

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1377

S.P. 484

In Senate, April 9, 2013

An Act To Protect Cellular Telephone Privacy

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read "DAREK M. GRANT".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative CAREY of Lewiston and
Senators: CAIN of Penobscot, HAMPER of Oxford, LANGLEY of Hancock, Representatives:
HICKMAN of Winthrop, KNIGHT of Livermore Falls, WILSON of Augusta.

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

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

SUBCHAPTER 10

PORTABLE ELECTRONIC DEVICE CONTENT INFORMATION

§641. 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;
 - B. Flight from prosecution;
 - C. Destruction of or tampering with evidence;
 - D. Intimidation of a potential witness;
 - E. Substantially jeopardizes an investigation; or
 - F. Undue delay of a trial.

2. Content information. "Content information" means information concerning the identities of parties to a communication, the date and time of the communication or the existence, substance, purport or meaning of the communication.

3. Electronic communication service. "Electronic communication service" means a service that provides to users the ability to send or receive spoken or electronic communications.

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

5. Owner. "Owner" means the person or entity having the legal title, claim or right to a portable electronic device.

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

7. Remote computing service. "Remote computing service" means computer storage or processing services provided by means of an electronic communication service.

8. User. "User" means a person or entity that uses a portable electronic device.

1 **§642. Release of an acquisition of content information**

2 A provider of electronic communication service may not release portable electronic
3 device content information to a government entity except as provided in this subchapter.

4 Except as provided in this subchapter, a government entity may not obtain portable
5 electronic device content information without a valid warrant issued by a duly authorized
6 judge or justice using procedures established pursuant to Title 15, section 55.

7 **§643. Notice**

8 Notice must be given to the owner or user of a portable electronic device whose
9 content information was obtained by a government entity.

10 1. Timing and content of notice. Unless delayed notice is ordered under subsection
11 2, the government entity shall provide notice to the owner or user that content
12 information was obtained by the government entity from that owner's or user's portable
13 electronic device within 3 days of obtaining the content information. The notice must be
14 made by service or delivered by registered or first-class mail, e-mail or any other means
15 reasonably calculated to be effective as specified by the court issuing the warrant. The
16 notice must contain the following information:

- 17 A. The nature of the law enforcement inquiry, with reasonable specificity;
- 18 B. The content information of the owner or user that was supplied to or requested by
19 the government entity and the date on which it was provided or requested;
- 20 C. If content information was obtained from a provider of electronic communication
21 service or other 3rd party, the identity of the provider of electronic communication
22 service or the 3rd party from whom the information was obtained; and
- 23 D. Whether the notification was delayed pursuant to subsection 2 and, if so, the court
24 that granted the delay and the reasons for granting the delay.

25 2. Delay of notification. A government entity acting under section 642 or section
26 645 may include in the application for a warrant a request for an order to delay the
27 notification required under this section for a period not to exceed 10 days. The court shall
28 issue the order if the court determines that there is reason to believe that notification may
29 have an adverse result. Upon expiration of the period of delay granted under this
30 subsection and any extension granted under subsection 4, the government entity shall
31 provide the owner or user a copy of the warrant together with a notice pursuant to
32 subsection 1.

33 3. Preclusion of notice to owner or user subject to warrant for content
34 information. A government entity acting under section 642 or section 645 may include
35 in its application for a warrant a request for an order directing a provider of electronic
36 communication service to which a warrant is directed not to notify any other person of
37 the existence of the warrant for a period of not more than 10 days. The court shall issue
38 the order if the court determines that there is reason to believe that notification of the
39 existence of the warrant may have an adverse result.

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

3 **§644. Consent of owner or user**

4 When disclosure of portable electronic device content information is not prohibited
5 by federal law, a government entity may obtain the information without a warrant with
6 the informed, affirmative consent of the owner or user of the portable electronic device
7 concerned.

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

9 On a case-by-case basis and in accordance with this section, the Attorney General
10 may designate an investigative or law enforcement officer who may acquire portable
11 electronic device content information before obtaining a warrant.

12 **1. Conditions.** A designated investigative or law enforcement officer may acquire
13 portable electronic device content information only if the following conditions are met:

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

17 B. At the time the officer acquires portable electronic device content information,
18 there exist grounds, known to or in the possession of the officer, upon which a
19 warrant could be entered under this subchapter to authorize the acquisition.

