

CHAPTER 3

RECORDS AND OTHER DOCUMENTS

SUBCHAPTER 1

GENERAL PROVISIONS

§351. Testimony of deceased subscribing witness or magistrate

When the testimony of a subscribing witness to a deed or of the magistrate who took the acknowledgment thereof has been taken in the trial of any civil action in relation to the execution, delivery or registry of such deed, and such witness has since died, proof of such former testimony is admissible in the trial of any other civil action involving the same question if the parties are the same or if one of the parties is the same and the adverse party acted as agent or attorney for the adverse party in the former action, but such testimony may be impeached like the testimony of a living witness.

§352. Writings dated Sunday

(REPEALED)

SECTION HISTORY

PL 1979, c. 11, §1 (RP).

§353. Avoidance of Lord's Day contracts; restoration of consideration; torts on Lord's Day

(REPEALED)

SECTION HISTORY

PL 1979, c. 11, §1 (RP).

§353-A. Contracts and torts on Lord's Day

No deed, contract, receipt or other instrument in writing shall be voidable only because it was made, executed, dated or delivered on the Lord's Day. [PL 1979, c. 11, §2 (NEW).]

Title 17, chapter 105, relating to the observance of the Lord's Day shall not affect the rights or remedy of either party in any action for a tort or injury suffered on that day. [PL 1979, c. 11, §2 (NEW).]

SECTION HISTORY

PL 1979, c. 11, §2 (NEW).

§354. Proof of signature

(REPEALED)

SECTION HISTORY

PL 1977, c. 564, §80 (RP).

§355. Affidavit of plaintiff as prima facie evidence; exception

In all actions brought on an itemized account annexed to the complaint, including an action brought in small claims court pursuant to Title 14, chapter 738, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits given and that the prices or items charged therein are just and reasonable is prima facie evidence of the truth of the statement

made in such affidavit and entitles the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, vice-president, secretary, treasurer or other person authorized by the corporation. If the plaintiff is a debt buyer within the meaning of the Maine Fair Debt Collection Practices Act, the affidavit must also conform to the requirements of Title 32, section 11019. [PL 2017, c. 216, §1 (AMD).]

SECTION HISTORY

PL 1977, c. 564, §81 (AMD). PL 1977, c. 696, §364 (AMD). PL 1981, c. 470, §A34 (AMD). PL 2017, c. 216, §1 (AMD).

§356. Accounts admissible though hearsay or self-serving

An entry in an account kept in a book or by a card system or by any other system of keeping accounts shall not be inadmissible in any civil proceeding as evidence of the facts therein stated because it is transcribed or because it is hearsay or self-serving, if the court finds that the entry was made in good faith in the regular course of business and before the beginning of the civil proceeding. The court in its discretion, before admitting such entry in evidence, may, to such extent as it deems practicable or desirable but to no greater extent than the law required before June 30, 1933, require the party offering the same to produce and offer in evidence the original entry, writing, document or account from which the entry offered or the facts therein stated were transcribed or taken, and to call as his witness any person who made the entry offered or the original or any other entry, writing, document or account from which the entry offered or the facts therein stated were transcribed or taken or who has personal knowledge of the facts stated in the entry offered.

§357. Hospital records and copies of records

Records kept by hospitals and other medical facilities licensed under the laws of this State and records which the court finds are required to be kept by the laws of any other state or territory, or the District of Columbia, or by the laws and regulations of the United States of America pertaining to the Department of National Defense and the Veterans Administration, by hospitals and other medical facilities similarly conducted or operated or which, being incorporate, offer treatment free of charge, shall be admissible, as evidence in the courts of this State so far as such records relate to the treatment and medical history of such cases and the court shall admit copies of such records, if certified by the persons in custody thereof to be true and complete, but nothing therein contained shall be admissible as evidence which has reference to the question of liability. Copies of photographic or microphotographic records so kept by hospitals and medical facilities, when duly certified by the person in charge of the hospital and other medical facility, shall be admitted in evidence equally with the original photographs or microphotographs. [PL 1973, c. 788, §66 (AMD).]

Notwithstanding this section, the result of a laboratory or any other test kept by a hospital or other medical facility that reflects an alcohol level, a detectable urine-drug level, a detectable blood-drug level or a drug concentration of either blood or urine may not be excluded as evidence in a criminal or civil proceeding by reason of any claim of confidentiality or privilege and may be admitted as long as the result is relevant and reliable evidence if the proceeding is one in which the operator of a motor vehicle, snowmobile, all-terrain vehicle or watercraft is alleged to have operated under the influence of intoxicating liquor or drugs and the court is satisfied that probable cause exists to believe that the operator committed the offense charged. [PL 2011, c. 335, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 384 (NEW). PL 1973, c. 788, §66 (AMD). PL 1987, c. 791, §3 (AMD). PL 2005, c. 477, §26 (AMD). PL 2007, c. 63, §1 (AMD). PL 2009, c. 447, §17 (AMD). PL 2011, c. 335, §1 (AMD).

§358. Recordings of protected person

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

A. "Forensic interview" means a fact-finding conversation conducted by a forensic interviewer using an evidence-based practice. [PL 2023, c. 193, §1 (NEW).]

B. "Forensic interviewer" means an individual who meets the qualifications in subsection 2. [PL 2023, c. 193, §1 (NEW).]

C. "Protected person" means a person who at the time of a recording of a forensic interview:

(1) Has not attained 18 years of age; or

(2) Is an adult who is eligible for protective services pursuant to the Adult Protective Services Act. [PL 2023, c. 193, §1 (NEW).]

[PL 2023, c. 193, §1 (NEW).]

2. Qualifications of forensic interviewer. In order to be qualified as a forensic interviewer, an individual must:

A. Be employed by a child advocacy center or affiliated with a child advocacy center; [PL 2023, c. 193, §1 (NEW).]

B. Have completed a minimum of 32 hours of specialized instruction on an evidence-supported interview protocol; and [PL 2023, c. 193, §1 (NEW).]

