

CHAPTER 3

SEARCH WARRANTS

§51. Issuance**(REPEALED)**

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§52. Complaint**(REPEALED)**

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§53. Contents of warrant**(REPEALED)**

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§54. Search of dwelling house**(REPEALED)**

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§55. Search warrants; issuance by justice, judge or justice of the peace

A justice of the Superior Court, a judge of the District Court or a justice of the peace shall issue search warrants for any place in the State for such purposes as the United States Constitution and the Constitution of Maine permit, including with respect to any violation over which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians exercises exclusive jurisdiction under Title 30, section 6209-A, 6209-B or 6209-C. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath or affirmation that is capable of being reduced to a record for purposes of review. The application for the search warrant and supporting information and evidence must be submitted in accordance with rules adopted by the Supreme Judicial Court, except that, following the establishment of a statewide electronic warrant system as provided in Title 4, section 17, subsection 18, the filing of the application and supporting information and evidence may be done electronically, if presented to a justice of the Superior Court or a judge of the District Court or a justice of the peace authorized by rule of the Supreme Judicial Court to issue warrants electronically, and the warrant issued and returned electronically. The Supreme Judicial Court shall by rule provide the procedure of the application for and issuance of search warrants. When no procedure is specified by the Supreme Judicial Court, the justice, judge or justice of the peace shall proceed in any reasonable manner that is authorized by this section, that, if presented electronically, conforms to the requirements of Title 4, section 17, subsection 18 and that will allow the issuance of a search warrant for any constitutional purpose. A justice, a judge or a justice of the peace shall issue a search warrant for a domestic or foreign entity that is a provider of electronic communication service or a provider of remote computing service in accordance with the provisions of this section and section 56. [PL 2021, c. 684, §4 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §18 (RPR). PL 1979, c. 343, §1 (RPR). PL 1987, c. 736, §20 (AMD). PL 1991, c. 484, §5 (AMD). PL 1995, c. 388, §3 (AMD). PL 1995, c. 388, §8 (AFF). PL 2017, c. 144, §2 (AMD). PL 2021, c. 684, §4 (AMD).

§56. Service of criminal process on providers of electronic communication service or providers of remote computing service

The following provisions apply to a service of criminal process on an electronic communication service provider and a remote computing service provider that are domestic or foreign entities. [PL 2017, c. 144, §3 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Adverse result" means:

- (1) Immediate danger of death or serious physical injury to any person;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;
- (4) Intimidation of a potential witness;
- (5) Seriously jeopardizing an investigation; or
- (6) Undue delay of a trial. [PL 2019, c. 489, §1 (AMD).]

B. "Applicant" means a law enforcement officer who has applied for or received a search warrant pursuant to section 55 or this section. [PL 2017, c. 144, §3 (NEW).]

C. "Content information," when used with respect to any wire or electronic communication, includes any information concerning the substance, purport or meaning of that communication. [PL 2017, c. 144, §3 (NEW).]

D. "Court" means the Superior Court or the District Court. [PL 2017, c. 144, §3 (NEW).]

E. "Criminal process" means a search warrant issued pursuant to Title 5, section 113; section 55; or this section, or a grand jury subpoena issued pursuant to Rule 17 or 17A of the Maine Rules of Unified Criminal Procedure and this section. [PL 2017, c. 144, §3 (NEW).]

F. "Domestic entity" means an entity whose internal affairs are governed by the laws of this State. [PL 2017, c. 144, §3 (NEW).]

G. "Electronic communication service" means a service that provides to users the ability to send or receive spoken, wire or electronic communications. [PL 2017, c. 144, §3 (NEW).]

H. "Electronic communication service provider" means an entity that provides electronic communication service to the general public. [PL 2017, c. 144, §3 (NEW).]

