

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 332

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H.P. 246

House of Representatives, January 31, 2017

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

(EMERGENCY)

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Reported by Representative WARREN of Hallowell for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the business of electronic communication service providers and remote  
4 computing service providers is growing rapidly and their involvement with the criminal  
5 justice system is increasing; and

6           **Whereas,** for the purposes of the timely administration of criminal justice in this  
7 State, amendments to current law are needed immediately to explicitly provide a  
8 procedure for the service of criminal process on foreign and domestic entities that are  
9 providers of electronic communication service and providers of remote computing  
10 service; and

11           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
12 the meaning of the Constitution of Maine and require the following legislation as  
13 immediately necessary for the preservation of the public peace, health and safety; now,  
14 therefore,

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

16           **Sec. 1. 5 MRSA §113, sub-§6** is enacted to read:

17           **6. Service of criminal process on providers of electronic communication service**  
18 **or providers of remote computing service.** A clerk or registered agent of a provider is  
19 an agent of the provider authorized to receive service of a grand jury subpoena or a search  
20 warrant required or permitted by law to be served on the entity. Service of criminal  
21 process must be accomplished as provided in this subsection.

22           A. As used in this subsection, unless the context otherwise indicates, the following  
23 terms have the following meanings.

24           (1) "Criminal process" means a grand jury subpoena or search warrant issued  
25 pursuant to this section, Title 15, section 55 or 56 or Rule 17 or 17A of the Maine  
26 Rules of Unified Criminal Procedure.

27           (2) "Electronic communication service" means a service that provides to users  
28 the ability to send or receive spoken, wire or electronic communications.

29           (3) "Electronic communication service provider" or "provider of electronic  
30 communication service" means an entity that provides electronic communication  
31 service to the general public.

32           (4) "Provider" means an electronic communication service provider or a remote  
33 computing service provider.

34           (5) "Remote computing service" means computing storage or processing services  
35 provided by means of an electronic communication service.

36           (6) "Remote computing service provider" or "provider of remote computing  
37 service" means an entity that provides remote computing service to the general  
38 public.

1                   (7) "Service of criminal process" means any service of a grand jury subpoena or  
2                   search warrant.

3                   B. The authority granted in this subsection applies to criminal process served  
4                   pursuant to Title 15, section 55 or 56, Rule 17 or 17A of the Maine Rules of Unified  
5                   Criminal Procedure or any other provision of state or federal law upon a provider in  
6                   accordance with paragraph C.

7                   C. For purposes of this subsection, criminal process is properly served if it is:

8                   (1) Delivered by hand, or in a manner reasonably allowing for proof of delivery  
9                   if delivered by United States mail, overnight delivery service or facsimile to a  
10                   commercial clerk or commercial registered agent as provided in section 106;  
11                   section 107, subsection 4; or this section;

12                   (2) Delivered by specific means identified by the provider for service of criminal  
13                   process, including, but not limited to, e-mail, facsimile or submission via an  
14                   Internet web portal; or

15                   (3) Delivered to the provider's place of business within the State.

16                   D. Service of criminal process pursuant to this section governs party and nonparty  
17                   recipients.

18                   **Sec. 2. 15 MRSA §55**, as amended by PL 1995, c. 388, §3 and affected by §8, is  
19 further amended to read:

20                   **§55. Search warrants; issuance by justice, judge or justice of the peace**

