

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2503

4
5 By: Representatives Sullivan, Childers, Adams

For An Act To Be Entitled

9 AN ACT CONCERNING PEN REGISTERS, TRAP AND TRACE
10 DEVICES, ACCESS TO STORED COMMUNICATIONS, AND
11 MOBILE TRACKING DEVICES; AND FOR OTHER PURPOSES.

Subtitle

14 AN ACT CONCERNING PEN REGISTERS, TRAP
15 AND TRACE DEVICES, ACCESS TO STORED
16 COMMUNICATIONS, AND MOBILE TRACKING
17 DEVICES.

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Definitions. As used in this act:

23 (1) "Adverse result" means:

24 (A) Endangering the life or physical safety of an individual;

25 (B) Flight from prosecution;

26 (C) Destruction of or tampering with evidence;

27 (D) Intimidation of a potential witness; or

28 (E) Otherwise seriously jeopardizing an investigation or unduly
29 delaying a trial.

30 (2) "Aural transfer" means a transfer containing the human voice at
31 any point between and including the point of origin and the point of
32 reception;

33 (3) "Authorized law enforcement officer" means:

34 (A) A sheriff or a sheriff's deputy;

35 (B) A marshal or police officer of an incorporated city, town,
36 or village;



1 (C) A law enforcement officer commissioned by the Department of
 2 the Arkansas State Police;

3 (D) An investigator commissioned by the prosecuting attorney;

4 (E) A law enforcement officer commissioned by the Arkansas
 5 Highway Police;

6 (F) A law enforcement agent of the Alcoholic Beverage Control
 7 Board;

8 (G) A law enforcement officer commissioned by the Arkansas Game
 9 and Fish Commission.

10 (4) "Communication common carrier" means a person engaged as a common
 11 carrier for hire in the transmission of wire or electronic communications;

12 (5) "Department" means the Department of Arkansas State Police;

13 (6) "Electronic communications service" means a service that provides
 14 to users of the service the ability to send or receive wire or electronic
 15 communications;

16 (7) "Electronic communications system" means a wire, radio,
 17 electromagnetic, photo-optical or photoelectronic facility for the
 18 transmission of wire or electronic communications, and any computer facility
 19 or related electronic equipment for the electronic storage of those
 20 communications;

21 (8) "Electronic storage" means:

22 (A) A temporary, intermediate storage of a wire or electronic
 23 communication that is incidental to the electronic transmission of the
 24 communication; or

25 (B) Storage of a wire or electronic communication by an
 26 electronic communications service for purposes of backup protection of the
 27 communication;

28 (9)(A) "Pen register" means a device that attaches to a telephone line
 29 and records or decodes electronic or other impulses to identify numbers
 30 dialed or otherwise transmitted on the telephone line.

31 (B) "Pen register" does not include a device used by a provider
 32 or customer of:

33 (i) A wire or electronic communication service for purposes
 34 of charging a fee for the service; or

35 (ii) A wire communication service during the ordinary
 36 course of the provider's or customer's business, including cost accounting

1 and security control;

2 (10) "Readily accessible to the general public" means, with respect to
 3 a radio communication, a communication that is not:

4 (A) Scrambled or encrypted;

5 (B) Transmitted using modulation techniques whose essential
 6 parameters have been withheld from the public with the intention of
 7 preserving the privacy of the communication;

8 (C) Carried on a subcarrier or other signal subsidiary to a
 9 radio transmission;

10 (D) Transmitted over a communication system provided by a common
 11 carrier, unless the communication is a tone only paging system communication;

12 (E) Transmitted on frequencies allocated under Part 25, Subpart
 13 D, E, or F of Part 74, or Part 94 of the rules of the Federal Communications
 14 Commission as they existed on January 1, 2003, unless, in the case of a
 15 communication transmitted on a frequency allocated under Part 74 that is not
 16 exclusively allocated to broadcast auxiliary services, the communication is a
 17 two way voice communication by radio; or

18 (F) An electronic communication;

