



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-5289/2  
EAW:cdc

## 2019 SENATE BILL 740

January 29, 2020 - Introduced by Senator JACQUE, cosponsored by Representatives JAMES, LOUDENBECK, OLDENBURG, TITTL and TUSLER. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1     **AN ACT** *to amend* 968.27 (13), 968.27 (15), 968.35 (1), 968.36 (2) (a), 968.36 (2)  
2           (c), 968.36 (5) (b) and 968.37 (2); and *to create* 968.36 (6) of the statutes;  
3     **relating to:** pen registers and trap and trace devices.

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### *Analysis by the Legislative Reference Bureau*

This bill expands the definition of “pen register” and “trap and trace device.” Under current law, a “pen register” is defined as a device that records or decodes electronic or other impulses that identify the numbers dialed or transmitted on a telephone line. Current law defines a “trap and trace device” as a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. Current law provides that the attorney general or a district attorney may apply for a court order to install a pen register or a trap and trace device for the purpose of furthering a criminal investigation.

This bill expands the definition of “pen register” to include a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted on a telephone line or by an instrument or facility from which a wire or electronic communication is transmitted. This bill expands the definition of “trap and trace device” to include a device or process that identifies the originating number or other dialing, routing, addressing, and signaling information of an instrument or facility from which a wire or electronic communication was transmitted.

The bill also allows the attorney general or a district attorney to apply for an order for a pen register or trap and trace device in the circuit court of any county.

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Under current law, an application for a pen register or trap and trace device must be filed in the circuit court in the county where the device is to be located.

Under the bill, a person is considered to be doing business in this state, for the purposes of a pen register or trap and trace device order, if the person contracts with or engages in a terms of service agreement with any other person for the use of a line, instrument, or facility, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 968.27 (13) of the statutes is amended to read:

2           968.27 (13) “Pen register” means a device or process that records or decodes  
3           ~~electronic or other impulses that identify the numbers dialed or otherwise dialing,~~  
4           routing, addressing, or signaling information transmitted on the telephone line to  
5           ~~which the device is attached~~ or by an instrument or facility from which a wire or  
6           electronic communication is transmitted. “Pen register” does not include any device  
7           or process used by a provider or customer of a wire or electronic communication  
8           service for billing, or recording as an incident to billing, for communications services  
9           provided by the provider or any device or process used by a provider or customer of  
10          a wire communication service for cost accounting or other like purposes in the  
11          ordinary course of its business.

12          **SECTION 2.** 968.27 (15) of the statutes is amended to read:

13          968.27 (15) “Trap and trace device” means a device or process that captures the  
14          incoming electronic or other impulses that identify the originating number or other  
15          dialing, routing, addressing, and signaling information of an instrument or device  
16          from which a wire or electronic communication was transmitted.

17          **SECTION 3.** 968.35 (1) of the statutes is amended to read:

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1           968.35 (1) The attorney general or a district attorney may make application for  
2           an order or an extension of an order under s. 968.36 authorizing or approving the  
3           installation and use of a pen register or a trap and trace device, in writing under oath  
4           or equivalent affirmation, to a circuit court ~~for the~~ in any county ~~where the device~~  
5           ~~is to be located.~~

6           **SECTION 4.** 968.36 (2) (a) of the statutes is amended to read:

7           968.36 (2) (a) Specify the identity, if known, of the person to whom is leased or  
8           in whose name is listed the telephone line, instrument, or facility to which the pen  
9           register or trap and trace device is to be attached.

10          **SECTION 5.** 968.36 (2) (c) of the statutes is amended to read:

11          968.36 (2) (c) Specify the number and, if known, the physical location of the  
12          telephone line, instrument, or facility to which the pen register or trap and trace  
13          device is to be attached and, in the case of a trap and trace device, the geographic  
14          limits of the trap and trace order.

15          **SECTION 6.** 968.36 (5) (b) of the statutes is amended to read:

16          968.36 (5) (b) The person owning or leasing the line, instrument, or facility to  
17          which the pen register or a trap and trace device is attached, or who has been ordered  
18          by the court to provide assistance to the applicant, not disclose the existence of the  
19          pen register or trap and trace device or the existence of the investigation to the listed  
20          subscriber, or to any other person, unless or until otherwise ordered by the court.

21          **SECTION 7.** 968.36 (6) of the statutes is created to read:

22          968.36 (6) JURISDICTION. For purposes of this section, a person is considered to  
23          be doing business in this state and is subject to service and execution of process from  
24          this state, if the person makes a contract with or engages in a terms of service  
25          agreement with any other person for the use of a line, instrument, or facility, whether

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1 or not the other person is a resident of this state, and any part of the performance  
2 of the contract or provision of service takes place within this state on any occasion.

3 **SECTION 8.** 968.37 (2) of the statutes is amended to read:

4 968.37 (2) Upon the request of the attorney general, a district attorney or an  
5 officer of a law enforcement agency authorized to receive the results of a trap and  
6 trace device under ss. 968.28 to 968.37, a provider of a wire or electronic  
7 communication service, landlord, custodian or other person shall install the device  
8 or process forthwith on the appropriate line, instrument, or facility and shall furnish  
9 the investigative or law enforcement officer all additional information, facilities and  
10 technical assistance including installation and operation of the device or process  
11 unobtrusively and with a minimum of interference with the services that the person  
12 so ordered by the court accords the party with respect to whom the installation and  
13 use is to take place, if the installation and assistance is directed by a court order  
14 under s. 968.36 (5) (b). Unless otherwise ordered by the court, the results of the trap  
15 and trace device shall be furnished to the officer of a law enforcement agency,  
16 designated by the court, at reasonable intervals during regular business hours for  
17 the duration of the order.

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(END)