodate the request or to cause the request to be accommodated;
2 and

3 G. Notwithstanding any provision of law to the contrary, the person requesting the
4 computer data makes advance payment for the time and costs that the criminal justice
5 agency estimates will be needed for the requested computer data to be extracted and
6 provided by the agency or caused by the agency to be extracted and provided to the
7 person.

8 If the conditions identified in paragraphs A to G of this subsection are not met, the
9 computer data that are the subject of the request must be permanently destroyed in
10 accordance with subsection 1.

11 **§437. Permissible destruction or transfer of ownership to the State of a computer**
12 **used in the commission of a crime**

13 1. Notwithstanding any provision of law to the contrary and except as provided in
14 subsection 3, the State may either permanently destroy or assume ownership of a
15 computer that was used in the commission of a crime or that facilitated the commission of
16 a crime if:

17 A. A person has been found guilty of a crime committed using, or that was facilitated
18 through the use of, the computer;

19 B. The opportunity for the computer to be forfeited to the State through proceedings
20 at the presentencing stage has passed; and

21 C. A person having a lawful property interest in the computer has not notified the
22 State in writing within 6 months following the finding of guilt that the person wants
23 to take possession of the computer. The written notification must be made to the
24 criminal justice agency having custody of the computer.

25 If the State assumes ownership of a computer pursuant to this subsection, all computer
26 data stored on the computer must be permanently destroyed by the State, or caused by the
27 State to be permanently destroyed, in accordance with section 436.

28 2. A person who has a lawful property interest in a computer that was used to
29 commit a crime or that facilitated the commission of a crime may take possession of the
30 computer if:

31 A. The person notifies the State in writing within 6 months following the finding of
32 guilt that a person committed a crime using, or that was facilitated by the use of, the
33 computer that the person wants to take possession of that computer. The written
34 notification must be made to the criminal justice agency having custody of the
35 computer;

36 B. The crime that was committed using, or that was facilitated through the use of, the
37 computer is not a crime identified in chapter 12; and

38 C. All computer data stored on the computer have been permanently destroyed
39 pursuant to section 436.

1 the effective date of this bill, the agency post on its publicly accessible website a notice
2 stating that, unless written notification as described in the bill is given to the criminal
3 justice agency within 4 months after the effective date of this bill, all such computer data
4 and computers must be disposed of in accordance with the provisions of the bill.