19 (11) "Remote computing service" means the provision to the public of
 20 computer storage or processing services by means of an electronic
 21 communications system;

22 (12) "Supervisory official" means:

23 (A) An investigative agent or an assistant investigative agent
 24 who is in charge of an investigation;

25 (B) An equivalent person at an investigating agency's
 26 headquarters or regional office; and

27 (C) The prosecuting attorney for a judicial district or chief
 28 deputy prosecuting attorney;

29 (13) "Tracking device" means an electronic or mechanical device that
 30 permits only tracking the movement of a person or object;

31 (14)(A) "Trap and trace device" means a device that records an
 32 incoming electronic signal or other impulse that identifies the originating
 33 number of an instrument or device from which a wire or electronic
 34 communication was transmitted.

35 (B) "Trap and trace device" does not include a device or
 36 telecommunications network used in providing:

1 (i) A caller identification service authorized by the
2 Arkansas Public Service Commission; or

3 (ii) A caller identification service provided by a commercial
4 mobile radio service provider licensed by the Federal Communications
5 Commission; and

6 (15) "User" means a person who uses an electronic communications
7 service and is authorized by the provider of the service to use the service.

8
9 SECTION 2. Application and order of pen registers or trap and trace
10 devices.

11 (a)(1) A certified law enforcement officer authorized by the
12 department may request the prosecuting attorney to file an application with a
13 judge of the judicial district in which the proposed installation will be
14 made for the installation and use of a pen register to obtain information
15 material to the investigation of any criminal offense defined by the Arkansas
16 Criminal Code, § 5-1-101 et seq.

17 (2)(A) A prosecuting attorney may on his or her own motion file
18 an application under this section.

19 (B) The prosecuting attorney who is acting on his or her
20 own motion must make the application personally and may not do so through a
21 deputy prosecuting attorney or some other person acting on his or her behalf.

22 (b)(1) An authorized law enforcement officer may request the
23 prosecuting attorney to file an application with a judge of the judicial
24 district in which the proposed installation will be made for the installation
25 and utilization of a trap and trace device to obtain information material to
26 the investigation of any criminal offense defined by the Arkansas Criminal
27 Code, § 5-1-101 et seq.

28 (2)(A) A prosecuting attorney may on his or her own motion file
29 an application under this section.

30 (B) The prosecuting attorney who is acting on his or her
31 own motion must make the application personally and may not do so through
32 a deputy prosecuting attorney or some other person acting on his or her
33 behalf.

34 (c)(1) An application under this section must be made in writing under
35 oath and must include the name of the subscriber, the telephone number or
36 numbers, and the location of the telephone instrument or instruments on which

1 the pen register or trap and trace device will be utilized.

2 (2) The application must also state that the installation and
 3 utilization of the pen register or trap and trace device will be material to
 4 the investigation of a criminal offense.

5 (d) On presentation of the application, the judge may order the
 6 installation and utilization of the pen register by a certified law
 7 enforcement officer authorized by the department. On request of the
 8 applicant, the judge shall direct in the order that a communications common
 9 carrier or a provider of electronic communications service furnish all
 10 information, facilities, and technical assistance necessary to facilitate the
 11 installation and utilization of the pen register by the department
 12 unobtrusively and with a minimum of interference to the services provided by
 13 the carrier. The carrier is entitled to compensation at the prevailing rates
 14 for the facilities and assistance provided to the department.

15 (e)(1) On presentation of the application, the judge may order the
 16 installation and operation of the trap and trace device by the communications
 17 common carrier or other person on the appropriate line. In the order the
 18 judge shall direct the communications common carrier or other person and any
 19 landlord or other custodian of equipment to furnish all information,
 20 facilities, and technical assistance necessary to install and operate the
 21 device unobtrusively and with a minimum of interference to the services
 22 provided by the communications common carrier, landlord, custodian, or other
 23 person.

24 (2) Unless otherwise ordered by the court, the results of the
 25 trap and trace device shall be furnished to the applicant at reasonable
 26 intervals during regular business hours, for the duration of the order.

