

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 876

Short Title: Cell Phone Location Tracking. (Public)

Sponsors: Representatives Jordan, Glazier, Jeter, and Brockman (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A SEARCH WARRANT TO OBTAIN THE LOCATION
INFORMATION OF A CELL PHONE OR OTHER ELECTRONIC DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Subdivisions (2) and (3) of G.S. 15A-260 are recodified as
subdivisions (5) and (6) of that section.

SECTION 1.(b) G.S. 15A-260, as amended by subsection (a) of this section, reads
as rewritten:

"§ 15A-260. Definitions.

As used in this Article:

- (1) "Electronic communication," "electronic communication service," and "wire communication" shall have the meaning as set forth in Section 2510 of Title 18 of the United States ~~Code~~; Code.
- (2) "Electronic device" means any device that enables access to or use of an electronic communication service as defined in 18 U.S.C. § 2510(15), remote computing service as defined in 18 U.S.C. § 2711(2), or location information service.
- (3) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof who is empowered by the laws of this State to conduct investigations or to make arrests for offenses enumerated in G.S. 15A-290 and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.
- (4) "Location information" means any information concerning the location of an electronic device that, in whole or in part, is generated by or derived from the operation of that device.
- (5) "Pen register" means a device which records or decodes electronic or other impulses which identify numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but the term does not include any device used by a provider or customer of a wire or electronic service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business, nor shall the term include any



1 device which allows the listening or recording of communications
2 transmitted on the telephone line to which the device is attached.

- 3 (6) "Trap and trace device" means a device which captures the incoming
4 electronic or other impulses which identify the originating number of an
5 instrument or device from which a wire or electronic communication was
6 transmitted."

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

9 **"§ 15A-265. Location information; warrant requirement; exceptions.**

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

13 (b) Exception. – The prohibition of subsection (a) of this section does not apply to an
14 investigative or law enforcement officer obtaining location information under any of the
15 following circumstances:

16 (1) The user of the service has consented.

17 (2) In response to a missing persons report.

18 (3) In response to a report by the parent or legal guardian of a minor that the
19 minor is missing, regardless of whether an official missing persons report
20 has been filed or what amount of time has elapsed.

21 (4) The active pursuit of a fleeing fugitive.

22 (5) In response to (i) the user's call for emergency services or (ii) a notification
23 that a user may be at risk for suicide from a third party, if an investigative or
24 law enforcement officer believes that an emergency involving danger of
25 death or serious physical injury to any person requires obtaining without
26 delay the location information relating to the emergency, and the request for
27 the location information is narrowly tailored to address the emergency,
28 subject to both of the following limitations:

29 a. The request shall document the factual basis for believing that an
30 emergency involving immediate danger of death or physical injury to
31 a person requires obtaining without delay the location information
32 relating to the emergency.

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

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

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

1 (e) Prohibition on Disclosure of Incidentally Collected Data. – Except as provided in
2 subsections (a) and (b) of this section, a government entity may not use, copy, or disclose, for
3 any purpose, the location information, stored data, or transmitted data of an electronic device
4 that is not the subject of the warrant that is collected as part of an effort to obtain the location
5 information, stored data, or transmitted data of the electronic device that is the subject of the
6 warrant or search pursuant to subsections (a) and (b).

7 (f) Exception. – An investigative or law enforcement agency may use, copy, or disclose
8 the transmitted data of an electronic device used to communicate with the electronic device that
9 is the subject of the warrant if the investigative or law enforcement agency believes that the
10 transmitted data is necessary to achieve the objective of the warrant.

11 (g) Destruction of Collected Data. – The data described in subsection (e) of this section
12 shall be destroyed in an unrecoverable manner by the person, investigative agency, or law
13 enforcement agency no later than 24 hours after the data is collected.

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

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

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

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

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

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

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

27 (i) Annual Report to the General Assembly. – By April 1 of each year, beginning in
28 2016, the Administrative Office of the Courts shall transmit to the General Assembly a full and
29 complete report concerning the number of applications for orders authorizing or requiring the
30 disclosure of location information pursuant to this section, the number of times access to the
31 location information was obtained, and the number of orders granted or denied during the
32 preceding calendar year. The report shall include a summary and analysis of the data required
33 to be filed with the Administrative Office of the Courts by subsection (e) of this section. The
34 Administrative Office of the Courts may issue binding regulations dealing with the content and
35 form of the report required to be filed by subsection (e) of this section. In April of each year,
36 beginning in 2016, a nonclassified summary of the report shall be made publicly available on
37 the Web site for the North Carolina General Assembly and the Administrative Office of the
38 Courts."

39 **SECTION 3.** This act becomes effective December 1, 2015, and applies to
40 offenses occurring on or after that date, and the requirements of this act apply to persons
41 seeking location information on or after that date. Prosecutions for offenses committed before
42 the effective date of this act are not abated or affected by this act, and the statutes that would be
43 applicable but for this act remain applicable to those prosecutions.