C. Participate in ongoing education in the field of child maltreatment or forensic interviewing. [PL 2023, c. 193, §1 (NEW).]

[PL 2023, c. 193, §1 (NEW).]

3. Exception to hearsay rule. This section establishes an exception to the hearsay rule under the Maine Rules of Evidence, Rule 802, for the recording of a forensic interview of a protected person. A party seeking to offer all or a portion of a recording of a forensic interview of a protected person into evidence shall file a motion in limine. After providing all parties the opportunity to be heard on the motion, the court shall determine whether, in addition to satisfying all of the other requirements of this section, the following criteria have been met:

A. The interview was conducted by a forensic interviewer; [PL 2023, c. 193, §1 (NEW).]

B. Statements made by the protected person during the forensic interview were not made in response to suggestive or leading questions; [PL 2023, c. 193, §1 (NEW).]

C. A relative of the protected person was not present in the room during the substantive phase of the interview; [PL 2023, c. 193, §1 (NEW).]

D. An attorney for any party in a proceeding with the protected person was not present in the room with the protected person during the interview; [PL 2023, c. 193, §1 (NEW).]

E. The recording is both visual and audio; [PL 2023, c. 193, §1 (NEW).]

F. The recording is a fair and accurate representation of the statements made by the protected person and has not been altered except for purposes of admissibility; [PL 2023, c. 193, §1 (NEW).]

G. In a criminal matter, the protected person is available to testify or be cross-examined by any party and is called as a witness by the party offering the recording in evidence immediately following the presentation of the recording to the trier of fact and made available for cross-examination, unless all other parties expressly waive the requirement that the witness testify; and [PL 2023, c. 193, §1 (NEW).]

H. The portion of the interview to be admitted in evidence is relevant pursuant to the Maine Rules of Evidence, Rule 401, and is not otherwise inadmissible under the Maine Rules of Evidence. [PL 2023, c. 193, §1 (NEW).]

In the event that the protected person was the subject of more than one forensic interview, the exception to hearsay established under this subsection does not apply to statements from more than one forensic interview related to the same event or incident.

[PL 2023, c. 193, §1 (NEW).]

4. Recordings of protected persons preserved. A recording of a protected person that is made part of the court record must be preserved under a protective order of the court in order to protect the privacy of the protected person. The court shall maintain a copy of the recording as part of the court file for 20 years.

[PL 2023, c. 193, §1 (NEW).]

5. Applicability. Notwithstanding Title 1, section 302, this section applies to:

A. Cases pending on June 16, 2023; and [PL 2023, c. 646, Pt. D, §1 (NEW).]

B. Cases initiated after June 16, 2023, regardless of the date on which conduct described in the forensic interview allegedly occurred. [PL 2023, c. 646, Pt. D, §1 (NEW).]

[PL 2023, c. 646, Pt. D, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 193, §1 (NEW). PL 2023, c. 646, Pt. D, §1 (AMD).

SUBCHAPTER 2

JUDICIAL NOTICE

§401. Construction to effectuate purpose

This subchapter shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them and may be cited as the "Uniform Judicial Notice of Foreign Law Act."

§402. Common law and statutes

Every court of this State shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.

§403. Information for court

The court may inform itself of such laws in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.

§404. Determination of laws by court is reviewable

The determination of such laws shall be made by the court and not by the jury and shall be reviewable.

§405. Admissibility of laws of other jurisdictions

Any party may present to the trial court any admissible evidence of such laws, but to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties, if any, either in the pleadings or otherwise.

§406. Laws of foreign countries

The law of a jurisdiction other than those referred to in section 402 shall be an issue for the court but shall not be subject to sections 402 to 405, concerning judicial notice.

SUBCHAPTER 3

PUBLIC RECORDS

§451. Court records as evidence

The records and proceedings of any court of the United States or of any state, authenticated by the attestation of the clerk or officer having charge thereof and by the seal of such court, are evidence.

§452. Admissibility; attested copies of deeds

(REPEALED)

SECTION HISTORY

PL 1977, c. 564, §82 (RP).

§453. -- copied records of deeds

Copies made from any portion of either of the volumes of the early records in the York County registry of deeds published by the authority of the Legislature and placed in each registry, when attested by any register of deeds having lawful custody of such printed volume, and records duplicated from originals or from copies of originals in any registry of deeds and filed in such registry of deeds or in any other registry of deeds by authority of law and copies made from such records when attested by the register of deeds of the county or district where such records are filed, may be used in evidence like attested copies of the original records.

§454. -- photostats of public records

Copies made by photographic process from public records shall be received as evidence in the courts of this State under existing laws if duly attested by the officials required by law to keep said records.

§455. Authorization of photostats

Whenever any officer or employee of the State or of any county, city or town is required or authorized by law, or otherwise, to record or copy any document, plat, paper or instrument in writing, he may do such recording or copying by any photostatic, photographic or other mechanical process which produces a clear, accurate and permanent copy or reproduction of the original document, plat, paper or instrument in writing.

§456. Photostatic and microfilm reproductions admissible

If, in the regular course of any business or governmental activity, there is kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of any business or governmental activity, causes any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, optical disk that is not erasable or other process that accurately reproduces or forms a durable medium for reproducing the original, the reproduction or copy, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of the reproduction or copy is likewise admissible in evidence if the original reproduction or copy is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original. This section may not be construed

to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence. [PL 1991, c. 172, §2 (AMD).]

SECTION HISTORY

PL 1991, c. 172, §2 (AMD).

§456-A. Admissibility of electronic records

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

A. "Electronic record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player. [PL 1997, c. 636, §9 (NEW).]

B. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience. [PL 1997, c. 636, §9 (NEW).]

