

2016 -- S 2403

LC004252

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO CRIMINAL PROCEDURE -- CELL PHONE TRACKING

Introduced By: Senators Nesselbush, Miller, Jabour, Conley, and Archambault

Date Introduced: February 11, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 32

4 CELL PHONE TRACKING

5 **12-32-1. Definitions. -- As used in this chapter:**

6 (1) "Adverse result" means:

7 (i) Endangering the life or physical safety of an individual;

8 (ii) Flight from prosecution;

9 (iii) Destruction of or tampering with evidence;

10 (iv) Intimidation of potential witnesses; or

11 (v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

12 (2) "Electronic device" means any device that enables access to, or use of, an electronic
13 communication service (as defined in 18 U.S.C. § 2510(15)), remote computing service (as
14 defined in 18 U.S.C. § 2711(2)), or location information service.

15 (3) "Location information" means any information concerning the location of an
16 electronic device that, in whole or in part, is generated by or derived from the operation of that
17 device.

18 (4) "Location information service" means a global positioning service or other mapping,
19 locational, or directional information service.

1 (5) Service provider means the provider of an electronic communications service, remote
2 computing service, or location information service.

3 **12-32-2. Requirement for warrant. --** No agent of the state or any political subdivision
4 thereof shall obtain location information without a warrant.

5 **12-32-3. Notice. --** (a) Unless delayed notice is ordered under subsection (b) of this
6 section, not later than three (3) days after an agent of the state or any political subdivision thereof
7 receives location information under this chapter, the agent of the state or any political subdivision
8 thereof shall serve upon, or deliver by registered or first-class mail, electronic mail, or other
9 means reasonably calculated to be effective as specified by the court issuing the warrant to the
10 customer(s) or subscriber(s):

11 (1) A copy of the warrant; and

12 (2) Notice that informs such customer(s) or subscriber(s):

13 (i) Of the nature of the law enforcement inquiry with reasonable specificity;

14 (ii) That location information maintained for such customer(s) or subscriber(s) was
15 supplied to or requested by that agent of the state or any political subdivision thereof and the date
16 on which the supplying or request took place;

17 (iii) If such location information was obtained from a service provider or other third
18 party, the identity of the third party from which the information was obtained;

19 (iv) Whether notification of such customer(s) or subscriber(s) was delayed pursuant to
20 §12-32-3(b);

21 (v) What court made the certification or determination pursuant to which that delay was
22 made, if applicable; and

23 (vi) If applicable, which provision of this chapter allowed such delay.

24 (b) Delay of notification. - An agent of the state or any political subdivisions thereof
25 acting under this chapter may include in the application a request for an order delaying the
26 notification required pursuant to this subsection for a period not to exceed ninety (90) days, and
27 the court shall issue the order if the court determines that there is reason to believe that
28 notification of the existence of the warrant may have an adverse result.

29 (c) Upon expiration of the period of delay granted under this section, the agent of the
30 state or any political subdivision thereof shall provide the customer(s) or subscriber(s) a copy of
31 the warrant together with any notice required.

32 (d) Preclusion of notice to subject of governmental access. - An agent of the state or any
33 political subdivisions thereof acting under this chapter may include in the application a request
34 for an order directing a service provider to which a warrant is directed not to notify any other

1 person of the existence of the warrant for a period of not more than ninety (90) days, and the
2 court shall issue the order if the court determines that there is reason to believe that notification of
3 the existence of the warrant may have an adverse result.

4 (e) The court may, upon application, grant one or more extensions of orders granted
5 under this chapter for an additional ninety (90) days.

6 **12-32-4. Emergency situation exceptions.** -- Notwithstanding any other provision of
7 this chapter, an agent of the state or any political subdivision may obtain location information:

8 (1) In order to respond to the user's call for emergency services;

9 (2) With the express consent of the owner or user of the electronic communications
10 device concerned; or

11 (3) If an agent of the state or any political subdivision thereof believes that an emergency
12 involving immediate danger of death or serious physical injury to any person requires obtaining
13 without delay of information relating to the emergency and the request is narrowly tailored to
14 address the emergency, subject to the following limitations:

15 (i) The request shall document the factual basis for believing that an emergency involving
16 immediate danger of death or serious physical injury to a person requires obtaining without delay
17 the information relating to the emergency; and

18 (ii) Not later than forty-eight (48) hours after the date on which an agent of the state or
19 any political subdivision thereof obtains access to records under the provisions of this section, a
20 governmental entity shall file with the appropriate court a signed, sworn statement of a
21 supervisory official of a rank designated by the head of the governmental entity setting forth the
22 grounds for the emergency access.

23 **12-32-5. Exigent circumstances exceptions.** -- (a) An investigative or law enforcement
24 officer specially designated by the attorney general may acquire location information before
25 obtaining a warrant authorizing the installation or use if:

26 (1) The officer cannot, with due diligence, obtain a warrant to address an emergency
27 situation that involves immediate danger of death or serious bodily injury; and

28 (2) When the officer acquires location information, there are grounds upon which a
29 warrant could be entered under this chapter to authorize the acquisition.

30 (b) An officer who acquires location information before obtaining an order authorizing
31 the acquisition must, within forty-eight (48) hours after the acquisition occurs or begins to occur,
32 obtain a warrant approving the installation or use in accordance with this chapter.

33 (c) In the absence of a warrant, such acquisition shall immediately terminate when the
34 location information sought is obtained or when the application for a warrant is denied.

1 whichever is earlier.

2 (d) In the event such application for a warrant is denied, or in any other case where the
3 interception is terminated without a warrant having been issued, the location information acquired
4 shall be treated as having been obtained in violation of this chapter, and notice shall be served to
5 all owners or users of electronic devices about which location information was acquired in
6 violation of this chapter.

7 **12-32-6. Reporting requirements.** -- By January 31 of each calendar year, the attorney
8 general shall issue a report identifying the number of warrants approved and denied in the
9 previous year, including:

10 (1) The identity of the agency making the application;

11 (2) The offense specified in the warrant or application therefor;

12 (3) The nature of the facilities from which, the place where, or the technique by which
13 location information was to be obtained;

14 (4) The expected number of devices about which location information was to be
15 obtained;

16 (5) The fact that the warrant was granted as applied for, was modified, or was denied; and

17 (6) The period of disclosures authorized by the warrant, and the number and duration of
18 any extensions of the warrant.

19 **12-32-7. Suppression.** -- (a) Except as proof of a violation of this section, no evidence
20 obtained in violation of this section shall be admissible in any criminal, civil, administrative, or
21 other proceeding.

22 (b) Any location information obtained pursuant to this chapter or evidence derived
23 therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other
24 proceeding in a federal or state court unless each party, not less than ten (10) days before the trial,
25 hearing, or proceeding, has been furnished with a copy of the warrant, and accompanying
26 application, under which the information was obtained. This ten (10) day period may be waived
27 by the judge if they find that it was not possible to furnish the party with the above information
28 ten (10) days before the trial, hearing, or proceeding and that the party will not be prejudiced by
29 the delay in receiving such information.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINAL PROCEDURE -- CELL PHONE TRACKING

- 1 This act would require the issuance of a warrant to obtain cell phone location information
- 2 subject to emergency situation exceptions.
- 3 This act would take effect upon passage.

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