



2013 SENATE BILL 432

December 10, 2013 – Introduced by Senators GROTHMAN and LEHMAN, cosponsored by Representatives HUTTON, SARGENT, AUGUST, BALLWEG, BERCEAU, BEWLEY, CRAIG, CZAJA, KAPENGA, KESSLER, KLEEFISCH, KNUDSON, KOOYENGA, MURPHY, NASS, OHNSTAD, SANFELIPPO, SINICKI, THIESFELDT, TITTL, VRUWINK and WACHS. Referred to Energy, Consumer Protection, and Government Reform.

1 **AN ACT** *to amend* 134.43 (3), 968.27 (10) and 995.50 (7); and *to create* 968.373
2 and 968.375 (4) (c) of the statutes; **relating to:** prohibition on tracking the
3 location of a cellular telephone by law enforcement without a warrant.

Analysis by the Legislative Reference Bureau

Current law limits certain interceptions of communications and the use of pen register or trap and trace devices. This bill prohibits, with certain exceptions, law enforcement officers from tracking the location of a cellular telephone or other wireless communications device without first obtaining from a court a warrant authorizing the action. This bill also creates a process by which a law enforcement officer may apply to a court for such a warrant.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

4 **SECTION 1.** 134.43 (3) of the statutes is amended to read:
5 134.43 (3) Any person who is the victim of an intrusion of privacy under this
6 section is entitled to relief under s. 995.50 (1) and (4) unless the act is permissible
7 under ss. 968.27 to ~~968.37~~ 968.373.

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1 **SECTION 2.** 968.27 (10) of the statutes is amended to read:

2 968.27 (10) “Investigative or law enforcement officer” means any officer of this
3 state or political subdivision thereof, who is empowered by the laws of this state to
4 conduct investigations of or to make arrests for ~~offenses enumerated in ss. 968.28 to~~
5 968.37 violations of the laws that he or she is employed to enforce, and any attorney
6 authorized by law to prosecute or participate in the prosecution of those offenses.

7 **SECTION 3.** 968.373 of the statutes is created to read:

8 **968.373 Warrant to track a communications device. (1) DEFINITION.** In
9 this section, “communications device” includes any wireless or mobile device that
10 transmits wire or electronic communications.

11 **(2) PROHIBITION.** Except as provided in sub. (8), no investigative or law
12 enforcement officer may identify or track the location of a communications device
13 without first obtaining a warrant under sub. (4).

14 **(3) APPLICATION FOR WARRANT.** Upon the request of a district attorney or the
15 attorney general, an investigative or law enforcement officer may apply to a judge
16 for a warrant to authorize a person to identify or track the location of a
17 communications device. The application shall be under oath or affirmation, may be
18 in writing or oral, and may be based upon personal knowledge or information and
19 belief. In the application, the investigative or law enforcement officer shall do all of
20 the following:

21 (a) Identify the communications device.

22 (b) Identify, if known, the owners or possessors of the communications device.

23 (c) Identify, if known, the person who is the subject of the investigation.

24 (d) Provide a statement of the criminal offense to which the information likely
25 to be obtained relates.

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

5 **(4) WARRANT.** A judge shall issue a warrant authorizing a person to identify or
6 track the location of a communications device if the judge finds that the application
7 satisfies the requirements under sub. (3). A warrant issued under this subsection
8 may not authorize the action for a period that exceeds 60 days. A judge may extend
9 the authorized period upon the request of the attorney general or a district attorney
10 if the request satisfies the requirements under sub. (3). Each extension may not
11 exceed 60 days but there is no limit on the number of extensions a judge may grant.

12 **(4m) SECRECY.** A warrant under sub. (4) shall be issued with all practicable
13 secrecy and the request, application, or other information upon which the warrant
14 is based may not be filed with the clerk or made public until the warrant has been
15 executed and returned to the court. The judge may issue an order sealing the
16 application, request, or other information upon which the warrant is based. The
17 judge may issue an order prohibiting any person who has been ordered by the judge
18 to provide assistance to the applicant from disclosing the existence of the warrant or
19 of the investigation to any other person unless ordered by a judge.