[PL 1997, c. 636, §9 (NEW).]

2. Effect. A record may not be denied legal effect, validity or enforceability solely because it is in the form of an electronic record.

[PL 1997, c. 636, §9 (NEW).]

3. Accuracy. The assessment of accuracy and integrity of information set forth in electronic records is governed by the following.

A. If a rule of law requires a record to be presented or retained in its original form or provides consequences for the record not being presented or retained in its original form, that requirement is met by an electronic record if there exists a reliable assurance as to the integrity of the information set forth in the electronic record at the time it was first generated in its final form, whether as an electronic record or in another form. Reliable assurance may be based on documentation of standard operating, access and security procedures governing the system that manages the electronic record. [PL 1997, c. 636, §9 (NEW).]

B. The integrity and accuracy of the information in an electronic record are determined by whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display. The standard of reliability required must be assessed in light of the purpose for which the information was generated and in light of all the relevant circumstances. [PL 1997, c. 636, §9 (NEW).]

[PL 1997, c. 636, §9 (NEW).]

4. Retention. The ability of electronic records to meet legal requirements regarding the retention of documents, records or information is governed by the following.

A. If a rule of law requires that certain documents, records or information be retained, that requirement is met by retaining electronic records as long as the following conditions are satisfied:

(1) The information contained in the electronic record remains accessible so that it is usable for subsequent reference;

(2) The electronic record is retained in the format in which it was generated, stored, sent or received, or in a format that can be demonstrated to reflect accurately the information as originally generated, stored, sent or received; and

(3) Any information that enables the identification of the source or origin and destination of an electronic record and the date and time when it was sent or received is retained. [PL 1997, c. 636, §9 (NEW).]

B. A requirement to retain documents, records or information in accordance with paragraph A does not extend to any information the sole purpose of which is to enable the record to be sent or received. [PL 1997, c. 636, §9 (NEW).]

C. A person may satisfy the requirement referred to in paragraph A by using the services of any other person as long as the conditions set forth in paragraph A, subparagraphs (1) to (3) are met. [PL 1997, c. 636, §9 (NEW).]

D. Nothing in this subsection precludes any state agency from specifying additional requirements for the retention of records, either written or electronic, that are subject to the jurisdiction of that agency. [PL 1997, c. 636, §9 (NEW).]

[PL 1997, c. 636, §9 (NEW).]

SECTION HISTORY

PL 1997, c. 636, §9 (NEW).

§457. Copies of consular and customhouse records and documents

Copies of papers and documents belonging to, or filed or remaining in the office of any consul, vice-consul or commercial agent of the United States and of official entries in the books or records of such office, when certified under the hand and official seal of the proper consul, vice-consul or commercial agent are evidence. Copies of registers or enrollments of vessels, or of any other customhouse records or documents deposited in the office of the collector of customs, attested by him or his deputy, under seal of office, may be used in evidence and shall have the same effect as the production of the records in court, verified by the recording officer in person.

§458. Copies of deeds of Director of the Bureau of Parks and Lands

A copy from the records in the office of the Director of the Bureau of Parks and Lands of a deed from the State of the land of the State, or of a deed from the State and from the Commonwealth of Massachusetts of the undivided lands of the State and of said Commonwealth, or of a deed from said Commonwealth of the lands of said Commonwealth in Maine, certified by the Director of the Bureau of Parks and Lands or other legal custodian of such records as a true copy thereof, may be filed and recorded in the registry of deeds in the county or registry district where the land lies, with the same effect as if the deed itself had been recorded, whether said deed shall or shall not have been acknowledged by the person making the same. Such record shall have all the force and effect of a record of deeds duly acknowledged, and certified copies thereof from such registry shall be evidence when the original would be. [PL 1975, c. 339, §7 (AMD); PL 1995, c. 502, Pt. E, §30 (AMD); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

SECTION HISTORY

PL 1965, c. 226, §62 (AMD). PL 1975, c. 339, §7 (AMD). PL 1995, c. 502, Pt. E, §30 (AMD). PL 2011, c. 657, Pt. W, §7 (REV). PL 2013, c. 405, Pt. A, §24 (REV).

§459. Adjutant General's certificate as evidence

The certificate of the Adjutant General relating to the enlistment of any person from this State in the United States' service and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the records of his office, are prima facie evidence of the facts so certified in any civil action or proceeding.

§460. Proof of official record

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §65 (RP).

§461. Proof of lack of record

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §65 (RP).

§462. Scope of proof

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §65 (RP).

SUBCHAPTER 4**STATUTES AND LAW****§501. Proof of foreign laws and unwritten state law**

Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence and by books of reports of cases adjudged in their courts.

Reference to the citation of such cases shall be deemed to incorporate them in the record. The determination of such law shall be for the court on all the evidence.

SUBCHAPTER 5**DEPOSITIONS****§551. Use of depositions**

In trials before probate courts, arbitrators, referees under Title 14, chapter 303, and county commissioners, depositions may, upon order of the tribunal before which the matter is pending and on good cause shown, be taken and used in the manner provided by rule for depositions in the Superior Court. Depositions or affidavits may be taken in applications for pensions, bounties or arrears of pay under any law of the United States.

§552. Recording of deposition and other papers

Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken shall, within 90 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside.

§553. Deposition by compulsion

When a magistrate, duly authorized, has summoned a person before him to give his deposition or affidavit in any case authorized by this subchapter pending in this or any other state, the summons has been served and returned by a proper officer or other person, and proof thereof is entered on the summons, and legal fees have been tendered him a reasonable time before the day appointed for taking

the deposition and he refuses to attend, the magistrate may adjourn the time of taking his deposition and issue a *capias*, directed to a proper officer, to apprehend and bring such person before him. If at the time of the adjournment he is not apprehended, the magistrate may adjourn from time to time until he is brought before him. If he then refuses to depose and answer such questions as are propounded to him by either of the parties or persons interested, under his direction, the magistrate may commit him to the county jail for contempt, as a court may commit a witness for refusing to testify. The *capias* may be served by the sheriff, deputy sheriff or any constable of the county in which such person resides. If he escapes into another county, either of said officers may arrest him there and bring him before said magistrate.

