

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 941 - L.D. 1316

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

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

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

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

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

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

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

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

1. If a person is convicted upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or found not criminally responsible of a violation of this Title, the State, after all appeal periods have run and those proceedings have concluded, may permanently destroy the computer data on any computer that was used to commit or facilitate the commission of that violation or cause the computer data to be permanently destroyed through the removal and destruction of any part of the computer in the possession of the State on which the computer data are stored.

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

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

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

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

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

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

F. The criminal justice agency, in the judgment of the chief officer of the agency, determines the agency has the technological expertise, resources and personnel available to accommodate the request or to cause the request to be accommodated. The chief officer of the agency may consider whether there is a 3rd-party vendor that can accommodate the request if the chief officer determines the agency cannot accommodate the request for reasons provided in this paragraph. The chief officer of the agency subject to the request shall refer the request to an appropriate 3rd-party vendor for processing upon receipt by the chief officer of the agency of full payment from the requestor for the amount charged by the vendor to accommodate the request for information; and

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

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

The chief officer of the criminal justice agency that is subject to a request under this subsection shall respond to the requestor within 60 days from the date the request was received by the chief officer. The chief officer's response must include but is not limited to what actions if any the agency will take regarding the computer data identified in the request.

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

1. Notwithstanding any provision of law to the contrary and except as provided in subsection 3, the State may either permanently destroy or assume ownership of a

computer that was used in the commission of a crime or that facilitated the commission of a crime if:

A. A person is convicted upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or is found not criminally responsible of a crime committed using, or that was facilitated through the use of, the computer and all appeal periods have run and those proceedings have concluded;

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

C. A person having a lawful property interest in the computer has not notified the State in writing within 6 months following a conviction upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or a finding of not criminally responsible that the person wants to take possession of the computer. The written notification must be made to the criminal justice agency having custody of the computer.

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

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

A. The person notifies the State in writing within 6 months following a conviction upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or a finding of not criminally responsible that a person committed a crime using, or that was facilitated by the use of, the computer and all appeal periods have run and those proceedings have concluded, that the person wants to take possession of that computer. The written notification must be made to the criminal justice agency having custody of the computer;

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

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

3. Notwithstanding subsection 2, a person having a lawful property interest in a computer may not take possession of that computer if the crime that was committed using, or that was facilitated through the use of, the computer is a crime identified in chapter 12. Notwithstanding subsection 1, the computer may be permanently destroyed by the State, or caused by the State to be permanently destroyed, in accordance with section 436 if the crime that was committed using, or that was facilitated through the use of, the computer is a crime identified in chapter 12.

When the State receives a notification from a person who wishes to take possession of a computer pursuant to subsection 2, the State must respond to that notification within 60 days from the date the notification was received by the State. The State's response must

include but is not limited to what actions, if any, the State will take regarding the computer identified in the notification.

Sec. 4. Public notice concerning computers and computer data already in the custody of a criminal justice agency. Before a criminal justice agency, pursuant to the Maine Revised Statutes, Title 17-A, section 436 or 437, permanently destroys any computer data or disposes or assumes ownership of a computer in the custody of the agency prior to the effective date of this Act, the agency shall post on its publicly accessible website a notice stating that, unless written notification as described in Title 17-A, section 436, subsection 2 or Title 17-A, section 437, subsection 2 is given to the criminal justice agency within 90 days after the effective date of this Act, all such computer data and computers must be disposed of in accordance with the provisions of Title 17-A, section 436 or 437.