March 24, 2021 – Introduced by Senator JACQUE, cosponsored by Representatives MURSAU, ARMSTRONG, BALDEH, KUGLITSCH and WICHGERS. Referred to Committee on Judiciary and Public Safety.

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

Analysis by the Legislative Reference Bureau

This bill expands the definitions of “pen register” and “trap and trace device,” which are two types of wiretapping devices. 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. A “trap and trace device” is defined 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.

Under the bill, the definition of “pen register” includes 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. The definition of “trap and trace device” includes 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 received.

Current law provides that the attorney general or a district attorney may apply for a court order from the circuit court for the county where the device is to be located to install a pen register or a trap and trace device to further a criminal investigation. This bill allows the attorney general or a district attorney to apply for the court order for a pen register or trap and trace device from the circuit court for any county.
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Under the bill, a person is considered to be doing business in this state, for the purpose 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.

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

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

968.27 (13) “Pen register” means a device or process that records or decodes electronic or other impulses that identify the numbers dialed or otherwise dialing, routing, addressing, or signaling information transmitted on the telephone line to which the device is attached or by an instrument or facility from which a wire or electronic communication is transmitted. “Pen register” does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device or process 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.

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

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

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

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

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

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

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

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

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

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

968.36 (6) For purposes of this section, 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 for the use of a line, instrument, or facility, 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.

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

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

(END)