§554. Stenographers with power to take depositions

(REPEALED)

SECTION HISTORY

PL 1969, c. 367, §3 (RP).

§555. Manner of taking depositions and disclosures

(REPEALED)

SECTION HISTORY

PL 1969, c. 367, §3 (RP).

§556. Fees of commissioners

(REPEALED)

SECTION HISTORY

PL 1969, c. 367, §3 (RP).

§557. Testimony of party out of State

When a party to a civil action resides without the State or is absent therefrom during the pendency of the action and the opposite party desires his testimony, a commission under the rules of court may issue to take his deposition. Such nonresident or absent party, upon such notice to him or his attorney of record in the action of the time and place appointed for taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, the action may be dismissed or defaulted by order of court unless his attorney admits the affidavit of the party desiring his testimony as to what the absent party would say, if present, to be used as testimony in the case.

SUBCHAPTER 6

RECORDS OF ARRESTS

(REPEALED)

§600. Expungement of records of arrest

(REPEALED)

SECTION HISTORY

PL 1969, c. 460 (NEW). PL 1973, c. 706 (RPR). PL 1975, c. 430, §§23,24 (AMD). PL 1975, c. 623, §§18-A,18-B (AMD). PL 1975, c. 763, §2 (RP).

SUBCHAPTER 7

CRIMINAL HISTORY RECORD INFORMATION

(REPEALED)

§601. Definitions

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1979, c. 433, §1 (RP).

§602. Applicability

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1977, c. 281 (AMD). PL 1977, c. 384, §1 (AMD). PL 1979, c. 433, §1 (RP).

§603. Nondisclosure of certain records

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1979, c. 433, §1 (RP).

§604. Limitations on dissemination

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1977, c. 311, §2 (AMD). PL 1977, c. 383 (AMD). PL 1979, c. 433, §1 (RP).

§605. Unlawful dissemination

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1979, c. 433, §1 (RP).

§606. Right to access and review

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1977, c. 384, §§2-4 (AMD). PL 1979, c. 433, §1 (RP).

§607. Application

(REPEALED)

SECTION HISTORY

PL 1975, c. 763, §3 (NEW). PL 1979, c. 433, §1 (RP).

SUBCHAPTER 8

CRIMINAL HISTORY RECORD INFORMATION ACT

§611. Definitions**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 1983, c. 787, §1 (AMD). PL 1993, c. 719, §§5,6 (AMD). PL 1993, c. 719, §12 (AFF). PL 1995, c. 216, §1 (AMD). PL 2013, c. 267, Pt. A, §1 (RP).

§612. Application**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). RR 2011, c. 2, §14 (COR). PL 2013, c. 267, Pt. A, §1 (RP).

§612-A. Record of persons detained**(REPEALED)**

SECTION HISTORY

PL 1983, c. 377 (NEW). RR 1995, c. 2, §33 (COR). PL 2013, c. 267, Pt. A, §1 (RP).

§613. Limitations on dissemination of nonconviction data**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

§614. Limitation on dissemination of intelligence and investigative information**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 1981, c. 64 (AMD). PL 1983, c. 787, §2 (AMD). PL 1985, c. 552 (AMD). PL 1991, c. 729, §3 (AMD). PL 1991, c. 837, §B5 (AMD). PL 1993, c. 376, §1 (AMD). PL 1993, c. 719, §7 (AMD). PL 1993, c. 719, §12 (AFF). PL 1995, c. 135, §1 (AMD). PL 1997, c. 456, §10 (AMD). PL 1999, c. 155, §A5 (AMD). PL 1999, c. 305, §1 (AMD). PL 2001, c. 532, §§1,2 (AMD). PL 2003, c. 402, §§1,2 (AMD). PL 2009, c. 181, §§1-4 (AMD). PL 2011, c. 52, §1 (AMD). PL 2011, c. 210, §1 (AMD). PL 2011, c. 356, §1 (AMD). PL 2011, c. 657, Pt. W, §§5, 8 (REV). PL 2011, c. 691, Pt. A, §10 (AMD). PL 2013, c. 267, Pt. A, §1 (RP). PL 2013, c. 267, Pt. B, §§7-9 (AMD). PL 2013, c. 588, Pt. A, §20 (RP).

§615. Dissemination of conviction data**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

§616. Inquiries required**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

§617. Dissemination to noncriminal justice agencies**(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

**§618. Confirming existence or nonexistence of criminal history record information
(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

**§619. Unlawful dissemination
(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

**§620. Right to access and review
(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

**§621. Information and records of the Attorney General
(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 1993, c. 376, §2 (AMD). PL 1993, c. 719, §8 (RP). PL 1993, c. 719, §12 (AFF).

**§622. Application
(REPEALED)**

SECTION HISTORY

PL 1979, c. 433, §2 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

**§623. Attorney General fees
(REPEALED)**

SECTION HISTORY

PL 1993, c. 719, §9 (NEW). PL 2013, c. 267, Pt. A, §1 (RP).

SUBCHAPTER 9

MAINE CRIMINAL JUSTICE INFORMATION SYSTEM

§631. Maine Criminal Justice Information System

There is created, within the Department of Public Safety, an information clearinghouse to be known as the Maine Criminal Justice Information System. The Maine Criminal Justice Information System shall provide criminal justice agencies and authorized private users ready access to shared uniform information on criminal offenders and crime data, including: [PL 1993, c. 346, §1 (NEW).]

1. Offender tracking information. Offender-based tracking information, including any active status of offenders in the criminal justice system;
[PL 1993, c. 346, §1 (NEW).]

