

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPCOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

March 28, 2023

Senator Anne Carney, Chair
Representative Matt Moonen, Chair
Committee on Judiciary
100 State House Station
Augusta, Maine 04333

Re: *LD 1056, An Act Restricting State Assistance in Federal Collection of Personal Electronic Data and Metadata*

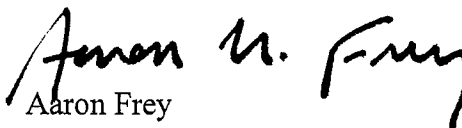
Greetings Senator Carney, Representative Moonen and esteemed members of the Judiciary Committee.

I am writing to provide comments in opposition to LD 1056, *An Act Restricting State Assistance in Federal Collection of Personal Electronic Data and Metadata*. Protecting Mainers' privacy is an important issue and one that my office has spent countless hours working to advance. The expansion of technology and use of the Internet has fundamentally changed law enforcement investigations. Crimes used to be committed locally and could be investigated locally because the suspect, victim, and witnesses were all in the jurisdiction of the local police department. Unfortunately, crimes are now committed without any relation to state borders or jurisdictional boundaries. Maine citizens, especially the young, the elderly, and vulnerable individuals, are now being exploited by perpetrators who are not local. For example, in one common scam a grandfather/grandmother is called/texted and told that their grandson or granddaughter has been in an accident out of state and needs money. The victim wires the money out of state. The perpetrator has never stepped inside the state of Maine. In another example, a child is solicited or extorted by a person out of state to take sexually explicit images of themselves and send the images using one of the many easily accessible methods to connect over the internet. Again, the perpetrator is not local and accessible to the agency investigating the crime. In order to investigate these very serious crimes, it is necessary for law enforcement to band together with agencies in other states or federal authorities who have jurisdiction where either the victim, witness or suspect actually reside.

This bill, if enacted, would severely hamper law enforcement investigations. As drafted, the language would effectively prevent any sharing of electronic data between state and federal law enforcement agencies as part of investigations. The issue is the scope of the language in LD 1056. It attempts to prohibit State officers from “participat[ing] with or provid[ing] material support or resources” to a federal officer if it involves the “use of a person’s electronic communications....” The majority of the Internet Crimes Against Children (ICAC) cases come in as “Cybertips”. Cybertips are reports from out of state electronic communication service providers (ESPs) (such as Google, Facebook, Kik, etc.) where the ESP has detected either children being solicited to engage in or to provide sexually explicit images or where sexually explicit materials are being uploaded or shared. Because there are not enough resources at Maine State Police Computer Crimes Unit (CCU) to investigate the large number of Cybertips, some cases are being sent to Homeland Security for investigation. At that point, it is an electronic communication that is now being shared with federal authorities. Under current law, the Cybertip program falls under the warrant exception as a “private search” by the ESP, but this area is being actively litigated and some previous accepted practices are being challenged and are no longer allowed in some jurisdictions. This bill could prohibit the ability to use qualified federal investigators in investigating and finding individuals who exploit Maine children when the State is facing inadequate resources to handle the demand. As a practical matter while these cases involve a child’s image being exploited, the complexity can range from an image being sought or shared on the internet, a person soliciting children to engage in sexual acts, a person who collects images and who engages in sexually abusing a local child, to an individual who sexually abuses a child and photographs that abuse. Once an investigation into a Cybertip commences, the seriousness is often unknown. Currently, two of the full-time members of the CCU are also cross-designated federal task force officers allowing training and relationships with federal officers who all have the same goal of protecting our children. Must that relationship end to avoid the appearance that the task force officer has provided information to a federal investigation?

The CCU is not the only investigative agency that needs to be able to reach out to other agencies, including federal officers, in order to most expeditiously investigate crime. The Maine Drug Enforcement Agency also relies on officers who have jurisdiction in other states or areas to investigate leads or to, hopefully reach a major drug distributor. At a time when the criminals are taking advantage of technology to avoid ever stepping into the local jurisdiction, the scarce law enforcement resources must be used to maximum benefit to effectively investigate and provide justice to the Maine citizen.

Sincerely,



Aaron Frey
Attorney General