

Testimony of
Deputy Attorney General William R. Stokes

In opposition to:

**LD 415-AN ACT TO REQUIRE A WARRANT TO
OBTAIN THE LOCATION INFORMATION OF A
CELL PHONE OR OTHER ELECTRONIC DEVICE**

Senator Valentino, Representative Priest, and
Honorable members of the Joint Standing Committee on
Judiciary.

My name is William R. Stokes and I am a Deputy
Attorney General for the State of Maine and I serve as
Chief of the Attorney General's Criminal Division. I am
here testifying in opposition to LD 415, An Act to
Require a Warrant to Obtain the Location Information of
a Cell Phone or Other Electronic Device. My Office has
serious concerns that this proposed legislation could
significantly impede our ability to conduct investigations
of major crimes including murder, drug conspiracy and
child pornography.

In order to place our concerns in perspective, it may
be helpful to understand how law enforcement obtains
location information of a cell phone or other electronic

device at the present time. We are governed by the provisions of the Fourth Amendment of the United States Constitution and the comparable provision of the Maine Constitution. With respect to obtaining cell phone information and location information from an electronic device, we follow the provisions of federal law, specifically, Title 18 of the United States Code, Section 2703, The Electronic Communications Privacy Act. For subscriber information, this means a Grand Jury Subpoena; for customer communications (for example text messaging and content) we must obtain a search warrant; and for other types of information, including historic cell tower data (not real time or live time data) we obtain a court order that must be based upon specific and articulable facts that show reasonable grounds to believe that the information is relevant and material in an ongoing criminal investigation. To obtain real time or live cell tower location information, we obtain a search warrant.

It is also important to point out that, although there are other penalties for violating this law, Title 18 U.S. C. Section 2703 does not include an exclusionary rule for a violation of the statute. This is so because the information requested is being sought from the cell phone or internet provider company, not from an individual's

location information that has been critical in either solving a murder or in providing an alibi to an innocent person.

Section 643 of the Bill provides that we must provide notice to the owner or user of an electronic device when we are obtaining location information. In addition, the notice must include the nature of the law enforcement inquiry and the nature of the information that was obtained, as well as any reasons for delaying notification of such. It is virtually unprecedented in law enforcement that a law enforcement agency must give notice of an ongoing criminal investigation as well as the nature of the law enforcement inquiry. This notice requirement has the potential of essentially thwarting criminal investigations of murders and other serious crimes.

While the Bill provides that notification may be delayed for periods of time not to exceed 90 days, in some of our cases, particularly unsolved homicides, the investigation can last months if not years. Thus, an extension of the notification delay will have to be filed every 90 days. What happens if law enforcement forgets to file an extension of the 90-day period? Does that mean that the evidence is suppressed?

Section 645 of the Bill provides that on a case-by-case basis the Attorney General may designate an investigative or law enforcement officer who may acquire location information before obtaining a warrant. This could be a substantial burden on the Attorney General's Office.

Section 646 imposes reporting requirements on Judges and Justices who issue warrants for location information. There is no requirement for such reporting for any other type of information. Presumably, these reports would be public documents the release of which could potentially compromise on-going investigations.

Finally, Section 647 of the Bill provides that evidence obtained in violation of the Bill is not admissible in any criminal, civil, administrative or any other proceeding. This statutory exclusionary rule is not required by the Fourth Amendment or federal law. We have serious concerns that reliable and relevant evidence that has been properly obtained in accordance with the constitution and federal law would be excluded by virtue of a state statute that is trying to deal with a problem that does not seem to exist.

LD 415 appears to be the classic case of a solution in search of a problem. Maine law enforcement and

prosecutors are complying with the Federal Constitution, the State Constitution and federal law with respect to location information and there would appear to be no need for LD 415 to deal with any abuses. Moreover, LD 415 has the potential to do real and substantial harm by jeopardizing the investigation of major criminal offenses including murders, drug conspiracy, child pornography and other offenses.

On behalf of the Attorney General, I would request that the committee vote ought not to pass on LD 415.

Thank you for your attention and I would be happy to answer any questions for you at this time.