2. Criminal history information. Criminal history record information that includes information on the potential risk of individuals;
[PL 1993, c. 346, §1 (NEW).]

3. Crime data. Specific crime data for investigations and statistical analysis;
[PL 1993, c. 346, §1 (NEW).]

4. Warrant information. Warrant and wanted persons information;
[PL 1993, c. 346, §1 (NEW).]

4-A. Conditions of release information. Status and conditions of release of those persons on probation or parole or admitted to bail;
[PL 1999, c. 451, §1 (NEW).]

4-B. Protective order information. Information pertaining to conditions of protection, protected persons and the subjects of protection from abuse orders;
[PL 1999, c. 451, §1 (NEW).]

5. Stolen property information. Stolen property listings; and
[PL 1993, c. 346, §1 (NEW).]

6. Other information. Other information available through communications or networking with other states or federal criminal justice agencies, or both.
[PL 1993, c. 346, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 1999, c. 451, §1 (AMD).

§632. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 346, §1 (NEW).]

1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as defined in section 703, subsection 1.
[PL 2013, c. 267, Pt. B, §10 (AMD).]

2. Conviction data.
[PL 2013, c. 267, Pt. B, §10 (RP).]

2-A. Confidential criminal history record information. "Confidential criminal history record information" has the same meaning as defined in section 703, subsection 2.
[PL 2013, c. 267, Pt. B, §10 (NEW).]

3. Criminal history record information. "Criminal history record information" has the same meaning as defined in section 703, subsection 3.
[PL 2013, c. 267, Pt. B, §10 (AMD).]

4. Criminal justice agency. "Criminal justice agency" has the same meaning as defined in section 703, subsection 4.
[PL 2013, c. 267, Pt. B, §10 (AMD).]

5. Criminal record information system. "Criminal record information system" means a system including equipment, facilities, procedures and agreements for the collection, processing, preservation and dissemination of criminal record information including criminal history record information.
[PL 1993, c. 346, §1 (NEW).]

6. Disposition. "Disposition" has the same meaning as defined in section 703, subsection 5.
[PL 2013, c. 267, Pt. B, §10 (AMD).]

7. Executive order. "Executive order" has the same meaning as defined in section 703, subsection 7.

[PL 2013, c. 267, Pt. B, §10 (AMD).]

8. Nonconviction data.

[PL 2013, c. 267, Pt. B, §10 (RP).]

9. Offender. "Offender" means an individual, juvenile or adult, accused or convicted of a criminal offense under the laws of this State or federal law.

[PL 1993, c. 346, §1 (NEW).]

10. Offender-based tracking information. "Offender-based tracking information" means information collected during the administration of criminal justice by criminal justice agencies related to an identifiable person who has been determined to be an offender.

[PL 1993, c. 346, §1 (NEW).]

11. Person.

[PL 2013, c. 267, Pt. B, §10 (RP).]

11-A. Public criminal history record information. "Public criminal history record information" has the same meaning as defined in section 703, subsection 8.

[PL 2013, c. 267, Pt. B, §10 (NEW).]

12. State. "State" has the same meaning as defined in section 703, subsection 9.

[PL 2013, c. 267, Pt. B, §10 (AMD).]

13. Statute. "Statute" has the same meaning as defined in section 703, subsection 10.

[PL 2013, c. 267, Pt. B, §10 (AMD).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 2013, c. 267, Pt. B, §10 (AMD).

§633. Policy board established; membership

There is established the Maine Criminal Justice Information System Policy Board, referred to in this subchapter as the "board." The board consists of 13 members that include the Attorney General, the Commissioner of Public Safety, the Commissioner of Corrections, the State Court Administrator, the Chief of the State Police, the Associate Commissioner for Adult Services within the Department of Corrections, the Chief Information Officer, a representative of the Maine Prosecutors Association appointed by the Attorney General, a representative of the Maine Chiefs of Police Association appointed by the Commissioner of Public Safety, a representative of the Maine Sheriff's Association appointed by the Commissioner of Public Safety, a representative of a federal criminal justice agency appointed by the Governor, a representative of a nongovernmental agency that provides services to victims of domestic violence appointed by the Governor and a public member who represents private users of criminal offender record information appointed by the Governor. [PL 2005, c. 12, Pt. SS, §19 (AMD).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 1999, c. 451, §2 (AMD). PL 2001, c. 388, §15 (AMD). PL 2005, c. 12, §SS19 (AMD).

§634. Term of membership

The Attorney General, the Commissioner of Public Safety, the Commissioner of Corrections, the State Court Administrator, the Chief of the State Police and the Chief Information Officer are members of the board during their terms of office and may appoint designees to serve in their place. The other members of the board serve terms of 3 years. Members of the board serve without compensation, except for reimbursement for actual expenses incurred in the performance of their duties. Any vacancy

on the board must be filled in the same manner as the original appointment, but only for the unexpired term. [PL 2005, c. 12, Pt. SS, §20 (AMD).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 2005, c. 12, §SS20 (AMD).

§635. Duties

The board has the following duties. [PL 1993, c. 346, §1 (NEW).]

1. Establish policies. The board shall establish policies and practices necessary to provide ready access to shared, uniform information on criminal offenders and crime data described in section 631. [PL 1999, c. 451, §3 (AMD).]

2. Establish information standards. The board shall establish, maintain and promote minimum standards for accessing the Maine Criminal Justice Information System to ensure complete, accurate and up-to-date information is received by criminal justice agencies and authorized private users. These standards include:

- A. Completeness and accuracy of information; [PL 1993, c. 346, §1 (NEW).]
- B. Limitations on access and dissemination of information; [PL 1993, c. 346, §1 (NEW).]
- C. System audits; [PL 1993, c. 346, §1 (NEW).]
- D. System security; [PL 1993, c. 346, §1 (NEW).]
- E. Individuals' rights to the review of records; [PL 1993, c. 346, §1 (NEW).]
- F. Hardware and software requirements; [PL 1993, c. 346, §1 (NEW).]
- G. Networking and communications; and [PL 1993, c. 346, §1 (NEW).]
- H. Personnel qualifications and training. [PL 1993, c. 346, §1 (NEW).]

