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HOUSE BILL DRH40096-ND-68

Short Title: SBI Emergency Pen Register/Trap and Trace. (Public)

Sponsors: Representatives McNeill, Hurley, C. Smith, and Greene (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE SBI TO USE A PEN REGISTER OR TRAP AND TRACE DEVICE
3 IN EMERGENCY SITUATIONS.

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;~~

11 (2) ~~"Pen register" means a device which records or decodes electronic or other~~
12 ~~impulses which identify numbers dialed or otherwise transmitted on the~~
13 ~~telephone line to which such device is attached, but the term does not include~~
14 ~~any device used by a provider or customer of a wire or electronic service for~~
15 ~~billing, or recording as an incident to billing, for communication services~~
16 ~~provided by the provider or any device used by a provider or customer of a~~
17 ~~wire communication service for cost accounting or other like purposes in the~~
18 ~~ordinary course of its business, nor shall the term include any device which~~
19 ~~allows the listening or recording of communications transmitted on the~~
20 ~~telephone line to which the device is attached.~~

21 (3) ~~"Trap and trace device" means a device which captures the incoming~~
22 ~~electronic or other impulses which identify the originating number of an~~
23 ~~instrument or device from which a wire or electronic communication was~~
24 ~~transmitted.~~

25 The following definitions apply in this Article:

26 (1) Electronic communication. – As defined in Section 2510 of Title 18 of the
27 United States Code.

28 (2) Electronic communication service. – As defined in Section 2510 of Title 18
29 of the United States Code.

30 (3) Law enforcement officer. – A sheriff, deputy sheriff, police officer, State
31 Highway Patrol trooper, or State Bureau of Investigation agent.

32 (4) Location data. – Global positioning system (GPS) coordinates, triangulation
33 and timing advance data, distance to tower measurements, location-based
34 services (LBS) information, and per-call measurement data collected or
35 retained by a telecommunications provider which can be used to locate a
36 telecommunications device either historically or prospectively. Location data



1 does not include the contents of any communication made using a
 2 telecommunications device.

3 (5) Pen register. – A device which records or decodes electronic or other impulses
 4 which identify numbers dialed or otherwise transmitted on a
 5 telecommunications device and location data of a telecommunications device.
 6 The term does not include any device used by a provider or customer of a wire
 7 or electronic service for billing, or recording as an incident for billing, for
 8 communication services provided by the provider or any device used by a
 9 provider or customer of a wire communication service for cost accounting or
 10 other like purposes in the ordinary course of its business, nor shall the term
 11 include any device which allows the listening or recording of communications
 12 transmitted on the telephone line to which the device is attached.

13 (6) Trap and trace device. – A device which captures the incoming electronic or
 14 other impulses which identify the originating number of an instrument or
 15 device from which a wire or electronic communication was transmitted.

16 (7) Wire communication. – As defined in Section 2510 of Title 18 of the United
 17 States Code."

18 **SECTION 2.** G.S. 15A-261 reads as rewritten:

19 **"§ 15A-261. Prohibition and exceptions.**

20 (a) In General. – Except as provided in subsection (b) of this section, no person may
 21 install or use a pen register or a trap and trace device without first obtaining a court order as
 22 provided in this Article.

23 (b) Exception. – The prohibition of subsection (a) of this section does not apply to the
 24 use of a pen register or a trap and trace device by a provider of wire or electronic communication
 25 ~~service;~~service in any of the following circumstances:

26 (1) Relating to the operation, maintenance, or testing of a wire or electronic
 27 communication service or to the protection of the rights or property of the
 28 provider, or to the protection of users of that service from abuse of service or
 29 unlawful use of ~~service;~~ ~~or~~service.

30 (2) To record the fact that a wire or electronic communication was initiated or
 31 completed in order to protect the provider, another provider furnishing service
 32 toward the completion of the wire communication, or a user of that service,
 33 from fraudulent, unlawful or abusive use of ~~service;~~ ~~or~~service.

34 (3) With the consent of the user of that service.

35 (4) Under emergency circumstances, as provided in G.S. 15A-265.

36 (c) Penalty. – A person who willfully and knowingly violates subsection (a) of this
 37 section is guilty of a Class 1 misdemeanor."

38 **SECTION 3.** G.S. 15A-263 reads as rewritten:

39 **"§ 15A-263. Issuance of order for pen register or trap and trace device.**

40 (a) In General. – Following application made under G.S. 15A-262, a superior court judge
 41 may enter an ex parte order authorizing the installation and use of a pen register or a trap and
 42 trace device within the State if the judge ~~finds;~~finds that either of the following requirements has
 43 been met:

44 (1) The judge finds all of the following:

45 a. That there is ~~reasonable suspicion~~ ~~probable cause~~ to believe that a
 46 felony offense, or a Class A1 or Class 1 misdemeanor offense has been
 47 ~~committed;~~ ~~committed.~~

48 (2)b. That there ~~are reasonable grounds~~ ~~is~~ probable cause to suspect that the
 49 person named or described in the affidavit committed the offense, if
 50 that person is known and can be named or ~~described;~~ ~~and~~ described.