20 **2. Warrant after acquisition of content information.** A designated investigative
21 or law enforcement officer who acquires portable electronic device content information
22 before obtaining a warrant authorizing the acquisition shall, within 48 hours after the
23 acquisition occurs or begins to occur, obtain a warrant authorizing acquisition of the
24 content information.

25 **3. Termination of search.** In the absence of a warrant, acquisition of portable
26 electronic device content information under this section must cease when the portable
27 electronic device content information sought is obtained or when the application for a
28 warrant is denied, whichever is earlier.

29 **4. Denial of warrant.** In the event an application for a warrant under this section is
30 denied, or in any other case in which the acquisition of portable electronic device content
31 information is terminated without a warrant's having been issued, the portable electronic
32 device content information acquired must be treated as having been obtained in violation
33 of this subchapter. Notice must be served on the owner or user of a portable electronic
34 device with respect to which content information was acquired in accordance with section
35 643.

36 **§646. Reporting requirements**

37 **1. Report by judge or justice.** No later than January 31st each year, a judge or
38 justice who issues or denies a warrant under section 642 or section 645 during the

1 preceding calendar year must report on each warrant to the Administrative Office of the
2 Courts. The report must include, but is not limited to:

- 3 A. The fact that the warrant was applied for;
- 4 B. The identity of the government entity that made the application;
- 5 C. The offense specified in the warrant or warrant application; and
- 6 D. Whether the warrant was granted as applied for or was modified or denied.

7 **2. Report by Administrative Office of the Courts to Legislature.** In June of each
8 year, beginning in 2014, the Administrative Office of the Courts shall submit to the
9 Legislature a full and complete report concerning the number of applications for warrants
10 authorizing or requiring the disclosure of portable electronic device content information
11 pursuant to this subchapter, the number of times portable electronic device content
12 information was obtained pursuant to section 645 and the number of warrants granted or
13 denied pursuant to section 645 during the preceding calendar year. The full and complete
14 report must include a summary and analysis of the data required under this subsection.

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

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

20 **§647. Conditions of use of content information**

21 **1. Use of content information obtained in violation of this subchapter not**
22 **admissible.** Except as proof of a violation of this subchapter, evidence obtained in
23 violation of this subchapter is not admissible in a criminal, civil, administrative or other
24 proceeding.

25 **2. Conditions of use of content information in proceeding.** Portable electronic
26 device content information obtained pursuant to this subchapter or evidence derived from
27 that content information may be received in evidence or otherwise disclosed in a trial,
28 hearing or other proceeding only if each party, not less than 10 days before the trial,
29 hearing or proceeding, has been furnished with a copy of the warrant and accompanying
30 application under which the content information was obtained.

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

36 **§648. Violations; private actions; enforcement**

37 **1. Civil suit authorized.** A person damaged as a result of a violation of this
38 subchapter has a cause of action in Superior Court against the provider of electronic
39 communication service that disclosed portable electronic device content information in

Violation of this subchapter, and, in addition to actual damages, costs and attorney's fees, the court may award statutory damages in an amount not to exceed \$5,000.

2. Injunctive relief. A person damaged as a result of a violation of this subchapter has a cause of action in court against a government entity that fails to comply with the provisions of this subchapter, and the court may award injunctive relief.

3. Attorney General. The Attorney General may enforce the provisions of this subchapter.

SUMMARY

This bill enacts provisions governing the disclosure of information regarding the content of communications conveyed using portable electronic devices such as cellular telephones. This bill prohibits a government entity from obtaining information concerning the identities of parties to a communication, the date and time of the communication or the existence, substance, purport or meaning of the communication conveyed using a cellular telephone or other electronic device without a valid warrant, except that a government entity may obtain such information with the consent of the owner or user of the electronic device. It also authorizes the Attorney General to designate a law enforcement officer to obtain such content information without a warrant in cases in which there is an imminent threat of death or serious physical injury or a threat to national security.

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

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

This bill provides that a person damaged as a result of a violation of these provisions has a cause of action in Superior Court against the provider of electronic communication service that disclosed portable electronic device content information in violation of these provisions, and, in addition to actual damages, costs and attorney's fees, the court may award statutory damages in an amount not to exceed \$5,000. The bill also provides that a person damaged as a result of a violation of these provisions has a cause of action in court against a government entity that fails to comply with these provisions, and the court may award injunctive relief. Finally, the bill authorizes the Attorney General to enforce these provisions.