27 (3) The carrier is entitled to compensation at the prevailing
 28 rates for the facilities and assistance provided to the law enforcement
 29 agency.

30 (f)(1) An order for the installation and utilization of a pen register
 31 or trap and trace device is valid for not more than sixty (60) days after the
 32 date the device is installed or ten (10) days after the date the order is
 33 entered, whichever occurs first, unless before the expiration of the order
 34 the attorney for the state applies for and obtains from the court an
 35 extension of the order.

36 (2) The period of extension may not exceed sixty (60) days for

1 each extension granted, except that with the consent of the subscriber or
 2 customer of the service on which the pen register or trap and trace device is
 3 utilized, the court may extend an order for a period not to exceed one (1)
 4 year.

5 (g)(1) The circuit court shall seal an application and order for the
 6 installation and utilization of a pen register or trap and trace device
 7 granted under this act.

8 (2) The contents of an application or order may not be disclosed
 9 except in the course of a judicial proceeding and an unauthorized disclosure
 10 is punishable as contempt of court.

11
 12 SECTION 3. Emergency pen register and trap and trace device
 13 installation.

14 (a) An authorized law enforcement officer, designated by the
 15 prosecuting attorney of the county where the installation will be used, may
 16 install and use a pen register or trap and trace device if the law
 17 enforcement officer reasonably believes that:

18 (1) An emergency requiring the installation of a pen register or
 19 trap and trace device before an order authorizing the installation and use
 20 can, with due diligence, be obtained, exist involving immediate danger of
 21 death or serious injury to any person; and

22 (2) There are grounds under this act on which an order could be
 23 entered to authorize the installation and use of a pen register or trap and
 24 trace device.

25 (b) If an authorized law enforcement officer installs a pen register
 26 or trap and trace device under subsection (a) of this section, the officer
 27 must obtain an order approving installation and use within forty-eight (48)
 28 hours after the installation begins. If authorization is not obtained within
 29 forty-eight (48) hours, the officer shall terminate use of the pen register
 30 or the trap and trace device on the expiration of the forty-eight (48) hours
 31 or at the time the order is denied, whichever is earlier.

32 (c) The state may not use as evidence in a criminal proceeding any
 33 information gained through the use of a pen register or trap and trace device
 34 installed under this section if authorization for the pen register or trap
 35 and trace device is denied.

36

1 SECTION 4. Requirements for government access to stored
2 communications.

3 (a) An authorized law enforcement officer may require a provider of
4 electronic communications service to disclose the contents of an electronic
5 communication that has been in electronic storage for not longer than one
6 hundred eighty (180) days by obtaining a warrant.

7 (b) An authorized law enforcement officer may require a provider of
8 electronic communications service to disclose the contents of an electronic
9 communication that has been in electronic storage for longer than one hundred
10 eighty (180) days:

11 (1) If notice is not being given to the subscriber or customer,
12 by obtaining a warrant;

13 (2) If notice is being given to the subscriber or customer, by
14 obtaining:

15 (A) A prosecuting attorney’s subpoena authorized by
16 statute;

17 (B) A grand jury subpoena; or

18 (C) A court order issued under section 5 of this act; or

19 (3) As otherwise permitted by applicable federal law.

20 (c)(1) An authorized law enforcement officer may require a provider of
21 a remote computing service to disclose the contents of an electronic
22 communication as described in subdivision (b)(2) of this section:

23 (A) If notice is not being given to the subscriber or
24 customer, by obtaining a warrant issued under this section;

25 (B) If notice is being given to the subscriber or
26 customer, by:

27 (i) A prosecuting attorney’s subpoena authorized by
28 statute;

29 (ii) A grand jury subpoena; or

30 (iii) A court order issued under section 5 of this
31 act; or

32 (C) As otherwise permitted by applicable federal law.

