

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1759

S.P. 589

In Senate, May 21, 2019

**An Act Regarding the Electronic Data and Court Records Filed in
the Electronic Case Management System of the Supreme Judicial
Court**

Submitted by the Judicial Department pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.
Cosponsored by Representative BAILEY of Saco and
Senator: KEIM of Oxford, Representatives: CARDONE of Bangor, DeVEAU of Caribou,
HARNETT of Gardiner, TALBOT ROSS of Portland.

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

2 **Sec. 1. 4 MRSA §7** is amended to read:

3 **§7. General jurisdiction; control of records**

4 The Supreme Judicial Court may exercise its jurisdiction according to the common
5 law not inconsistent with the Constitution or any statute, and may punish contempts
6 against its authority by fine and imprisonment, or either, and administer oaths. It has
7 general superintendence of all inferior courts for the prevention and correction of errors
8 and abuses where the law does not expressly provide a remedy and has control of all
9 records and documents in the custody of its clerks whether physical or electronic,
10 including those stored in an electronic case management system. Whenever justice or the
11 public good requires, it may order the expunging from the records and papers on file in
12 any case which has gone to judgment of any name or other part thereof unnecessary to the
13 purpose and effect of said judgment. It may issue all writs and processes, not within the
14 exclusive jurisdiction of the Superior Court, necessary for the furtherance of justice or the
15 execution of the laws in the name of the State under the seal of said court, attested by any
16 justice not a party or interested in the suit and signed by the clerk.

17 **Sec. 2. 4 MRSA §8-C,** as enacted by PL 2015, c. 78, §1, is amended to read:

18 **§8-C. Rules concerning electronic court records**

19 **1. Rules and orders; processes and procedures.** Notwithstanding any other
20 provision of law, the Supreme Judicial Court may adopt rules and issue orders to permit
21 or require the use of electronic forms, filings, records, documents, e-mail and electronic
22 signatures whenever paper forms, filings, records, written notice, postal mail and written
23 signatures are required for judicial, legal or any other court-related process under the
24 Maine Revised Statutes.

25 The Supreme Judicial Court, by rule, may determine any other processes or procedures
26 appropriate to ensure adequate preservation, disposition, integrity, security, appropriate
27 accessibility and confidentiality of the electronic court documents, data and court records
28 described in this section and section 8-D.

29 **2. Electronic signatures.** An electronic signature may be accepted as a substitute
30 for and, if accepted, has the same force and effect as the use of a manual signature. The
31 Supreme Judicial Court shall determine the type of electronic signature required, the
32 manner and format in which the signature is affixed to the electronic record and the
33 criteria that must be met by a party, including attorneys, filing a document.

34 **Sec. 3. 4 MRSA §8-D** is enacted to read:

35 **§8-D. Rules concerning electronic case management system**

36 **1. Rulemaking for electronic case management system.** The Supreme Judicial
37 Court shall develop and adopt rules addressing any systems or procedures appropriate to
38 ensure adequate preservation, disposition, integrity, security, accessibility and

1 confidentiality of electronic data and court records filed with or generated by the state
2 courts and stored in an electronic case management system. In developing the rules, the
3 Supreme Judicial Court shall ensure that the tradition of open courts and public access to
4 court records is preserved by making available those court records that advance the
5 public's interest in the administration of justice while maintaining the protection of
6 private, personal or confidential information, data and documents.

7 **2. General policies regarding access to electronic court records.** The following
8 provisions apply regarding access to electronic court records.

9 A. Access to electronic court records by the public is the presumption. Electronic
10 court records that are not designated confidential, private, closed, sealed or otherwise
11 not public records by state or federal statute or by court rule or order must be publicly
12 accessible except as otherwise provided in this subsection. The presumption that
13 electronic court records are public does not preclude the imposition of reasonable
14 fees for access to records.

15 B. All parties to a case, and the attorneys for those parties, must have access to the
16 electronic court records for that case, whether or not those records are publicly
17 accessible, unless otherwise specifically ordered.

18 C. When an entire case type is closed to the public by statute, the electronic court
19 records of a case of that case type are not publicly accessible. For case types that are
20 generally open to the public, specific documents, data and information from those
21 case types may be closed to the public by state or federal statute or by court rule or
22 order.

23 D. Documents, data and information that are designated confidential, private, closed,
24 sealed or otherwise not public by state or federal statute or by court rule or order that
25 are contained in electronic court records are not publicly accessible.

26 SUMMARY

27 This bill requires the Supreme Judicial Court to develop and adopt rules regarding
28 court records and documents retained by the courts in an electronic case management
29 system. The rules must reflect the presumption that court records are open to the public
30 except in certain circumstances when necessary to protect private, personal or
31 confidential information, data and documents or when designated confidential by state or
32 federal statute or by court rule or order. The presumption that court records are public
33 does not preclude the imposition of reasonable fees for access to those records.