[PL 1993, c. 346, §1 (NEW).]

3. Recommendation of fees.

[PL 1999, c. 451, §3 (RP).]

4. Report. The board shall submit the following reports to the Legislature.

A. The board shall report to the joint standing committees of the Legislature having jurisdiction over criminal justice matters and judiciary matters no later than January 1st of each year concerning the status of the development, implementation and operation of the Maine Criminal Justice Information System. The report must contain information about the ability of the Judicial Department, the Department of Public Safety and the Department of Corrections to maintain, furnish and disseminate information described in section 631 in an automated manner. The report must also contain a project plan that delineates the date upon which each category of information described in section 631 will be available to criminal justice agencies and authorized private users in an automated fashion and, for those categories for which the information is already available in an automated fashion but for which enhancements are planned, the date upon which enhanced service will be available. [PL 1999, c. 451, §3 (NEW).]

B. The board shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 1st of each year concerning the methods devised to keep accurate, updated records of misdemeanor crimes of domestic violence to ensure enforcement of 18 United States Code, Section 922 (1996). [PL 1999, c. 451, §3 (NEW).]

[PL 1999, c. 451, §3 (AMD).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 1997, c. 194, §1 (AMD). PL 1999, c. 451, §3 (AMD).

§636. Administration

The Department of Public Safety shall provide general administrative oversight for the board's policies and responsibilities. The Department of Public Safety and other criminal justice agencies when appropriate may employ personnel necessary to carry out the purposes of the Maine Criminal Justice Information System, lease, rent or acquire adequate equipment and facilities, accept federal funds or grants that are available to carry out or implement its purpose and provide technical assistance and training to criminal justice agencies necessary to meet minimum standards for access. [PL 1999, c. 451, §4 (AMD).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW). PL 1999, c. 451, §4 (AMD).

§637. Meetings

The board may meet at such time or times as necessary to carry out its duties, but at least one time in each calendar quarter at a place and time as the board determines and at the call of the chair. The board shall elect annually a chair, vice-chair, secretary and a treasurer from among its members. [PL 1993, c. 346, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 346, §1 (NEW).

SUBCHAPTER 9-A**TRACKING DEVICE INFORMATION****§638. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2019, c. 489, §3 (NEW).]

1. Adverse result. "Adverse result" means:

A. Immediate danger of death or serious physical injury to any person; [PL 2019, c. 489, §3 (NEW).]

B. Flight from prosecution; [PL 2019, c. 489, §3 (NEW).]

C. Destruction of or tampering with evidence; [PL 2019, c. 489, §3 (NEW).]

D. Intimidation of a potential witness; [PL 2019, c. 489, §3 (NEW).]

E. Seriously jeopardizing an investigation; or [PL 2019, c. 489, §3 (NEW).]

F. Undue delay of a trial. [PL 2019, c. 489, §3 (NEW).]

[PL 2019, c. 489, §3 (NEW).]

2. Law enforcement officer. "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions or who is an adult probation supervisor.

[PL 2019, c. 489, §3 (NEW).]

3. Tracking device. "Tracking device" means an electronic or mechanical device the primary purpose of which is to track the movement of a person or object. "Tracking device" does not include devices covered in subchapters 10 and 11.

[PL 2019, c. 489, §3 (NEW).]

SECTION HISTORY

PL 2019, c. 489, §3 (NEW).

§639. Authority to install and monitor a tracking device

1. Application. This subchapter only applies to tracking devices that are placed by law enforcement officers.

[PL 2019, c. 489, §3 (NEW).]

2. Installation and monitoring. A law enforcement officer may install and monitor a tracking device only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.

[PL 2019, c. 489, §3 (NEW).]

3. Authorization of use. A court empowered to issue a search warrant or other order for the installation of a tracking device may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed within the jurisdiction of the court.

[PL 2019, c. 489, §3 (NEW).]

4. Time period. A justice, judge or justice of the peace may issue a search warrant authorizing the installation and monitoring of a tracking device pursuant to this section. The warrant must require the installation of the tracking device within 14 days of the issuance of the warrant and allow the tracking device to be monitored for a period of 30 days following installation. A justice, judge or justice of the peace may grant an extension of the monitoring period for an additional 30 days upon a finding of continuing probable cause.

[PL 2019, c. 489, §3 (NEW).]

SECTION HISTORY

PL 2019, c. 489, §3 (NEW).

§640. Notice

1. Service of notice. Unless the court determines under subsection 3 that no notice is required, within 14 calendar days after the use of the tracking device has ended, the law enforcement officer who executed the warrant shall serve a copy of the warrant on the person who was tracked or whose property was tracked. The time period provided in this subsection may be extended for good cause shown.

[PL 2019, c. 489, §3 (NEW).]

2. Means of providing notice. The notice required under subsection 1 must be made by:

A. Delivering a copy to the person who was tracked or whose property was tracked; [PL 2019, c. 489, §3 (NEW).]

B. Leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or [PL 2019, c. 489, §3 (NEW).]

C. Mailing a copy to the person's last known address. [PL 2019, c. 489, §3 (NEW).]

[PL 2019, c. 489, §3 (NEW).]

3. Notification not required. A law enforcement officer acting pursuant to section 639 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 an order waiving notification if the court determines that there is reason to believe that notification will have an adverse result.

[PL 2019, c. 489, §3 (NEW).]

SECTION HISTORY

PL 2019, c. 489, §3 (NEW).