33 (2) Subdivision (c)(1) of this section applies only to an
34 electronic communication that is in electronic storage:

35 (A) On behalf of a subscriber or customer of the service,
36 and is received by means of electronic transmission from or created by means

1 of computer processing of communications received by means of electronic
 2 transmission from the subscriber or customer; and

3 (B) Solely for the purpose of providing storage or
 4 computer processing services to the subscriber or customer if the provider of
 5 the service is not authorized to obtain access to the contents of those
 6 communications for purposes of providing any service other than storage or
 7 computer processing.

8 (d) An authorized law enforcement officer may require a provider of
 9 remote computing service to disclose records or other information pertaining
 10 to a subscriber or customer of the service, other than communications
 11 described in subsection (c) of this section, without giving the subscriber or
 12 customer notice:

13 (1) By obtaining a prosecuting attorney's subpoena authorized by
 14 state law;

15 (2) By obtaining a grand jury subpoena;

16 (3) By obtaining a warrant;

17 (4) By obtaining the consent of the subscriber or customer to
 18 the disclosure of the records or information;

19 (5) By obtaining a court order under section 5 of this act; or

20 (6) As otherwise permitted by applicable federal law.

21 (e) A provider of telephonic communications service shall disclose to
 22 an authorized law enforcement officer, without any form of legal process,
 23 subscriber listing information, including name, address, and telephone number
 24 or similar access code that:

25 (1) The service provides to others in the course of providing
 26 publicly available directory or similar assistance; or

27 (2) Is solely for use in the dispatch of emergency vehicles and
 28 personnel responding to a distress call directed to an emergency dispatch
 29 system, or if the information is reasonably necessary to aid in the
 30 dispatching of emergency vehicles and personnel for the immediate prevention
 31 of death, personal injury, or destruction of property.

32 (f) A provider of telephonic communications service shall provide an
 33 authorized law enforcement officer with the name of the subscriber of record
 34 whose published telephone number is provided to the service by an authorized
 35 law enforcement officer.

36

SECTION 5. Court order to obtain access to stored communications.

(a) A court shall issue an order authorizing disclosure of contents, records, or other information of a wire or electronic communication held in electronic storage if the court determines that there is reasonable belief that the information sought is relevant to a legitimate law enforcement inquiry.

(b) A court may grant a motion by the service provider to quash or modify the order issued under subsection (a) of this section if the court determines that the information or records requested are unusually voluminous in nature or that compliance with the order would cause an undue burden on the provider.

SECTION 6. Backup preservation.

(a)(1) A subpoena or court order for disclosure of the contents of an electronic communication in a remote computing service under section 4(c) of this act may require that the service provider to whom the request is directed create a copy of the contents of the electronic communications sought by the subpoena or court order for the purpose of preserving those contents.

(2) The service provider may not inform the subscriber or customer whose communications are being sought that the subpoena or court order has been issued.

(3) The service provider shall create the copy not later than two (2) business days after the date of the receipt by the service provider of the subpoena or court order.

(b) The service provider shall immediately notify the authorized law enforcement officer who presented the subpoena or court order requesting the copy when the copy has been created.

(c) Except as provided by section 7 of this act, the authorized law enforcement officer shall notify the subscriber or customer whose communications are the subject of the subpoena or court order of the creation of the copy not later than three (3) days after the date of the receipt of the notification from the service provider that the copy was created.

(d) The service provider shall release the copy to the requesting authorized law enforcement officer not earlier than the fourteenth day after the date of the officer's notice to the subscriber or customer, if the

1 service provider has not:

2 (1) Initiated proceedings to challenge the request of the law
 3 enforcement officer for the copy; or

4 (2) Received notice from the subscriber or customer that the
 5 subscriber or customer has initiated proceedings to challenge the request.

6 (e) The service provider may not destroy or permit the destruction of
 7 the copy until the information has been delivered to the law enforcement
 8 agency or until the resolution of any court proceedings, including appeals of
 9 any proceedings, relating to the subpoena or court order requesting the
 10 creation of the copy, whichever occurs last.

11 (f)(1) An authorized law enforcement officer who reasonably believes
 12 that notification to the subscriber or customer of the subpoena or court
 13 order would result in the destruction of or tampering with information sought
 14 may request the creation of a copy of the information.

