



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1316

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H.P. 941

House of Representatives, April 2, 2013

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### **An Act Regarding Computers Used To Commit a Crime or Facilitate the Commission of a Crime**

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered  
printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative TYLER of Windham.  
Cosponsored by Senator PLUMMER of Cumberland and  
Representatives: LAJOIE of Lewiston, LONG of Sherman, MARKS of Pittston, PEASE of  
Morrill, PLANTE of Berwick, Senators: DUTREMBLE of York, GERZOFKY of  
Cumberland.

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

2 **Sec. 1. 17-A MRSA §431, sub-§2**, as enacted by PL 1989, c. 620, is amended to  
3 read:

4 **2.** "Computer" means an electronic, magnetic, optical, electrochemical, or other  
5 high-speed data processing device performing logical, arithmetic, or storage functions,  
6 and includes any data storage ~~facility~~ device or communications facility directly related to  
7 or operating in conjunction with ~~such~~ the device.

8 **Sec. 2. 17-A MRSA §431, sub-§10-A** is enacted to read:

9 **10-A.** "Data storage device" means any computer or accessory device, designed for  
10 or capable of storing digital media or data, including, but not limited to, installed or  
11 transportable hard drives, memory cards and servers.

12 **Sec. 3. 17-A MRSA §§436 and 437** are enacted to read:

13 **§436. Permanent destruction of computer data on a computer used in the**  
14 **commission of a crime**

15 **1.** If a person is found guilty of a violation of this Title, the State shall permanently  
16 destroy the computer data on any computer that was used to commit or facilitate the  
17 commission of that violation or cause the computer data to be permanently destroyed  
18 through the removal and destruction of any part of the computer in the possession of the  
19 State on which that computer data are stored.

20 **2.** Notwithstanding subsection 1, a criminal justice agency, prior to the destruction  
21 of computer data, may extract and provide computer data to a person if:

22 **A.** Prior to the conclusion of criminal prosecution in the matter involving the  
23 computer data, the person provides written notification to the criminal justice agency  
24 having custody of the computer on which the computer data are stored that the person  
25 is interested in obtaining that computer data;

26 **B.** The person either has an ownership interest in the computer data or wants the  
27 computer data only for the sentimental value of the data. When computer data are  
28 requested only for the sentimental value of the data, the person must state such in a  
29 written affidavit;

30 **C.** The computer data that are the subject of the person's request may be lawfully  
31 disseminated;

32 **D.** The computer data that are the subject of the person's request are not confidential  
33 by law;

34 **E.** The computer data that are the subject of the request are specifically identified by  
35 the person making the request. For the purposes of this paragraph, "specifically  
36 identified" means identified with reasonable precision and not merely categorically;

37 **F.** The criminal justice agency, in the judgment of the chief officer of the agency,  
38 determines the agency has the technological expertise, resources and personnel

1 available to accommodate the request or to cause the request to be accommodated;  
2 and

3 G. Notwithstanding any provision of law to the contrary, the person requesting the  
4 computer data makes advance payment for the time and costs that the criminal justice  
5 agency estimates will be needed for the requested computer data to be extracted and  
6 provided by the agency or caused by the agency to be extracted and provided to the  
7 person.

8 If the conditions identified in paragraphs A to G of this subsection are not met, the  
9 computer data that are the subject of the request must be permanently destroyed in  
10 accordance with subsection 1.

11 **§437. Permissible destruction or transfer of ownership to the State of a computer**  
12 **used in the commission of a crime**

13 1. Notwithstanding any provision of law to the contrary and except as provided in  
14 subsection 3, the State may either permanently destroy or assume ownership of a  
15 computer that was used in the commission of a crime or that facilitated the commission of  
16 a crime if:

17 A. A person has been found guilty of a crime committed using, or that was facilitated  
18 through the use of, the computer;

19 B. The opportunity for the computer to be forfeited to the State through proceedings  
20 at the presentencing stage has passed; and

21 C. A person having a lawful property interest in the computer has not notified the  
22 State in writing within 6 months following the finding of guilt that the person wants  
23 to take possession of the computer. The written notification must be made to the  
24 criminal justice agency having custody of the computer.

25 If the State assumes ownership of a computer pursuant to this subsection, all computer  
26 data stored on the computer must be permanently destroyed by the State, or caused by the  
27 State to be permanently destroyed, in accordance with section 436.

28 2. A person who has a lawful property interest in a computer that was used to  
29 commit a crime or that facilitated the commission of a crime may take possession of the  
30 computer if:

31 A. The person notifies the State in writing within 6 months following the finding of  
32 guilt that a person committed a crime using, or that was facilitated by the use of, the  
33 computer that the person wants to take possession of that computer. The written  
34 notification must be made to the criminal justice agency having custody of the  
35 computer;

36 B. The crime that was committed using, or that was facilitated through the use of, the  
37 computer is not a crime identified in chapter 12; and

38 C. All computer data stored on the computer have been permanently destroyed  
39 pursuant to section 436.



1 the effective date of this bill, the agency post on its publicly accessible website a notice  
2 stating that, unless written notification as described in the bill is given to the criminal  
3 justice agency within 4 months after the effective date of this bill, all such computer data  
4 and computers must be disposed of in accordance with the provisions of the bill.