

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SMW
R QF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

L.D. 627

Date: 6/18/19

(Filing No. H-634)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 455, L.D. 627, Bill, "An Act Regarding Portable Electronic Device Content, Location Information and Tracking Devices"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 15 MRSA §56, sub-§1, ¶A, as enacted by PL 2017, c. 144, §3, is amended to read:

A. "Adverse result" means:

- (1) Immediate danger of death or serious physical injury to any person;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;
- (4) Intimidation of a potential witness;
- (5) ~~Potentially~~ Seriously jeopardizing an investigation; or
- (6) Undue delay of a trial; ~~or~~
- ~~(7) Other significantly detrimental consequence.~~

Sec. 2. 15 MRSA §56, sub-§4, as enacted by PL 2017, c. 144, §3, is amended to read:

4. Application for expedited production of records. Notwithstanding the 14-day period specified in subsection 2 or 3 for production of the records, if an applicant for a search warrant believes that delaying production is reasonably likely to cause an adverse result, the applicant may request that the court require the production of the records sooner than 14 days after service pursuant to this subsection.

COMMITTEE AMENDMENT

R.O.F.S.

- 1 A. The applicant shall demonstrate to the court the specific adverse result or results,
- 2 as specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6), that delaying
- 3 production for 14 days is reasonably likely to cause.
- 4 B. If the court finds that the delay may cause an adverse result, the court shall state
- 5 the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6)
- 6 and may require the provider to produce the records in a specified number of days.
- 7 C. If the court specifies that the provider has less than 14 days to produce the record
- 8 and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs
- 9 (1) to (4), the provider must respond within the time specified by the court.
- 10 D. If the court specifies that the provider has less than 14 days to produce the record
- 11 and the only adverse result findings are results listed in subsection 1, paragraph A,
- 12 subparagraphs (5) to ~~(7)~~ and (6), the provider must notify the law enforcement officer
- 13 serving the warrant that compliance within that period specified by the court is not
- 14 practicable and must state the date within 14 days from service by which the provider
- 15 will respond. The law enforcement officer shall file the provider's response with the
- 16 court, and, upon a demonstration of good cause by the provider, the response period
- 17 may be extended by the court to no more than 14 days from the date of service of the
- 18 warrant. As used in this paragraph, good cause includes, but is not limited to,
- 19 impracticability of timely response, difficulty of identifying and retrieving the data
- 20 requested and the volume of data or number of sources sought.'

21 Amend the bill in section 1 in §638 by striking out all of subsection 1 (page 1, lines 8
22 to 15 in L.D.) and inserting the following:

23 **'1. Adverse result. "Adverse result" means:**

- 24 **A. Immediate danger of death or serious physical injury to any person;**
- 25 **B. Flight from prosecution;**
- 26 **C. Destruction of or tampering with evidence;**
- 27 **D. Intimidation of a potential witness;**
- 28 **E. Seriously jeopardizing an investigation; or**
- 29 **F. Undue delay of a trial.'**

30 Amend the bill in section 1 in §638 by striking out all of subsection 3 (page 1, lines
31 21 and 22 in L.D.) and inserting the following:

32 **'3. Tracking device. "Tracking device" means an electronic or mechanical device**
33 **the primary purpose of which is to track the movement of a person or object. "Tracking**
34 **device" does not include devices covered in subchapters 10 and 11.'**

35 Amend the bill in section 1 in §639 by striking out all of subsection 4 (page 2, lines 1
36 to 7 in L.D.) and inserting the following:

37 **'4. Time period. A justice, judge or justice of the peace may issue a search warrant**
38 **authorizing the installation and monitoring of a tracking device pursuant to this section.**
39 **The warrant must require the installation of the tracking device within 14 days of the**
40 **issuance of the warrant and allow the tracking device to be monitored for a period of 30**

ROFS

1 days following installation. A justice, judge or justice of the peace may grant an extension
2 of the monitoring period for an additional 30 days upon a finding of continuing probable
3 cause.'