15 (2) The law enforcement officer's belief is not subject to
 16 challenge by the subscriber, customer, or service provider.

17 (g)(1) A subscriber or customer who receives notification as described
 18 in subsection (c) of this section may file a written motion to quash the
 19 subpoena or vacate the court order in the court that issued the subpoena or
 20 court order not later than the fourteenth day after the date of the receipt
 21 of the notice.

22 (2) The motion must contain an affidavit or sworn statement
 23 stating that:

24 (A) The applicant is a subscriber or customer of the
 25 service from which the contents of electronic communications stored for the
 26 subscriber or customer have been sought; and

27 (B) The applicant's reasons for believing that the
 28 information sought is not relevant to a legitimate law enforcement inquiry or
 29 that there has not been substantial compliance with this act in some other
 30 respect.

31 (3)(A) The subscriber or customer shall give written notice to
 32 the service provider of the challenge to the subpoena or court order.

33 (B) The authorized law enforcement officer or law
 34 enforcement agency requesting the subpoena or court order shall be served a
 35 copy of the papers filed, by personal delivery or by registered or certified
 36 mail.

1 (h)(1) The court shall order the authorized law enforcement officer to
2 file a sworn response to the motion filed by the subscriber or customer if
3 the court determines that the subscriber or customer has complied with the
4 requirements of subsection (g) of this section.

5 (2) On request of the law enforcement officer, the court may
6 permit the response to be filed on camera.

7 (3) The court may conduct any additional proceedings the court
8 considers appropriate, if the court is unable to make a determination on the
9 motion on the basis of the parties' initial allegation and response.

10 (4) The court shall rule on the motion as soon after the filing
11 of the officer's response as practicable.

12 (5) The court shall deny the motion if the court finds that the
13 applicant is not the subscriber or customer whose stored communications are
14 the subject of the subpoena or court order, or that there is reason to
15 believe that the law enforcement officer's inquiry is legitimate and that the
16 communications sought are relevant to that inquiry.

17 (6) The court shall quash the subpoena or vacate the order if
18 the court finds that the applicant is the subscriber or customer whose stored
19 communications are the subject of the subpoena or court order and that there
20 is not a reason to believe that the communications sought are relevant to a
21 legitimate law enforcement inquiry or that there has not been substantial
22 compliance with this act.

23 (7) A court order denying a motion or application under this
24 section is not a final order and no interlocutory appeal may be taken from
25 the denial.

26
27 SECTION 7. Delay of notification.

28 (a)(1) An authorized law enforcement officer seeking a court order to
29 obtain information under section 4(c) of this act may include a request for
30 an order delaying the notification required under section 4(c) of this act
31 for a period not to exceed ninety (90) days.

32 (2) The court shall grant the request if the court determines
33 that there is reason to believe that notification of the existence of the
34 court order may have an adverse result.

35 (b)(1) An authorized law enforcement officer who has obtained a
36 subpoena authorized by statute or a grand jury subpoena to seek information

1 under section 4(c) of this act may delay the notification required under that
2 section for a period not to exceed ninety (90) days on the execution of a
3 written certification of a supervisory official that there is reason to
4 believe that notification of the existence of the subpoena may have an
5 adverse result.

6 (2) The law enforcement officer shall maintain a true copy of
7 the certification.

8 (c) A court may grant one or more extensions of the delay of
9 notification provided by this section of up to ninety (90) days on request or
10 by certification by a supervisory official if the original requirements under
11 subsection (a) or (b) of this section are met for each extension.

12 (d) When the delay of notification under this section expires, the
13 authorized law enforcement officer shall serve, by personal delivery or
14 registered or certified mail, the subscriber or customer a copy of the
15 process or request together with notice that:

16 (1) States with reasonable specificity the nature of the law
17 enforcement inquiry; and

18 (2) Informs the subscriber or customer:

19 (A) That information stored for the subscriber or customer
20 by the service provider named in the process or request was supplied to or
21 requested by the law enforcement officer and the date on which the
22 information was supplied or requested;

23 (B) That notification to the subscriber or customer was
24 delayed;

25 (C) Of the name of the supervisory official who made the
26 certification or the court that granted the request for the delay of
27 notification; and

28 (D) Of which provision of this act permitted the delay of
29 notification.