I. "Entity" means an entity as defined in Title 5, section 102, subsection 7. [PL 2017, c. 144, §3 (NEW).]

J. "Foreign entity" means an entity other than a domestic entity. [PL 2017, c. 144, §3 (NEW).]

K. "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. [PL 2017, c. 144, §3 (NEW).]

L. "Properly served" means that a search warrant or grand jury subpoena has been:

- (1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a commercial clerk or commercial registered agent as provided in Title 5, section 106; Title 5, section 107, subsection 4; or this section;
- (2) Delivered by specific means identified by the provider for service of criminal process, including, but not limited to, e-mail, facsimile or submission via an Internet web portal; or
- (3) Delivered to the provider's place of business within the State.

If service is made pursuant to subparagraph (1) or (3) and the provider promptly notifies the law enforcement agency of the specific means of service identified by the provider pursuant to subparagraph (2) for criminal process, service must be made by the means of service specified by the provider if possible. [PL 2017, c. 144, §3 (NEW).]

M. "Provider" means an electronic communication service provider or a remote computing service provider. [PL 2017, c. 144, §3 (NEW).]

N. "Remote computing service" means computing storage or processing services provided by means of an electronic communication service. [PL 2017, c. 144, §3 (NEW).]

O. "Remote computing service provider" means an entity that provides remote computing service to the general public. [PL 2017, c. 144, §3 (NEW).]
[PL 2019, c. 489, §1 (AMD).]

2. Requirements applicable to a foreign entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a foreign entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.

A. A foreign entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14 days may be extended by the court as follows:

- (1) By the 10th day following service, the foreign entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the foreign entity provider will complete the production; and
- (2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).

If the court finds that good cause exists for the delay, the court may extend the 14-day period to the date of production specified by the foreign entity provider and the provider is prohibited from asserting that the warrant has expired. For purposes of this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2017, c. 144, §3 (NEW).]

B. A foreign entity provider served with a grand jury subpoena pursuant to this section shall produce to the prosecutor or grand jury all records sought, including those records maintained or located outside this State, by or at the time of the grand jury appearance. The grand jury subpoena must include the address of the prosecutor or grand jury to which the provider must produce the records. [PL 2017, c. 144, §3 (NEW).]

C. A foreign entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) if the foreign entity that is the provider of services is governed by the laws of another state

and that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(12) if the foreign entity that is the provider of services is governed by the laws of a foreign country. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6). [PL 2017, c. 377, §1 (AMD).]

D. A foreign entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court, attorney for the State or law enforcement agency involved in the investigation. [PL 2017, c. 144, §3 (NEW).] [PL 2017, c. 377, §1 (AMD).]

3. Requirements applicable to a domestic entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a domestic entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.

A. A domestic entity provider, when served with criminal process issued by another state to produce records that would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information, shall produce those records as if that criminal process had been issued by a court in this State. [PL 2017, c. 144, §3 (NEW).]

B. A domestic entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14-day period may be extended by the court as follows:

(1) By the 10th day following service, the domestic entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the domestic entity provider will complete the production; and

(2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).

If the court finds that good cause exists for the delay, the court may extend the 14-day period to the date of production specified by the domestic entity provider and the provider is prohibited from asserting that the warrant has expired. For purposes of this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2017, c. 144, §3 (NEW).]

C. A domestic entity provider served with a grand jury subpoena pursuant to this section shall produce to the prosecutor or grand jury all records sought, including those records maintained or located outside this State, by or at the time of the grand jury appearance. The grand jury subpoena must include the address of the prosecutor or grand jury to which the provider must produce the records. [PL 2017, c. 144, §3 (NEW).]

D. A domestic entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) or on a form provided by the requesting jurisdiction. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6). [PL 2017, c. 144, §3 (NEW).]

E. A domestic entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court,

attorney for the State or law enforcement agency involved in the investigation. [PL 2017, c. 144, §3 (NEW).]

[PL 2017, c. 144, §3 (NEW).]

4. Application for expedited production of records. Notwithstanding the 14-day period specified in subsection 2 or 3 for production of the records, if an applicant for a search warrant believes that delaying production is reasonably likely to cause an adverse result, the applicant may request that the court require the production of the records sooner than 14 days after service pursuant to this subsection.

