

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 157 - L.D. 415

**An Act To Require a Warrant To Obtain the Location Information of a Cell
Phone or Other Electronic Device**

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

Sec. 1. 16 MRSA c. 3, sub-c. 10 is enacted to read:

SUBCHAPTER 10

ELECTRONIC DEVICE LOCATION INFORMATION

§641. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. Substantially jeopardizes an investigation; or
- F. Undue delay of a trial.

2. Electronic communication service. "Electronic communication service" means a service that provides to users the ability to send or receive wire or electronic communications.

3. Electronic device. "Electronic device" means a device that enables access to, or use of, an electronic communication service, remote computing service or location information service.

4. Government entity. "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

5. Location information. "Location information" means information concerning the location of an electronic device, including both the current location and any prior location of the device, that, in whole or in part, is generated, derived from or obtained by the operation of an electronic device.

6. Location information service. "Location information service" means a global positioning service or other mapping, locational or directional information service.

7. Owner. "Owner" means the person or entity having the legal title, claim or right to an electronic device.

8. Remote computing service. "Remote computing service" means computer storage or processing services provided by means of an electronic communication service.

9. User. "User" means a person or entity that uses an electronic device.

§642. Warrant needed for acquisition of location information

Except as provided in this subchapter, a government entity may not obtain location information without a valid warrant issued by a duly authorized judge or justice using procedures established pursuant to Title 15, section 55.

A judge or justice may issue a warrant for the location information of an electronic device pursuant to this section for a period of time necessary to achieve the objective of the authorization, but in any case the warrant is not valid for more than 10 days after the issuance. A judge or justice may grant an extension of a warrant upon a finding of continuing probable cause and a finding that the extension is necessary to achieve the objective of the authorization. An extension may not exceed 30 days.

§643. Notice

Notice must be given to the owner or user of an electronic device whose location information was obtained by a government entity. The government entity's notification obligation applies only if the government entity is able to identify the owner or user.

1. Timing and content of notice. Unless the court determines under subsection 2 that no notice is required, the government entity shall provide notice to the owner or user that location information was obtained by the government entity from that owner's or user's electronic device within 3 days of obtaining the location information. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

A. The nature of the law enforcement inquiry, with reasonable specificity;

B. The location information of the owner or user that was supplied to or requested by the government entity and the date on which it was provided or requested; and

C. If location information was obtained from a provider of electronic communication service or location information service or other 3rd party, the identity of the provider of electronic communication service or location information service or the 3rd party from whom the information was obtained.

2. Notification not required. A government entity acting under section 642 may include in the application for a warrant a request for an order to waive the notification required under this section. The court may issue the order if the court determines that there is reason to believe that notification will have an adverse result.

3. Preclusion of notice to owner or user subject to warrant for location information. A government entity acting under section 642 may include in its application for a warrant a request for an order directing a provider of electronic communication service or location information service to which a warrant is directed not to notify any other person of the existence of the warrant. The court may issue the order if the court determines that there is reason to believe that notification of the existence of the warrant will have an adverse result.

§644. Exceptions to warrant requirement

When disclosure of location information is not prohibited by federal law, a government entity may obtain the location information without a warrant:

1. Emergency services. To respond to the user's call for emergency services;

2. Consent of owner or user. With the informed, affirmative consent of the owner or user of the electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party known to the owner or user;

3. Consent of family member. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user, if the owner or user is believed to be deceased or reported missing and unable to be contacted; or

4. Immediate danger of death or serious injury. If the government entity reasonably believes that an emergency involving immediate danger of death or serious physical injury to a person requires the disclosure, without delay, of location information concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger, and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

Within a reasonable period of time after seeking disclosure pursuant to this subsection, the government entity seeking the location information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose location information was sought is believed to be important in addressing the emergency.

§645. Conditions of use of location information

1. Conditions of use of location information in proceeding. Location information obtained pursuant to this subchapter or evidence derived from that information may be received in evidence or otherwise disclosed in a trial, hearing or other proceeding only if each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the warrant and accompanying application under which the information was obtained.

2. Ten-day requirement; exception. The 10-day requirement under subsection 1 may be waived if a judge makes a finding that it was not possible to provide a party with the warrant and accompanying application 10 days prior to a trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

§646. Action against a corporation

This subchapter may not be construed to create a cause of action against a corporation or its officers, employees or agents for providing location information.