



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2013 Wisconsin Act 375**  
[2013 Assembly Bill 536]

**Tracking the Location of a  
Cellular Telephone**

2013 Wisconsin Act 375 requires an investigative or law enforcement officer to obtain a warrant before identifying or tracking the location of a communications device, which includes any wireless or mobile device that transmits wire or electronic communications. An officer is prohibited from identifying or tracking the location of such a device without a warrant, except if any of the following applies: (1) the customer or subscriber provides consent for the action; or (2) an emergency involving danger of death or serious physical injury to any person exists and identifying or tracking the location of the communications device is relevant to preventing the death or injury or to mitigating the injury.

The Act outlines the process by which an officer may obtain a warrant to identify or track the location of a communications device.

### **Application for Warrant**

The Act provides that an investigative or law enforcement officer may, upon the request of a district attorney or the attorney general, apply to a judge for a warrant to authorize a person to identify or track the location of a communications device. The application must be under oath or affirmation, may be in writing or oral, and may be based upon personal knowledge or information and belief. In the application, the officer must do all of the following:

- Identify the communications device.
- Identify, if known, the owners or possessors of the communications device.
- Identify, if known, the person who is the subject of the investigation.
- Provide a statement of the criminal offense to which the information likely to be obtained relates.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

- Provide a statement that sets forth facts and circumstances that provide probable cause to believe the criminal activity has been, is, or will be in progress and that identifying and tracking the communications device will yield information relevant to an ongoing criminal investigation.

### **Issuance of Warrant**

Under the Act, a judge must issue a warrant authorizing a person to identify or track the location of a communications device if the judge finds that the application satisfies the requirements of the warrant application, described above.

A warrant issued under the Act may not authorize the action for a period that exceeds 60 days. A judge may extend the authorized period upon the request of the attorney general or a district attorney if the request satisfies the requirements of the warrant application. Each extension may not exceed 60 days but there is no limit on the number of extensions a judge may grant.

### **Secrecy**

Under the Act, a warrant must be issued with all practicable secrecy and the request, application, or other information upon which the warrant is based may not be filed with the clerk or made public until the warrant has been executed and returned to the court.

The judge may issue an order sealing the application, request, or other information upon which the warrant is based or an order prohibiting any person who has been ordered by the judge to provide assistance to the applicant from disclosing the existence of the warrant or of the investigation to any other person unless ordered by a judge.

### **Assistance**

The Act provides that, upon the request of the attorney general, a district attorney, or a law enforcement agency authorized by a warrant to track or identify the location of a communications device, the court must order a provider of electronic communication service or other person to provide information, facilities, and technical assistance to identify or track the location of the communications device. A person who is ordered to provide assistance must be compensated for the reasonable expenses incurred.

### **Confidentiality of Information**

Under the Act, information obtained regarding the location of a communications device is not subject to the right of inspection and copying under the state open records law. However, information regarding the location of a communications device may be disclosed to other investigative or law enforcement officers.

The attorney general, a district attorney, or a law enforcement agency that obtains information regarding the location of a communications device, or evidence derived from that information, must destroy any information or evidence derived from it if the trial court reaches final disposition for all charges in connection with the investigation that was the

subject of the warrant and no person was adjudged guilty of a crime in connection with the investigation.

### **Return of Warrant**

Under the Act, a warrant must be returned, including in the form of a summary description of the information received, to the court not later than five days after the records or information described in the warrant are received by the attorney general, district attorney, or law enforcement agency, whichever is designated in the warrant.

### **Defense and Immunity**

Under the Act, a person on whom a warrant is served is immune from civil liability for acts or omissions in providing records or information, facilities, or assistance in accordance with the terms of the warrant.

No cause of action may arise against any provider of electronic communication service, or its officers, employees, or agents or other persons specified in the court order, for providing information, facilities, or assistance in accordance with the terms of the court order.

The Act provides that a provider of electronic communication service may disclose the location of a communications device without a warrant if any of the following applies: (1) the customer or subscriber provides consent for the particular disclosure; or (2) the provider of electronic communication service believes in good faith that an emergency involving danger of death or serious physical injury to any person exists and that disclosure of the location is relevant to preventing the death or injury or to mitigating the injury. A person who discloses the location of a communications device under this provision is immune from civil liability for acts or omissions in making such disclosure.

### **Technical Irregularities**

Under the Act, evidence disclosed under a warrant may not be suppressed because of technical irregularities or errors not affecting the substantial rights of the defendant.

### **Jurisdiction**

The Act provides that, for purposes of the Act, a person is considered to be doing business in this state and is subject to service and execution of process from this state, if the person makes a contract with or engages in a terms of service agreement with any other person, whether or not the other person is a resident of this state, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

### **Seizure**

Under the Act, any device used in violation of the Act's prohibition against identifying or tracking the location of a communications device without a warrant may be seized as contraband by any law enforcement officer and forfeited to the state.

*Effective date:* April 25, 2014. The Act first applied to information regarding the location of a communications device obtained on April 25, 2014.

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