30
31 SECTION 8. Preclusion of notification.

32 (a) When an authorized law enforcement officer seeking information
33 under section (4) of this act is not required to give notice to the
34 subscriber or customer, or is delaying notification under section (7) of this
35 act, the law enforcement officer may apply to the court for an order
36 commanding the service provider to whom a warrant, subpoena, or court order

1 is directed not to disclose to any other person the existence of the warrant,
 2 subpoena, or
 3 court order.

4 (b) The order is effective for the period the court considers
 5 appropriate.

6 (c) The court shall enter the order if the court determines that there
 7 is reason to believe that notification of the existence of the warrant,
 8 subpoena, or court order will have an adverse result as described in section
 9 7(c) of this act.

10
 11 SECTION 9. Reimbursement of costs.

12 (a)(1) Except as provided by subsection (c) of this section, an
 13 authorized law enforcement officer who obtains information under this act
 14 shall reimburse the person assembling or providing the information for all
 15 costs that are reasonably necessary and that have been directly incurred in
 16 searching for, assembling, reproducing, or otherwise providing the
 17 information.

18 (2) These costs include costs arising from necessary disruption
 19 of normal operations of an electronic communications service or remote
 20 computing service in which the information may be stored.

21 (b)(1) The authorized law enforcement officer and the person providing
 22 the information may agree on the amount of reimbursement.

23 (2) If there is no agreement, the court that issued the order
 24 for production of the information shall determine the amount.

25 (3) If no court order was issued for production of the
 26 information, the court before which the criminal prosecution relating to the
 27 information would be brought shall determine the amount.

28 (c) Subsection (a) of this section does not apply to records or other
 29 information maintained by a communications common carrier that relate to
 30 telephone toll records or telephone listings obtained under section 4(e) of
 31 this act, unless the court determines that the amount of information required
 32 was unusually voluminous, or that an undue burden was imposed on the
 33 provider.

34
 35 SECTION 10. No cause of action.

36 A subscriber or customer of a wire or electronic communications or

1 remote computing service does not have a cause of action against a wire or
 2 electronic communications or remote computing service, its officers,
 3 employees, agents, or other specified persons for providing information,
 4 facilities, or assistance as required by a court order, warrant, subpoena, or
 5 certification under this act.

6
 7 SECTION 11. Disclosure of stored communications.

8 (a) Except as provided by subsection (c) of this section, a provider
 9 of an electronic communications service may not knowingly divulge the
 10 contents of a communication that is in electronic storage.

11 (b) Except as provided by subsection (c) of this section, a provider
 12 of remote computing service may not knowingly divulge the contents of any
 13 communication that is:

14 (1) In electronic storage;

15 (2) Stored on behalf of a subscriber or customer of the service
 16 and is received by means of electronic transmission from or created by means
 17 of computer processing of communications received by means of electronic
 18 transmission from the subscriber or customer; and

19 (3) Solely for the purpose of providing storage or computer
 20 processing services to the subscriber or customer if the provider of the
 21 service is not authorized to obtain access to the contents of those
 22 communications for purposes of providing any service other than storage or
 23 computer processing.

24 (c) A provider of an electronic communications or remote computing
 25 service may divulge the contents of an electronically stored communication:

26 (1) To an intended recipient of the communication or that
 27 person's agent;

28 (2) To the addressee or that person's agent;

29 (3) With the consent of the originator, to the addressee or the
 30 intended recipient of the communication, or the subscriber of a remote
 31 computing service;

32 (4) To a person whose facilities are used to transmit the
 33 communication to its destination or the person's employee or authorized
 34 representative;

35 (5) As may be necessary to provide the service or to protect the
 36 property or rights of the provider of the service;

1 (6) To a law enforcement agency if the contents were obtained
 2 inadvertently by the service provider and the contents appear to pertain to
 3 the commission of a crime; or

4 (7) As authorized under federal or other state law.

