

# MAINE STATE LEGISLATURE

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Date: 5/30/17

(Filing No. H-339 )

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

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

COMMITTEE AMENDMENT "A" 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

**COMMITTEE AMENDMENT**

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.







Approved: 05/11/17 *MAC*

# 128th MAINE LEGISLATURE

LD 332 ,

LR 507(04)

An Act Regarding Service of Criminal Process on Electronic Communication Service Providers and Remote Computing Service Providers

Fiscal Note for Bill as Amended by Committee Amendment *A (H-339)*  
Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Department of Public Safety associated with this legislation can be absorbed within existing budgeted resources.