SUBCHAPTER 10**ELECTRONIC DEVICE CONTENT INFORMATION****§641. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2013, c. 402, §1 (NEW).]

1. Adverse result. "Adverse result" means:

A. Immediate danger of death or serious physical injury to any person; [PL 2019, c. 489, §4 (AMD).]

B. Flight from prosecution; [PL 2013, c. 402, §1 (NEW).]

C. Destruction of or tampering with evidence; [PL 2013, c. 402, §1 (NEW).]

D. Intimidation of a potential witness; [PL 2013, c. 402, §1 (NEW).]

E. Seriously jeopardizing an investigation; or [PL 2019, c. 489, §4 (AMD).]

F. Undue delay of a trial. [PL 2019, c. 489, §4 (AMD).]

G. [PL 2019, c. 489, §4 (RP).]

[PL 2019, c. 489, §4 (AMD).]

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.

[PL 2013, c. 402, §1 (NEW).]

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

[PL 2013, c. 402, §1 (NEW).]

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

[PL 2023, c. 499, §2 (NEW).]

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.

[PL 2013, c. 402, §1 (NEW).]

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

[PL 2023, c. 499, §3 (AMD).]

6. Portable electronic device.

[PL 2023, c. 499, §4 (RP).]

7. Remote computing service. "Remote computing service" means:

A. The provision to the public over the Internet of on-demand computer storage; or [PL 2023, c. 499, §5 (NEW).]

B. Processing services provided by means of an electronic communication service. [PL 2023, c. 499, §5 (NEW).]

[PL 2023, c. 499, §5 (RPR).]

7-A. Serious physical injury. "Serious physical injury" means:

A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence for recovery of physical health; or [PL 2019, c. 489, §6 (NEW).]

B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303. [PL 2019, c. 489, §6 (NEW).]

[PL 2019, c. 489, §6 (NEW).]

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

[PL 2023, c. 499, §6 (AMD).]

REVISOR'S NOTE: §641. Definitions (As enacted by PL 2013, c. 409, §1 is REALLOCATED TO TITLE 16, SECTION 647)

SECTION HISTORY

RR 2013, c. 1, §28 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW). PL 2019, c. 489, §§4-6 (AMD). PL 2023, c. 499, §§2-6 (AMD).

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

1. Authority to obtain. A government entity may obtain electronic device content information directly from a provider of electronic communication service or remote computing service only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.

[PL 2023, c. 499, §7 (AMD).]

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

[PL 2023, c. 499, §7 (AMD).]

3. Exception; legally protected health care activity. Notwithstanding any provision of state law to the contrary and except as required by federal law, a justice, judge or justice of the peace may not issue a search warrant permitting a government entity to obtain electronic device content information directly from a provider of electronic communication service or remote computing service that relates to an investigation into legally protected health care activity or aiding and assisting legally protected health care activity. For purposes of this subsection, "aiding and assisting legally protected health care activity" and "legally protected health care activity" have the same meanings as in Title 14, section 9002, subsection 1 and 8, respectively.

[PL 2023, c. 648, Pt. C, §2 (NEW).]

REVISOR'S NOTE: §642. Warrant needed for acquisition of location information (As enacted by PL 2013, c. 409, §1 is REALLOCATED TO TITLE 16, SECTION 648)

SECTION HISTORY

RR 2013, c. 1, §29 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW). PL 2013, c. 519, §5 (AMD). PL 2017, c. 144, §4 (AMD). PL 2023, c. 499, §7 (AMD). PL 2023, c. 648, Pt. C, §2 (AMD).

§643. Notice

Notice must be given to the owner or user of an electronic device whose content information was obtained by a government entity. The notice requirements of this section do not apply if the government entity is unable to identify the owner or user of an electronic device. [PL 2023, c. 499, §8 (AMD).]

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 a provider of electronic communication service or remote computing service 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; [PL 2013, c. 402, §1 (NEW).]

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 [PL 2013, c. 402, §1 (NEW).]

C. The identity of the provider of electronic communication service or remote computing service from whom the information was obtained. [PL 2019, c. 489, §8 (AMD).]
[PL 2019, c. 489, §8 (AMD).]

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.

[PL 2013, c. 402, §1 (NEW).]

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 or remote computing 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.

[PL 2023, c. 499, §9 (AMD).]

REVISOR'S NOTE: §643. Notice (As enacted by PL 2013, c. 409, §1 is REALLOCATED TO TITLE 16, SECTION 649)

SECTION HISTORY

RR 2013, c. 1, §30 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW). PL 2019, c. 489, §§7, 8 (AMD). PL 2023, c. 499, §§8, 9 (AMD).

§644. Exceptions

1. Consent of owner or user. When disclosure of 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 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 authorized to possess the device by the owner or user.

[PL 2023, c. 499, §10 (AMD).]

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.

[PL 2013, c. 402, §1 (NEW).]

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 imminent danger of death or serious physical injury to any person, a government entity may obtain the content information from an electronic device without a warrant, and a provider of electronic communication service or remote computing service may disclose such information to the requesting government entity without a warrant.

[PL 2023, c. 499, §11 (AMD).]

REVISOR'S NOTE: §644. Exceptions to warrant requirement (As enacted by PL 2013, c. 409, § 1 is REALLOCATED TO TITLE 16, SECTION 650)

SECTION HISTORY

RR 2013, c. 1, §31 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW). PL 2019, c. 489, §9 (AMD). PL 2023, c. 499, §§10, 11 (AMD).

§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. [PL 2013, c. 402, §1 (NEW).]

REVISOR'S NOTE: §645. Conditions of use of location information (As enacted by PL 2013, c. 409, §1 is REALLOCATED TO TITLE 16, SECTION 650-A)

SECTION HISTORY

RR 2013, c. 1, §32 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW).

§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. [PL 2013, c. 402, §1 (NEW).]