5
 6 SECTION 12. Cause of action.

7 (a) Except as provided by section 10 of this act, a provider of
 8 electronic communications service, subscriber, or customer of an electronic
 9 communications service aggrieved by a violation of this act has a civil cause
 10 of action if the conduct constituting the violation was committed knowingly
 11 or intentionally and is entitled to:

12 (1) Injunctive relief;

13 (2) A reasonable attorney's fee and other litigation costs
 14 reasonably incurred; and

15 (3) The sum of the actual damages suffered and any profits made
 16 by the violator as a result of the violation or \$1,000, whichever is more.

17 (b) The reliance in good faith on a court order, warrant, subpoena, or
 18 legislative authorization is a complete defense to any civil action brought
 19 under this act.

20 (c) A civil action under this section shall be presented within two
 21 (2) years after the date the claimant first discovered or had reasonable
 22 opportunity to discover the violation.

23
 24 SECTION 13. Exclusivity of remedies.

25 The remedies and sanctions described in this act are the exclusive
 26 judicial remedies and sanctions for a violation of this act other than a
 27 violation that infringes on a right of a party guaranteed by a state or
 28 federal constitution.

29
 30 SECTION 14. Mobile tracking devices.

31 (a) A circuit judge may issue an order for the installation within the
 32 judge's judicial district of one or more mobile tracking devices and for the
 33 use of mobile tracking devices.

34 (b) The order may authorize the use of mobile tracking devices outside
 35 the judicial district but within the state if the device is installed within
 36 the judicial district.

1 (c)(1) A circuit judge may issue the order only on the application of
 2 an authorized law enforcement officer or prosecuting attorney.

3 (2) An application must be written, signed, and sworn to or
 4 affirmed before the judge. The affidavit must:

5 (A) State the name, department, agency, and address of the
 6 applicant;

7 (B) Identify the vehicle, container, or item to which, in
 8 which, or on which the mobile tracking device is to be attached or placed,
 9 and state the name of the owner or possessor of that vehicle, container, or
 10 item;

11 (C) State the jurisdictional area in which the vehicle,
 12 container, or item is expected to be found; and

13 (D) State the facts and circumstances that provide the
 14 applicant with a reasonable suspicion that criminal activity has been, is, or
 15 will be in progress, and that the use of a mobile tracking device is
 16 reasonably likely to yield information relevant to the investigation of
 17 criminal activity.

18 (d) The circuit judge that issued an order shall be notified by the
 19 law enforcement officer or prosecuting attorney in writing within seventy-two
 20 (72) hours after the time the mobile tracking device has been activated in
 21 place on or within the vehicle, container, or item.

22 (e)(1) An order authorizing the use of a mobile tracking device
 23 expires not later than the ninetieth day after the date that the device has
 24 been activated in place on or within the vehicle, container, or item.

25 (2) For good cause shown, the judge may grant an extension for
 26 an additional ninety (90) day period.

27 (f)(1) A mobile tracking device shall be removed as soon as is
 28 practicable after the authorization period expires.

29 (2) If removal is not practicable, monitoring of the device
 30 shall cease on expiration of the authorization order.

31
 32 SECTION 15. Subpoena authority.

33 The prosecuting attorney may issue a subpoena to a communications
 34 common carrier or an electronic communications service to compel the
 35 production of the carrier's or service's business records that disclose
 36 information about:

- 1 (1) The carrier's or service's customers; or
- 2 (2) Users of the services offered by the carrier or service; and
- 3 (3) Are material to a criminal investigation.

4

5 SECTION 16. Limitation.

6 A governmental agency authorized to install and use a pen register
7 under this act or other law must use reasonably available technology to only
8 record and decode electronic or other impulses used to identify the numbers
9 dialed or otherwise transmitted.

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