

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

S.P. 484 - L.D. 1377

An Act To Protect Cellular Telephone Privacy

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

PORTABLE ELECTRONIC DEVICE CONTENT 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. Potentially jeopardizing an investigation;

F. Undue delay of a trial; or

G. Other significantly detrimental consequence.

2. Content information. "Content information," when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

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

4. Government entity. "Government entity" means a state or local government 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 government agency.

5. Owner. "Owner" means the person or entity having the legal title, claim or right to a portable electronic device.

6. Portable electronic device. "Portable electronic device" means a portable device that enables access to, or use of, an electronic communication service or remote computing service.

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

8. User. "User" means a person or entity that uses a portable electronic device.

§642. Authority to obtain and disclose content information held by a provider of electronic communication service

1. Authority to obtain. A government entity may obtain portable electronic device content information directly from a provider of electronic communication service only in accordance with a valid warrant issued by a duly authorized judge or justice using procedures established pursuant to Title 15, section 55 or as otherwise provided in this subchapter.

2. Authority to disclose. A provider of electronic communication service may disclose portable electronic device content information to a government entity only pursuant to a warrant issued by a duly authorized judge or justice or as otherwise provided in this subchapter.

§643. Notice

Notice must be given to the owner or user of a portable electronic device whose content information was obtained by a government entity.

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 content information was obtained by the government entity from that owner's or user's portable electronic device within 3 days of obtaining the content 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 content 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 content information was obtained from a provider of electronic communication service or other 3rd party, the identity of the provider of electronic communication 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 content 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 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

1. Consent of owner or user. When disclosure of portable electronic device content information is not prohibited by federal law, a government entity may obtain the information without a warrant with the informed, affirmative consent of the owner or user of the portable 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.

2. Consent of owner or user not required if content information public. Notwithstanding subsection 1, a government entity may obtain content information without a warrant if the content information is otherwise disclosed by anyone in a publicly accessible domain, including, but not limited to, on the Internet.

3. Emergency. When a government entity cannot, with due diligence, obtain a warrant in time to address an emergency that involves or is believed to involve an imminent threat to life or safety, a government entity may obtain the content information from a portable electronic device without a warrant, and a provider of electronic communication service may disclose such information to the requesting government entity without a warrant.

§645. Use of content information obtained in violation of this subchapter not admissible

Except as proof of a violation of this subchapter, evidence obtained in violation of this subchapter is not admissible in a criminal, civil, administrative or other proceeding.

§646. Violations; injunctive relief

A person damaged as a result of a violation of this subchapter has a cause of action in court against a government entity that fails to comply with the provisions of this subchapter, and the court may award injunctive relief.