20 **(5) ASSISTANCE.** Upon the request of the attorney general, a district attorney,
21 or a law enforcement agency authorized by a warrant issued under sub. (4) to track
22 or identify the location of a communications device, the court shall order a provider
23 of electronic communication service or other person to provide to an investigative or
24 law enforcement officer information, facilities, and technical assistance to identify
25 or track the location of the communications device. A person who is ordered under

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1 this subsection to provide assistance shall be compensated for the reasonable
2 expenses incurred.

3 **(6) CONFIDENTIALITY OF INFORMATION.** (a) Information obtained under this
4 section regarding the location of a communications device is not subject to the right
5 of inspection and copying under s. 19.35 (1).

6 (b) The attorney general, a law enforcement agency, or a district attorney that
7 obtains under this section information regarding the location of a communications
8 device, or evidence derived from the information, shall destroy any information or
9 evidence derived from it if the trial court reaches final disposition for all charges in
10 connection with the investigation that was the subject of the warrant under sub. (4)
11 and no person was adjudged guilty of a crime in connection with the investigation.

12 (c) Information regarding the location of a communications device that is
13 obtained under this section may be disclosed to other investigative or law
14 enforcement officers.

15 **(6m) RETURN.** A warrant issued under sub. (4) shall be returned, including in
16 the form of a summary description of the information received, to the court not later
17 than 5 days after the records or information described in the warrant are received
18 by the attorney general, district attorney, or law enforcement agency, whichever is
19 designated in the warrant.

20 **(7) DEFENSE AND IMMUNITY.** (a) A person on whom a warrant issued under sub.
21 (4) is served is immune from civil liability for acts or omissions in providing records
22 or information, facilities, or assistance in accordance with the terms of the warrant.

23 (b) A person who discloses the location of a communications device under sub.
24 (8) (b) is immune from civil liability for the acts or omissions in making the disclosure
25 in accordance with sub. (8) (b).

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1 (c) No cause of action may arise against any provider of electronic
2 communication service, or its officers, employees, or agents or other persons specified
3 in the court order under sub. (5), for providing information, facilities, or assistance
4 in accordance with the terms of a court order under sub. (5).

5 **(7m)** TECHNICAL IRREGULARITIES. Evidence disclosed under a warrant issued
6 under sub. (4) may not be suppressed because of technical irregularities or errors not
7 affecting the substantial rights of the defendant.

8 **(8)** EXCEPTION. (a) The prohibition in sub. (2) does not apply to an investigative
9 or law enforcement officer who identifies or tracks the location of a communications
10 device if any of the following applies:

11 1. The customer or subscriber provides consent for the action.

12 2. An emergency involving danger of death or serious physical injury to any
13 person exists and identifying or tracking the location of the communications device
14 is relevant to preventing the death or injury or to mitigating the injury.

15 (b) A provider of electronic communication service may disclose the location of
16 a communications device without a warrant if any of the following applies:

17 1. The customer or subscriber provides consent for the particular disclosure.

18 2. The provider of electronic communication service believes in good faith that
19 an emergency involving the danger of death or serious physical injury to any person
20 exists and that disclosure of the location is relevant to preventing the death or injury
21 or to mitigating the injury.

22 **(8m)** JURISDICTION. For purposes of this section, a person is considered to be
23 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, whether or not the other person is a resident of this

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1 state, and any part of the performance of the contract or provision of service takes
2 place within this state on any occasion.

3 **(9) SEIZURE.** Any device used in violation of sub. (2) may be seized as contraband
4 by any law enforcement officer and forfeited to this state in an action under s.
5 973.075.

6 **SECTION 4.** 968.375 (4) (c) of the statutes is created to read:

7 968.375 (4) (c) A record or information that identifies the location of a device
8 used to transmit electronic or wire communications.

9 **SECTION 5.** 995.50 (7) of the statutes is amended to read:

10 995.50 (7) No action for invasion of privacy may be maintained under this
11 section if the claim is based on an act which is permissible under ss. 196.63 or 968.27
12 to ~~968.37~~ 968.373.

13 **SECTION 6. Initial applicability.**

14 (1) This act first applies to information regarding the location of a
15 communications device obtained on the effective date of this subsection.

16 (END)