21                   A justice of the Superior Court, a judge of the District Court or a justice of the peace  
22                   shall issue search warrants for any place in the State for such purposes as the Constitution  
23                   of the United States and the Constitution of Maine permit, including with respect to any  
24                   violation over which the Passamaquoddy Tribe ~~or~~ the Penobscot Nation or the Houlton  
25                   Band of Maliseet Indians exercises exclusive jurisdiction under Title 30, section 6209-A  
26                   ~~or~~ 6209-B or 6209-C. The evidence presented to the magistrate in support of the search  
27                   warrant may consist of affidavits and other evidence under oath or affirmation that is  
28                   capable of being reduced to a record for purposes of review. The Supreme Judicial Court  
29                   shall by rule provide the procedure of the application for and issuance of search warrants;  
30                   ~~provided that, when.~~ When no procedure is specified by the Supreme Judicial Court, the  
31                   justice, judge or justice of the peace shall proceed in any reasonable manner that will  
32                   allow the issuance of a search warrant for any constitutional purpose. A justice, a judge  
33                   or a justice of the peace shall issue a search warrant for a domestic or foreign entity that is  
34                   a provider of electronic communication service or a provider of remote computing service  
35                   in accordance with the provisions of this section and section 56.

36                   **Sec. 3. 15 MRSA §56** is enacted to read:

1 **§56. Service of criminal process on providers of electronic communication service**  
2 **or providers of remote computing service**

3 The following provisions apply to a service of criminal process on an electronic  
4 communication service provider and a remote computing service provider that are  
5 domestic or foreign entities.

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
7 following words have the following meanings.

8 A. "Adverse result" means:

9 (1) Immediate danger of death or serious physical injury;

10 (2) Flight from prosecution;

11 (3) Destruction of or tampering with evidence;

12 (4) Intimidation of a potential witness;

13 (5) Potentially jeopardizing an investigation;

14 (6) Undue delay of a trial; or

15 (7) Other significantly detrimental consequence.

16 B. "Applicant" means a law enforcement officer who has applied for or received a  
17 search warrant pursuant to section 55 or this section.

18 C. "Content information," when used with respect to any wire or electronic  
19 communication, includes any information concerning the substance, purport or  
20 meaning of that communication.

21 D. "Court" means the Superior Court or the District Court.

22 E. "Criminal process" means a search warrant issued pursuant to Title 5, section 113;  
23 section 55; or this section, or a grand jury subpoena issued pursuant to Rule 17 or  
24 17A of the Maine Rules of Unified Criminal Procedure and this section.

25 F. "Domestic entity" means an entity whose internal affairs are governed by the laws  
26 of this State.

27 G. "Electronic communication service" means a service that provides to users the  
28 ability to send or receive spoken, wire or electronic communications.

29 H. "Electronic communication service provider" means an entity that provides  
30 electronic communication service to the general public.

31 I. "Entity" means an entity as defined in Title 5, section 102, subsection 7.

32 J. "Foreign entity" means an entity other than a domestic entity.

33 K. "Location information" means information concerning the location of an  
34 electronic device, including both the current location and any prior location of the  
35 device, that, in whole or in part, is generated, derived from or obtained by the  
36 operation of an electronic device.

37 L. "Properly served" means that a search warrant or grand jury subpoena has been:

1 (1) Delivered by hand, or in a manner reasonably allowing for proof of delivery  
2 if delivered by United States mail, overnight delivery service or facsimile to a  
3 commercial clerk or commercial registered agent as provided in Title 5, section  
4 106; Title 5, section 107, subsection 4; or this section;

5 (2) Delivered by specific means identified by the provider for service of criminal  
6 process, including, but not limited to, e-mail, facsimile or submission via an  
7 Internet web portal; or

8 (3) Delivered to the provider's place of business within the State.

9 M. "Provider" means an electronic communication service provider or a remote  
10 computing service provider.

11 N. "Remote computing service" means computing storage or processing services  
12 provided by means of an electronic communication service.

13 O. "Remote computing service provider" means an entity that provides remote  
14 computing service to the general public.

15 **2. Requirements applicable to a foreign entity.** The following provisions apply to  
16 criminal process issued pursuant to this section that requires a search for records that are  
17 in the actual or constructive possession of a foreign entity that provides electronic  
18 communication service or remote computing service when those records would reveal the  
19 identity of a customer using services, data stored by or on behalf of a customer, a  
20 customer's usage of the service, the recipient or destination of communications sent to or  
21 from a customer, content information or location information.