4 Amend the bill by inserting after section 1 the following:

5 '**Sec. 2. 16 MRSA §641, sub-§1**, as enacted by PL 2013, c. 402, §1, is amended
6 to read:

7 **1. Adverse result.** "Adverse result" means:

8 A. Immediate danger of death or serious physical injury to any person;

9 B. Flight from prosecution;

10 C. Destruction of or tampering with evidence;

11 D. Intimidation of a potential witness;

12 E. ~~Potentially~~ Seriously jeopardizing an investigation; or

13 F. Undue delay of a trial; ~~or,~~

14 ~~G. Other significantly detrimental consequence.'~~

15 Amend the bill by striking out all of section 6 and inserting the following:

16 '**Sec. 6. 16 MRSA §644, sub-§§1 and 3**, as enacted by PL 2013, c. 402, §1, are
17 amended to read:

18 **1. Consent of owner or user.** When disclosure of portable electronic device content
19 information is not prohibited by federal law, a government entity may obtain the
20 information without a warrant with the informed, affirmative consent of the owner or user
21 of the portable electronic device concerned, except when the device is known or believed
22 by the owner or user to be in the possession of a 3rd party ~~known to~~ authorized to possess
23 the device by the owner or user.

24 **3. Emergency.** When a government entity cannot, with due diligence, obtain a
25 warrant in time to address an emergency that involves or is believed to involve ~~an~~
26 ~~imminent threat to life or safety~~ danger of death or serious physical injury to any person,
27 a government entity may obtain the content information from a portable electronic device
28 without a warrant, and a provider of electronic communication service or remote
29 computing service may disclose such information to the requesting government entity
30 without a warrant.'

31 Amend the bill by striking out all of sections 7 to 9 and inserting the following:

32 '**Sec. 7. 16 MRSA §647, sub-§1**, as reallocated by RR 2013, c. 1, §28, is amended
33 to read:

34 **1. Adverse result.** "Adverse result" means:

35 A. Immediate danger of death or serious physical injury to any person;

36 B. Flight from prosecution;

37 C. Destruction of or tampering with evidence;

R O F S

- 1 D. Intimidation of a potential witness;
- 2 E. ~~Substantially~~ Seriously jeopardizes an investigation; or
- 3 F. Undue delay of a trial.'

4 Amend the bill by striking out all of sections 11 to 14 and inserting the following:

5 'Sec. 11. 16 MRSA §647, sub-§8-A is enacted to read:

6 **8-A. Serious physical injury.** "Serious physical injury" means:

7 A. Bodily injury that creates a substantial risk of death, serious, permanent
8 disfigurement or loss or substantial impairment of the function of a bodily member or
9 organ or extended convalescence necessary for recovery of physical health; or

10 B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title
11 17-A, section 282, 301, 302 or 303.

12 **Sec. 12. 16 MRSA §648**, as amended by PL 2017, c. 144, §5, is further amended
13 by adding at the end a new paragraph to read:

14 This subchapter does not apply to tracking devices, as defined in section 638, placed
15 by law enforcement officers.

16 **Sec. 13. 16 MRSA §649, sub-§1, ¶C**, as reallocated by RR 2013, c. 1, §30, is
17 amended to read:

18 C. If location information was obtained from a provider of electronic communication
19 service ~~or~~, location information service or remote computing service or other 3rd
20 party, the identity of the provider of electronic communication service ~~or~~, location
21 information service or remote computing service or the 3rd party from whom the
22 information was obtained.

23 **Sec. 14. 16 MRSA §649, sub-§3**, as amended by PL 2013, c. 588, Pt. A, §21, is
24 further amended to read:

25 **3. Preclusion of notice to owner or user subject to warrant for location**
26 **information.** A government entity acting under section 648 may include in its
27 application for a warrant a request for an order directing a provider of electronic
28 communication service, remote computing service or location information service to
29 which a warrant is directed not to notify any other person of the existence of the warrant.
30 The court may issue the order if the court determines that there is reason to believe that
31 notification of the existence of the warrant will have an adverse result.

