



Janet T. Mills  
Governor

Michael J. Sauschuck  
Commissioner

STATE OF MAINE  
Department of Public Safety  
**MAINE STATE POLICE**

45 Commerce Drive - Suite 1  
Augusta, Maine 04333



COL. Bill G. Ross  
Chief

LTC. Brian P. Scott  
Deputy Chief

Testimony of Lieutenant Jason Richards  
Maine State Police

**Opposed to LD 1576**

An Act to Update the Laws Governing Electronic Device Information as Evidence  
Sponsored by Representative O'NEIL  
Joint Standing Committee on Judiciary

Senator Carney, Representative Moonen and other distinguished members of the joint standing committee on Judiciary. My name is Lieutenant Jason Richards. I oversee the Maine State Police Computer Crimes Unit and I am the commander of the Northern New England Internet Crimes Against Children Task Force. I am here representing the Maine State Police and the Department of Public Safety and to testify in opposition to LD 1576 and the negative effects it would have on children and other victims of crime in Maine.

Much of LD1576 is covered by other areas of Title 15, Title 16 subchapters 10 and 11 along with US 18 chapter 119 and the United States Electronic Communications Privacy Act along with U.S. Supreme Court cases such as *Carpenter* or *Riley*. Current law already spells out when a criminal investigation requires a search warrant, necessitating a lengthy and complicated process for obtaining content generated by electronic devices from Electronic Service Providers (ESP's) and that subscriber information can be obtained with a subpoena. This bill requires a search warrant to obtain what has always been, subscriber information, such as sender or recipient, the date and time of transmission, and the Internet Protocol Address.

The changes in definitions in LD1576 create a lot of complication and confusion to an already complicated process that is covered with existing state statutes, federal statute and case law.

The most concerning issues with LD1576 is the complete restriction of ESP's to be able to provide information to law enforcement by any other means than a search warrant. ESP's follow federal statute when complying with legal requests and federal statute requires a subpoena for release of subscriber information and call detail records. ESP's do not recognize consent as a means to release any record and typically due to delays in reporting, we cannot meet exigency requirements even when a child is likely in danger.

The Maine Internet Crimes Against Children Task Force received 1,831 cyber tips in Maine during 2022. This represents a 344% increase in tips over the past 6 years. Our unit spends a great deal of time



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and resources working to triage the most urgent cases for investigation. LD 1576 if allowed to pass, this legislation would further disrupt and potentially stagnate an already critical and time-sensitive process.

The subpoena process is a vital first step in the investigative process and allows law enforcement to identify relevant and very limited information to recognize and prioritize which cases and which information is in need of pursuing and also serves as a first step in establishing the probable cause needed for a search warrant.

LD 1576 takes away our ability to receive this limited information by any other means than a search warrant.

Typically we would receive a "cyber tip" from an Electronic Service Provider or (ESP). Those tips contain general information on the reported illegal content or conduct (Typically, images, videos or chats depicting child sexual abuse material or an adult endangering or enticing a child) as well as a username and an IP address but not enough information to enable an investigator to obtain a search warrant.

As I read LD1576, this law could possibly prevent an ESP from providing information to us at all. If information is provided all we would get is a generic statement that a particular ESP has some concerning content that we should be aware of. That information alone is not probable cause of a crime sufficient enough for us to get a search warrant but let's say that it did. Our current protocol is to get a search warrant to look at any images that the ESP provided unless it is clear that a person at the ESP looked at the content before sending the tip. Under current procedure, we take the IP address provided by the ESP and request that a prosecutor subpoena the subscriber information. After getting that response, the investigator attempts to determine who used that IP address and a connection to a residence. Finally, the investigator drafts another warrant to search a residence to look for evidence of a crime.

Because this bill requires a search warrant whenever we are investigating an IP address, the investigator would have to draft a THIRD warrant. Just as troublesome, obtaining a search warrant for electronic information, particularly from an ESP, takes many hours if not days that involves the officer drafting a typically 25-60 page document, having it reviewed and approved by a prosecutor and then going to a court to get it approved and signed by a judge. This is not a fast process. Once signed, the officer submits that search warrant through the ESP's legal process portal. A response relies on the ESP for how fast it responds, it can take days, weeks or months. By mandating a warrant to determine who was using the IP address at the time the child sexual abuse material or a person was soliciting a child, LD1576 prevents us from obtaining the most basic information to start a criminal investigation or to solve a safety issue. Of the 425 investigations completed last year, you can cut that by a third because the investigation will take at least that much longer.

As stated, under current procedure, we take the IP address provided by the ESP and request that a prosecutor subpoena the subscriber information. This process can be expedited to receive this very limited information in a matter of hours. This is the process required by federal law and with which most ESP's comply. Keep in mind,

INTEGRITY

FAIRNESS

COMPASSION

EXCELLENCE



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all we can obtain under the subpoena provision is very limited information regarding subscriber information and in some cases call detail records. This allows for faster screening of cases where children are or have been in potential danger where exigency cannot be established. This also aids in establishing probable cause of a crime so the rest of the investigation can proceed. This is true in most crimes involving electronic information, including most felony level crimes, homicides and endangered missing persons where no crime can be established but a person is at risk.

We take people's rights and privacy very seriously and we work within an already extensive legal framework to ensure the suspect's rights are met while balancing the need to identify and protect victims in Maine and victims outside of Maine.

LD1576 adds confusion and complication to the already extensive legal framework that we operate under. If there is any notion that law enforcement is able to quickly and easily access peoples private electronic information without or with limited judicial review, let me assure you nothing could be further from the truth.

It is for these reasons that we are opposed to LD 1576.