22 A. A foreign entity served with a search warrant pursuant to this section shall  
23 provide to the applicant all records sought, including those records maintained or  
24 located outside this State, within 14 days of service. A foreign entity served with a  
25 grand jury subpoena pursuant to this section shall provide to the prosecutor all  
26 records sought, including those records maintained or located outside this State, by or  
27 at the time of the grand jury appearance.

28 B. A foreign entity shall verify the authenticity of records that it produces by  
29 providing an affidavit that complies with the requirements set forth in the Maine  
30 Rules of Evidence, Rule 902(12). Admissibility of these records in a court in this  
31 State is governed by the Maine Rules of Evidence, Rule 803(6).

32 C. A foreign entity seeking additional time to respond to the criminal process served  
33 pursuant to this section must file a request for relief from the court that issued the  
34 criminal process within the time required for production of records. The court shall  
35 hear and decide that request as soon as practicable after receipt of the request.

36 D. A foreign entity that provides records or testifies pursuant to this section is  
37 immune from criminal or civil liability for the release of the requested information to  
38 the court, attorney for the State or law enforcement agency involved in an  
39 investigation.

40 **3. Requirements applicable to a domestic entity.** The following provisions apply  
41 to criminal process issued pursuant to this section that requires a search for records that  
42 are in the actual or constructive possession of a domestic entity that provides electronic

1 communication service or remote computing service when those records would reveal the  
2 identity of a customer using services, data stored by or on behalf of a customer, a  
3 customer's usage of the service, the recipient or destination of communications sent to or  
4 from a customer, content information or location information.

5 A. A domestic entity that provides electronic communication service or remote  
6 computing service, when served with criminal process issued by another state to  
7 produce records that would reveal the identity of a customer using services, data  
8 stored by or on behalf of a customer, a customer's usage of the service, the recipient  
9 or destination of communications sent to or from a customer, content information or  
10 location information, shall produce those records as if that criminal process had been  
11 issued by a court in this State.

12 B. A domestic entity served with a search warrant pursuant to this section shall  
13 provide to the applicant all records sought, including those records maintained or  
14 located outside this State, within 14 days of service. A domestic entity served with a  
15 grand jury subpoena pursuant to this section shall provide to the prosecutor all  
16 records sought, including those records maintained or located outside this State, by or  
17 at the time of the grand jury appearance.

18 C. A domestic entity shall verify the authenticity of records that it produces by  
19 providing an affidavit that complies with the requirements set forth in the Maine  
20 Rules of Evidence, Rule 902(11) or on a form provided by the requesting jurisdiction.  
21 Admissibility of these records in a court in this State is governed by the Maine Rules  
22 of Evidence, Rule 803(6).

23 D. A domestic entity seeking additional time to respond to the criminal process  
24 served pursuant to this section must file a request for relief from the court that issued  
25 the criminal process within the time required for production of records. The issuing  
26 court shall hear and decide that request as soon as practicable after receipt of the  
27 request.

28 E. A domestic entity that provides records or testifies pursuant to this section is  
29 immune from criminal or civil liability for the release of the requested information to  
30 the court, attorney for the State or law enforcement agency involved in an  
31 investigation.

32 **4. Application for expedited production of records.** An applicant for a search  
33 warrant that demonstrates that the production of records more than 14 days after issuance  
34 is reasonably likely to cause an adverse result may request that the court require the  
35 production of the records in less than 14 days.

36 **Sec. 4. 16 MRSA §642, sub-§1,** as amended by PL 2013, c. 519, §5, is further  
37 amended to read:

38 **1. Authority to obtain.** A government entity may obtain portable electronic device  
39 content information directly from a provider of electronic communication service or a  
40 provider of remote computing service only in accordance with a valid search warrant  
41 issued by a duly authorized justice, judge or justice of the peace using procedures  
42 established pursuant to Title 15, section 55 or 56 or as otherwise provided in this  
43 subchapter.