REVISOR'S NOTE: §646. Action against a corporation (As enacted by PL 2013, c. 409, §1 is REALLOCATED TO TITLE 16, SECTION 650-B)

SECTION HISTORY

RR 2013, c. 1, §33 (RAL). PL 2013, c. 402, §1 (NEW). PL 2013, c. 409, §1 (NEW).

SUBCHAPTER 11

ELECTRONIC DEVICE LOCATION INFORMATION

§647. Definitions

(REALLOCATED FROM TITLE 16, SECTION 641)

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [RR 2013, c. 1, §28 (RAL).]

1. Adverse result. "Adverse result" means:

A. Immediate danger of death or serious physical injury to any person; [PL 2019, c. 489, §10 (AMD).]

B. Flight from prosecution; [RR 2013, c. 1, §28 (RAL).]

- C. Destruction of or tampering with evidence; [RR 2013, c. 1, §28 (RAL).]
 - D. Intimidation of a potential witness; [RR 2013, c. 1, §28 (RAL).]
 - E. Seriously jeopardizes an investigation; or [PL 2019, c. 489, §10 (AMD).]
 - F. Undue delay of a trial. [RR 2013, c. 1, §28 (RAL).]
- [PL 2019, c. 489, §10 (AMD).]

2. Electronic communication service. "Electronic communication service" means a service that provides to users the ability to send or receive wire or electronic communications.
[RR 2013, c. 1, §28 (RAL).]

3. Electronic device. "Electronic device" means a device that is electric and that enables access to, or use of, an electronic communication service, remote computing service or location information service.
[PL 2019, c. 489, §11 (AMD).]

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.
[RR 2013, c. 1, §28 (RAL).]

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.
[RR 2013, c. 1, §28 (RAL).]

6. Location information service. "Location information service" means a global positioning service or other mapping, locational or directional information service.
[RR 2013, c. 1, §28 (RAL).]

7. Owner. "Owner" means the person or entity having the legal title, claim or right to an electronic device.
[RR 2013, c. 1, §28 (RAL).]

8. Remote computing service. "Remote computing service" means computer storage or processing services provided by means of an electronic communication service.
[RR 2013, c. 1, §28 (RAL).]

8-A. Serious physical injury. "Serious physical injury" means:

A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence necessary for recovery of physical health; or [PL 2019, c. 489, §12 (NEW).]

B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303. [PL 2019, c. 489, §12 (NEW).]
[PL 2019, c. 489, §12 (NEW).]

9. User. "User" means a person or entity that uses an electronic device.
[RR 2013, c. 1, §28 (RAL).]

SECTION HISTORY

RR 2013, c. 1, §28 (RAL). PL 2019, c. 489, §§10-12 (AMD).

§648. Search 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 justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56. [PL 2017, c. 144, §5 (AMD).]

A justice, judge or justice of the peace may issue a search 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 14 days after the issuance. A justice, judge or justice of the peace 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. [PL 2017, c. 144, §5 (AMD).]

This subchapter does not apply to tracking devices, as defined in section 638, placed by law enforcement officers. [PL 2019, c. 489, §13 (NEW).]

SECTION HISTORY

RR 2013, c. 1, §29 (RAL). PL 2013, c. 519, §6 (AMD). PL 2017, c. 144, §5 (AMD). PL 2019, c. 489, §13 (AMD).

§649. Notice

(REALLOCATED FROM TITLE 16, SECTION 643)

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. [RR 2013, c. 1, §30 (RAL).]

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; [RR 2013, c. 1, §30 (RAL).]

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 [RR 2013, c. 1, §30 (RAL).]

C. If location information was obtained from a provider of electronic communication service, location information service or remote computing service or other 3rd party, the identity of the provider of electronic communication service, location information service or remote computing service or the 3rd party from whom the information was obtained. [PL 2019, c. 489, §14 (AMD).]
[PL 2019, c. 489, §14 (AMD).]

2. Notification not required. A government entity acting under section 648 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.

[PL 2013, c. 588, Pt. A, §21 (AMD).]

3. Preclusion of notice to owner or user subject to warrant for location information. A government entity acting under section 648 may include in its application for a warrant a request for an order directing a provider of electronic communication service, remote computing 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.

[PL 2019, c. 489, §15 (AMD).]

SECTION HISTORY

RR 2013, c. 1, §30 (RAL). PL 2013, c. 588, Pt. A, §21 (AMD). PL 2019, c. 489, §§14, 15 (AMD).

§650. Exceptions to warrant requirement

(REALLOCATED FROM TITLE 16, SECTION 644)

When disclosure of location information is not prohibited by federal law, a government entity may obtain the location information without a warrant: [RR 2013, c. 1, §31 (RAL).]

1. Emergency services. To respond to the user's call for emergency services; [RR 2013, c. 1, §31 (RAL).]

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 authorized to possess the device by the owner or user; [PL 2019, c. 489, §16 (AMD).]

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 [RR 2013, c. 1, §31 (RAL).]

4. Danger of death or serious injury. If the government entity reasonably believes that an emergency involving imminent 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. [PL 2019, c. 489, §16 (AMD).]

SECTION HISTORY

RR 2013, c. 1, §31 (RAL). PL 2019, c. 489, §16 (AMD).

§650-A. Conditions of use of location information

(REALLOCATED FROM TITLE 16, SECTION 645)

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 statement of emergency filed under section 650, subsection 4 or the warrant and accompanying application under which the information was obtained. [PL 2019, c. 489, §17 (AMD).]

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.

[RR 2013, c. 1, §32 (RAL).]

SECTION HISTORY

RR 2013, c. 1, §32 (RAL). PL 2019, c. 489, §17 (AMD).

§650-B. Action against a corporation

(REALLOCATED FROM TITLE 16, SECTION 646)

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. [RR 2013, c. 1, §33 (RAL).]

SECTION HISTORY

RR 2013, c. 1, §33 (RAL).

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