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**JUDICIARY**

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

COMMITTEE AMENDMENT “ ” 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**

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)~~ (5) 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**

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;

- 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

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

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 **FISCAL NOTE REQUIRED**

10 **(See attached)**