A. The applicant shall demonstrate to the court the specific adverse result or results, as specified in subsection 1, paragraph A, subparagraphs (1) to (6), that delaying production for 14 days is reasonably likely to cause. [PL 2019, c. 489, §2 (AMD).]

B. If the court finds that the delay may cause an adverse result, the court shall state the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to (6) and may require the provider to produce the records in a specified number of days. [PL 2019, c. 489, §2 (AMD).]

C. If the court specifies that the provider has less than 14 days to produce the record and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs (1) to (4), the provider must respond within the time specified by the court. [PL 2017, c. 144, §3 (NEW).]

D. If the court specifies that the provider has less than 14 days to produce the record and the only adverse result findings are results listed in subsection 1, paragraph A, subparagraphs (5) and (6), the provider must notify the law enforcement officer serving the warrant that compliance within that period specified by the court is not practicable and must state the date within 14 days from service by which the provider will respond. The law enforcement officer shall file the provider's response with the court, and, upon a demonstration of good cause by the provider, the response period may be extended by the court to no more than 14 days from the date of service of the warrant. As used in this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2019, c. 489, §2 (AMD).]

[PL 2019, c. 489, §2 (AMD).]

SECTION HISTORY

PL 2017, c. 144, §3 (NEW). PL 2017, c. 377, §1 (AMD). PL 2019, c. 489, §§1, 2 (AMD).

§57. Restriction on no-knock warrants; requirements for no-knock warrants

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Law enforcement officer" or "officer" has the same meaning as in Title 25, section 2801-A, subsection 5. [PL 2021, c. 267, §1 (NEW).]

B. "No-knock warrant" means a warrant that authorizes execution of the warrant without the law enforcement officer first announcing the authority for the execution of the warrant and the purpose for which the warrant was issued. Any warrant is a no-knock warrant if it is executed without waiting at least 20 seconds after the announcement of authority and purpose before making entry. [PL 2021, c. 267, §1 (NEW).]

[PL 2021, c. 267, §1 (NEW).]

2. Restriction on no-knock warrants. Notwithstanding any provision of law to the contrary, a state, county or local law enforcement officer may not execute a no-knock warrant except as provided in subsection 3 or 4.

[PL 2021, c. 267, §1 (NEW).]

3. Exceptions. The restrictions in subsection 2 do not apply if the warrant clearly states that providing notice prior to execution of the warrant would create an imminent risk of death or bodily harm to a law enforcement officer, an individual in the location named in the warrant or an individual in the surrounding areas outside of the location named in the warrant. Imminent risk of death or bodily harm under this subsection must be verified by the issuing authority by reviewing the information contained within the affidavit.

[PL 2021, c. 267, §1 (NEW).]

4. Exigent circumstances. Subsections 2 and 3 do not preclude entry by a law enforcement officer in accordance with a recognized exception to the warrant requirement, including, but not limited to, exigent circumstances.

[PL 2021, c. 267, §1 (NEW).]

5. Requirements. The following requirements apply to a law enforcement officer executing a no-knock warrant that is authorized under the exception provisions in subsection 3.

A. An officer on the entry team shall wear an official uniform that clearly identifies the officer as a law enforcement officer and, if the officer's law enforcement agency provides body-worn cameras to law enforcement officers, a body-worn camera worn in accordance with the policies of the officer's law enforcement agency. An officer shall follow the policy of the officer's law enforcement agency regarding the usage of body-worn cameras. This subsection does not require a law enforcement agency that provides body-worn cameras to mandate recording the execution of a no-knock warrant. [PL 2021, c. 267, §1 (NEW).]

B. In cases in which an imminent risk of death or bodily harm exists, only officers trained in the use of stun grenade, stun, distraction or other similar devices may use such a device during the execution of the warrant. [PL 2021, c. 267, §1 (NEW).]

[PL 2021, c. 267, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 267, §1 (NEW).

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