- 1 ~~(3)~~c. That the results of procedures involving pen registers or trap and trace
2 devices will be of material aid in determining whether the person
3 named in the affidavit committed the offense.
- 4 (2) The judge finds all of the following:
- 5 a. That there exists an emergency situation which involves the
6 disappearance of an individual, a runaway child, or a missing person
7 for which no criminal charge provided in G.S. 15A-263(a)(1)a. may
8 be readily apparent, that involves an imminent risk of death or serious
9 physical harm.
- 10 b. That the information gained from the use of pen registers or trap and
11 trace devices will be of material aid in locating an individual described
12 in sub-subdivision a. of this subdivision who is at risk of death or
13 serious physical harm.
- 14 (b) Contents of Order. – An order issued under this section:
- 15 (1) Shall specify:
- 16 a. The identity, if known, of the person to whom is leased or in whose
17 name is listed the telephone line to which the pen register or trap and
18 trace device is to be attached;
- 19 b. The identity, if known, of ~~the~~ any person who is the subject of the
20 criminal investigation;
- 21 c. The number and, if known, physical location of the telephone line to
22 which the pen register or trap and trace device is to be attached and, in
23 the case of a trap and trace device, the geographic limits of the trap
24 and trace order; and
- 25 d. The criminal offense or emergency situation to which the information
26 likely to be obtained by the pen register or trap and trace device relates;
27 and
- 28 (2) Shall direct, upon request of the applicant, the furnishing of information,
29 facilities, or technical assistance necessary to accomplish the installation of
30 the pen register or trap and trace device under G.S. 15A-264.
- 31 (c) Time Period and Extension.
- 32 (1) An order issued under this section shall authorize the installation and use of a
33 pen register or a trap and trace device for a period not to exceed 60 days.
- 34 (2) An extension of an order issued under this section may be granted, but only
35 upon an application for an order under G.S. 15A-262 and upon the judicial
36 finding required by subsection (a) of this section. The period of extension shall
37 not exceed 60 days.
- 38 (d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. – An order
39 authorizing or approving the installation and use of a pen register or a trap and trace device shall
40 direct that:
- 41 (1) The order be sealed until otherwise ordered by the judge; and
- 42 (2) The person owning or leasing the line to which the pen register or a trap and
43 trace device is attached, or who has been ordered by the judge to provide
44 assistance to the applicant, not disclose the existence of the pen register or trap
45 and trace device or the existence of the investigation to the listed subscriber,
46 or to any person, unless otherwise ordered by the judge.
- 47 The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article."
- 48 **SECTION 4.** Article 12 of Chapter 15A of the General Statutes is amended by
49 adding a new section to read:
- 50 "§ 15A-265. Emergency warrantless use of pen register or trap and trace device.

1 (a) Notwithstanding any other provision of this Article, an agent of the State Bureau of
2 Investigation, with the permission of the agent's supervisor, may have installed and use a pen
3 register or trap and trace device if the agent makes either of the following determinations:

4 (1) An emergency situation exists that involves immediate danger of death or
5 serious bodily injury to any person that requires the installation and use of a
6 pen register or a trap and trace device before an order authorizing the
7 installation and use can, with due diligence, be obtained, and there are grounds
8 upon which an order could be entered pursuant to G.S. 15A-263(a)(1) to
9 authorize the installation and use.

10 (2) An emergency situation exists that involves the disappearance of an
11 individual, a runaway child, or a missing person for which no criminal charge
12 provided in G.S. 15A-263(a)(1)a. may be readily apparent, but where the
13 individual may be in immediate danger of death or serious bodily injury based
14 on, but not limited to, the age, physical condition, or circumstances
15 surrounding the disappearance of the individual.

16 (b) When an agent installs a pen register or trap and trace device pursuant to subsection
17 (a) of this section, the agent must seek an order approving the installation or use in accordance
18 with G.S. 15A-263 within 48 hours after the installation begins.

19 (c) In the absence of an authorizing order pursuant to G.S. 15A-263, the use of a pen
20 register or trap and trace device shall immediately terminate when the information sought is
21 obtained, when the application for the order is denied, or when 48 hours have lapsed since the
22 installation of the pen register or trap and trace device, whichever first occurs.

23 (d) Any agent who knowingly violates subsection (b) or (c) of this section is guilty of a
24 Class 1 misdemeanor.

25 (e) A provider of a wire or electronic service, landlord, custodian, or other person who
26 furnishes facilities or technical assistance pursuant to this section shall be reasonably
27 compensated for reasonable expenses incurred in providing facilities and assistance.

28 (f) Notwithstanding G.S. 121-5, any information gained from the use of pen registers or
29 trap and trace devices pursuant to this section that is not required to be retained for discovery
30 purposes in a criminal prosecution shall be destroyed as soon as practicable upon the resolution
31 of the emergency situation."

32 **SECTION 5.** This act becomes effective December 1, 2021, and applies to
33 installations occurring on or after that date, and any criminal penalties created by this act apply
34 to offenses committed on or after that date.