32 **Sec. 15. 16 MRSA §650, sub-§§2 and 4**, as reallocated by RR 2013, c. 1, §31,
33 are amended to read:

34 **2. Consent of owner or user.** With the informed, affirmative consent of the owner
35 or user of the electronic device concerned, except when the device is known or believed
36 by the owner or user to be in the possession of a 3rd party ~~known to~~ authorized to possess
37 the device by the owner or user;

38 **4. Danger of death or serious injury.** If the government entity reasonably believes
39 that an emergency involving ~~immediate~~ imminent danger of death or serious physical

R.O.F.S

1 injury to a person requires the disclosure, without delay, of location information
2 concerning a specific person and that a warrant cannot be obtained in time to prevent the
3 identified danger, and the possessor of the location information, in good faith, believes
4 that an emergency involving danger of death or serious physical injury to a person
5 requires the disclosure without delay.

6 Within a reasonable period of time after seeking disclosure pursuant to this subsection,
7 the government entity seeking the location information shall file with the appropriate
8 court a written statement setting forth the facts giving rise to the emergency and the facts
9 as to why the person whose location information was sought is believed to be important
10 in addressing the emergency.'

11 Amend the bill by adding after section 15 the following:

12 **'Sec. 16. Right To Know Advisory Committee; warrants for tracking**
13 **devices and content and location information.** The Right To Know Advisory
14 Committee shall review the law concerning the application for and issuance of search
15 warrants authorizing the installation and monitoring of tracking devices and seeking
16 content and location information under the Maine Revised Statutes, Title 16, chapter 3,
17 subchapters 9-A, 10 and 11 and shall make recommendations concerning the public's
18 right to know aggregate information about warrants, including warrants in which the
19 application for the warrant included a request for an order to waive notice of the issuance
20 of the warrant. The Right To Know Advisory Committee shall include in its report
21 submitted by January 15, 2020, pursuant to Title 1, section 411, subsection 10, a
22 summary of its review and any recommendations.'

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
24 section number to read consecutively.

25 **SUMMARY**

26 The bill adds a new subchapter on obtaining search warrants for tracking devices and
27 makes changes to the laws governing access to content of and location information
28 pertaining to portable electronic devices, including cellular telephones.

29 This amendment clarifies the definition of "tracking device" to limit the definition to
30 those devices the primary purpose of which is to track a person or object and to provide
31 that the definition does not include the electronic devices covered by the Maine Revised
32 Statutes, Title 16, chapter 3, subchapters 10 and 11.

33 This amendment makes consistent the definition of "adverse result," used when
34 requesting that notice not be provided when a warrant is issued, to include "immediate
35 danger of death or serious physical injury to any person" and "seriously jeopardizing an
36 investigation" but not including "other significantly detrimental consequence." The
37 definition is used in the new subchapter on tracking devices as well as the existing
38 subchapters on access to content and location information of electronic devices and the
39 warrant procedure requirements for content and location information.

40 The bill authorizes the court to issue a search warrant for the installation and
41 monitoring of a tracking device and waive notice of the issuance of the warrant. This
42 amendment directs the Right To Know Advisory Committee to review the law

COMMITTEE AMENDMENT

R.O.F.S

COMMITTEE AMENDMENT "A" to H.P. 455, L.D. 627

1 concerning the application for and issuance of search warrants authorizing the installation
2 and monitoring of tracking devices, as well as obtaining content information and location
3 information, and make recommendations concerning the public's right to know aggregate
4 information about the warrants, including warrants in which the application for the
5 warrant included a request for an order to waive notice of the issuance of the warrant.
6 The Right To Know Advisory Committee is required to include in its report submitted by
7 January 15, 2020, pursuant to Title 1, section 411, subsection 10, a summary of its review
8 and any recommendations.

9
10

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



129th MAINE LEGISLATURE

LD 627

LR 494(02)

An Act Regarding Portable Electronic Device Content, Location Information and Tracking Devices

Fiscal Note for Bill as Amended by Committee Amendment *A(H-634)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Highway Fund

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

Fiscal Detail and Notes

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