

2016 -- S 2403 SUBSTITUTE A

LC004252/SUB A

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,
2 remote computing service, or location information service.

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

6 **12-32-3. Notice. --** (a) Unless delayed under subsection (b) of this section, notice to the
7 affected customer or subscriber is required not later than five (5) days after an agent of the state,
8 or any political subdivision of the state, receives location information under this chapter that is
9 obtained with or without a warrant, provided no notice shall be required if the location
10 information was obtained pursuant to §12-32-4(a). The agent of the state, or any political
11 subdivision of the state, shall serve the following upon or deliver to the affected customer or
12 subscriber by registered mail, or first-class mail, or electronic mail, or any other means permitted
13 by the court issuing the warrant to be as effective:

14 (1) A copy of the warrant, if applicable; and

15 (2) A statement of the general nature of the law enforcement inquiry; and

16 (3) If applicable, an affirmation that location information maintained by a service
17 provider was supplied to a law enforcement officer; and

18 (4) If such location information was obtained, an identification of the service provider
19 from which the information was obtained; and

20 (5) If applicable, a statement indicating the identifying number associated with the
21 electronic device; and

22 (6) If applicable, the dates for which the location information was supplied; and

23 (7) A statement of whether notification of such customer(s) or subscriber(s) was delayed
24 pursuant to §12-32-3(b); and

25 (8) If applicable, an identification of the court which made the certification or
26 determination pursuant to which that delay was made.

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

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

1 (d) Preclusion of notice to subject of governmental access. - An agent of the state, or any
2 political subdivision of the state, acting under this chapter may include in the application a
3 request for an order directing a service provider to which a warrant is directed not to notify any
4 other person of the existence of the warrant for a period of not more than ninety (90) days, and
5 the court shall issue the order if the court determines that there is reason to believe that
6 notification of the existence of the warrant may have an adverse result.

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

9 (f) Failure to comply with the notice provisions shall not be grounds for the suppression
10 of any evidence.

11 **12-32-4. Exceptions. --** (a) Notwithstanding any other provision of this chapter, an agent
12 of the state or any political subdivision of the state may obtain location information from a
13 service provider without obtaining a warrant under the following circumstances:

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

15 (2) In order to respond to a call for emergency services, including a request from an E-
16 911 supervisor to determine the location of a cellular telephone, when required pursuant to an
17 emergency involving actual or potential death, serious physical injury or major damage to
18 property and the information is needed without delay;

19 (3) If an agent of the state, or any political subdivision of the state, believes that an
20 emergency involving immediate danger of death or serious physical injury to any person requires
21 the obtaining of information relating to the emergency without delay, and/or pursuant to the
22 Kelsey Smith Act as codified in §39-2-20;

23 (4) If the location information was generated by an electronic device used as a condition
24 of release from a penal institution, as a condition of pre-trial release, probation, conditional
25 discharge, parole, mandatory supervised release, or other sentencing order;

26 (5) With the express consent of the owner or user of the electronic communications
27 device concerned; or

28 (6) With the express informed consent of the parent or foster parent of a minor who is the
29 owner or user, or the legal guardian or next of kin of the owner or user, if the owner or user is
30 believed to be deceased or reported missing and unable to be contacted;

31 (7) If the electronic device is reported lost or stolen by the owner or user of the electronic
32 device; or

33 (8) If the government entity is the owner of the electronic device and has issued it to an
34 employee or it is attached to property owned by the government entity.

1 (b) Not later than five (5) days after the date on which an agent of the state or any
2 political subdivision of the state obtains access to records under this section, a governmental
3 entity shall file with the appropriate court a signed, sworn statement of a supervisory official of a
4 rank designated by the head of the governmental entity setting forth the grounds for the access to
5 information in this section. Should the courts not be open upon the expiration of the five (5) days,
6 the statement shall be filed the next day the court is open to receive such statement.

7 (c) When location information is sought pursuant to this chapter, and unless otherwise
8 permitted by a warrant, any acquisition of information shall immediately terminate when the
9 location information sought is obtained.

10 (d) In the event an application for a warrant is denied, or in any other case where the
11 interception is made or terminated without a warrant having been issued where required by this
12 chapter, notice shall be served to all owners or known users of electronic devices about which
13 location information was acquired in violation of this chapter.

14 (e) The notice required by §12-32-3 shall also be provided when location information is
15 obtained pursuant to §12-32-4(a)(2) or (a)(3).

16 (f) Nothing in this chapter shall be construed to prohibit law enforcement from obtaining,
17 without a court order, location information when the information, including metadata attached to
18 images and video, is otherwise publicly available on a social networking website.

19 **12-32-5. Reporting requirements.** -- (a) By January 31 of each calendar year, each law
20 enforcement agency that collects any location information from electronic devices in the previous
21 calendar year shall issue a report identifying the number of warrants issued for location
22 information for an electronic device that were approved and denied in the previous year,
23 including:

- 24 (1) The identity of the agency making the application; and
- 25 (2) The offense specified in the warrant or application therefor; and
- 26 (3) The number of warrants granted in full or in part, and the number denied; and
- 27 (4) The number and duration of any extensions of the warrant.

28 **12-32-6. Immunity from liability.** -- No cause of action shall lie in any court against a
29 service provider or such provider's officers, employees, agents, or other specified persons, for
30 providing information, facilities, or assistance in accordance with the terms of any court order,
31 warrant, or for providing information in reliance on representations by law enforcement that the
32 location information may be obtained without a warrant pursuant to §12-32-4.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO CRIMINAL PROCEDURE -- CELL PHONE TRACKING

- 1 This act would require a warrant prior to obtaining location or other information from a
- 2 service provider for cellular devices. This act would also establish exceptions, including
- 3 emergencies and consent of the owner, and would impose various notice requirements.
- 4 This act would take effect upon passage.

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