

## §95-A. Protection and recovery of public records

**1. Ownership and possession; notice and demand of return.** A record created by or belonging to the State, to a local or county government in the State or to any agency of the State remains the property of the State until ownership and possession are formally relinquished in accordance with statute and rules. Whenever the State Archivist has reasonable grounds to believe that records belonging to the State or to a local government or any agency of the State or to which the State or its agencies have a lawful right of possession are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the records. The notice and demand must be sent by certified or registered mail, return receipt requested. The notice and demand must identify the records claimed to belong to the State or local government with reasonable specificity. Upon receipt of the notice and demand, the person or entity in the possession of records claimed to belong to the State or local government may not destroy, alter, transfer, convey or otherwise alienate those records unless authorized in writing by the State Archivist or by an order issued by a court of competent jurisdiction. The notice and demand must specifically state that any transfer, conveyance or other alienation of the records after receipt of the notice and demand constitutes a Class E crime in violation of section 97.

[PL 2009, c. 509, §5 (AMD).]

**2. Petition; hearing.** Following the issuance of a notice and demand in accordance with subsection 1, the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which records are located for the return of state records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records. After hearing, the court shall order the records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are records and that the records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the records. The court may issue all orders necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials and may also order the person or entity in possession of the materials to surrender the records into the custody of the State Archivist pending the court's decision on the petition.

[PL 1997, c. 636, §7 (AMD).]

**3. Presumption.** In any proceeding pursuant to subsection 2, there is a rebuttable presumption that records that were once in the custody of the State or a local government were not lawfully alienated from that custody.

[PL 1997, c. 636, §7 (AMD).]

### 4. Definition.

[PL 1997, c. 636, §7 (RP).]

**5. Sale or transfer of record prohibited.** A person may not sell or transfer a record unless specifically authorized by law. A person who violates this subsection commits a Class D crime.

[PL 2003, c. 365, §1 (NEW).]

## SECTION HISTORY

PL 1989, c. 283 (NEW). PL 1995, c. 148, §9 (AMD). PL 1997, c. 636, §7 (AMD). PL 2003, c. 365, §1 (AMD). PL 2009, c. 509, §5 (AMD).

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