

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

FILED SENATE
Mar 28, 2013
S.B. 529
PRINCIPAL CLERK

S

D

SENATE DRS95036-LH-151A (03/14)

Short Title: Search Warrant/Cell Phone Location Info. (Public)

Sponsors: Senators Goolsby and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A SEARCH WARRANT TO OBTAIN THE LOCATION
3 INFORMATION OF A CELL PHONE OR OTHER ELECTRONIC DEVICE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 15A-260 reads as rewritten:

6 "§ 15A-260. Definitions.

7 As used in this Article:

- 8 (1) "Electronic communication," "electronic communication service," and "wire
9 communication" shall have the meaning as set forth in Section 2510 of Title
10 18 of the United States Code; Code.
- 11 (1a) "Electronic device" means any device that enables access to or use of an
12 electronic communication service as defined in 18 U.S.C. § 2510(15),
13 remote computing service as defined in 18 U.S.C. § 2711(2), or location
14 information service.
- 15 (1b) "Investigative or law enforcement officer" means any officer of the State of
16 North Carolina or any political subdivision thereof who is empowered by the
17 laws of this State to conduct investigations or to make arrests for offenses
18 enumerated in G.S. 15A-290 and any attorney authorized by the laws of this
19 State to prosecute or participate in the prosecution of those offenses,
20 including the Attorney General of North Carolina.
- 21 (1c) "Location information" means any information concerning the location of an
22 electronic device that, in whole or in part, is generated by or derived from
23 the operation of that device.
- 24 (2) "Pen register" means a device which records or decodes electronic or other
25 impulses which identify numbers dialed or otherwise transmitted on the
26 telephone line to which such device is attached, but the term does not
27 include any device used by a provider or customer of a wire or electronic
28 service for billing, or recording as an incident to billing, for communication
29 services provided by the provider or any device used by a provider or
30 customer of a wire communication service for cost accounting or other like
31 purposes in the ordinary course of its business, nor shall the term include any
32 device which allows the listening or recording of communications
33 transmitted on the telephone line to which the device is attached.
- 34 (3) "Trap and trace device" means a device which captures the incoming
35 electronic or other impulses which identify the originating number of an



* D R S 9 5 0 3 6 - L H - 1 5 1 A *

1 instrument or device from which a wire or electronic communication was
2 transmitted."

3 **SECTION 2.** Article 12 of Chapter 15A of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 15A-265. Location information; warrant requirement; exceptions.**

6 (a) In General. – Except as provided in subsection (b) of this section, no person or
7 investigative or law enforcement officer may obtain location information without first
8 obtaining a search warrant as provided for in Article 11 of Chapter 15A of the General Statutes.

9 (b) Exception. – The prohibition of subsection (a) of this section does not apply to
10 obtaining location information when:

11 (1) Responding to the user's call for emergency services, or

12 (2) With the consent of the user of that service, or

13 (3) In response to the user's call for emergency services if an investigative or
14 law enforcement officer believes that an emergency involving danger of
15 death or serious physical injury to any person requires obtaining without
16 delay the location information relating to the emergency, and the request for
17 the location information is narrowly tailored to address the emergency,
18 subject to the following limitations:

19 a. The request shall document the factual basis for believing that an
20 emergency involving immediate danger of death or physical injury to
21 a person requires obtaining without delay the location information
22 relating to the emergency; and

23 b. Not later than 48 hours after the date on which an investigative or
24 law enforcement officer obtains access to the records under this
25 section, a government entity shall file with the appropriate court a
26 signed, sworn statement of a supervising officer or a rank designated
27 by the head of the government entity setting forth the grounds for the
28 emergency access.

29 (c) Penalty. – A person who willfully and knowingly violates subsection (a) of this
30 section is guilty of a Class 1 misdemeanor. Except as proof of a violation of this section, no
31 evidence obtained in violation of this section shall be admissible in any criminal, civil,
32 administrative, or other proceeding.

33 (d) Location Information. – Any location information obtained pursuant to this section
34 or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any
35 trial, hearing, or other proceeding in a federal or State court unless each party, not less than 10
36 days before the trial, hearing, or proceeding, has been furnished with a copy of the order and
37 accompanying application under which the information was obtained. This 10-day period may
38 be waived by the judge if the judge finds that it was not possible to furnish the party with the
39 above information 10 days before the trial, hearing, or proceeding and that the party will not be
40 prejudiced by the delay in receiving such information.

41 (e) Judicial Reporting Requirements. – By January 31 of each calendar year, any judge
42 issuing or denying any application for a search warrant for location information under this
43 section and during the preceding year shall report on each such warrant to the Administrative
44 Office of the Courts. The report shall include the following information:

45 (1) The fact that the order was applied for.

46 (2) The identity of the agency making the application.

47 (3) The offense specified in the order or application therefore.

48 (4) The nature of the facilities from which or the place where the location
49 information was obtained.

50 (5) The fact that the order was granted as applied for, was modified, or was
51 denied.

1 (6) The period of disclosures authorized by the order and the number and
2 duration of any extensions of the order.

3 (f) Annual Report to the General Assembly. – By April 1 of each year, beginning in
4 2014, the Administrative Office of the Courts shall transmit to the General Assembly a full and
5 complete report concerning the number of applications for orders authorizing or requiring the
6 disclosure of location information pursuant to this section, the number of times access to the
7 location information was obtained, and the number of orders granted or denied during the
8 preceding calendar year. The report shall include a summary and analysis of the data required
9 to be filed with the Administrative Office of the Courts by subsection (e) of this section. The
10 Administrative Office of the Courts may issue binding regulations dealing with the content and
11 form of the report required to be filed by subsection (e) of this section. In April of each year,
12 beginning in 2014, a nonclassified summary of the report shall be made publicly available on
13 the Web site for the North Carolina General Assembly and the Administrative Office of the
14 Courts."

15 **SECTION 2.** This act becomes effective December 1, 2013, and applies to
16 offenses occurring on or after that date, and the requirements of this act apply to persons
17 seeking location information on or after that date. Prosecutions for offenses committed before
18 the effective date of this act are not abated or affected by this act, and the statutes that would be
19 applicable but for this act remain applicable to those prosecutions.