

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
4

As Engrossed: H4/1/03
A Bill

HOUSE BILL 2503

5 By: Representatives Sullivan, Childers, Adams
6
7

8 **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.
12

13 **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 circuit judge of the judicial district in which the proposed installation
14 will be made for the installation and use of a pen register to obtain
15 information material to the investigation of any criminal offense defined by
16 the Arkansas 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 circuit judge of the
24 judicial district in which the proposed installation will be made for the
25 installation and utilization of a trap and trace device to obtain information
26 material to the investigation of any criminal offense defined by the Arkansas
27 Criminal 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 circuit judge may order
6 the 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 circuit judge shall direct in the order that a communications
9 common 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 unless otherwise ordered by the court, the results of the pen
14 register shall be furnished to the applicant at reasonable intervals during
15 regular business hours, for the duration of the order. The carrier is
16 entitled to compensation at the prevailing rates for the facilities and
17 assistance provided to the department.

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

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

30 (3) The carrier is entitled to compensation at the prevailing
31 rates for the facilities and assistance provided to the law enforcement
32 agency.

33 (f)(1) An order for the installation and utilization of a pen register
34 or trap and trace device is valid for not more than sixty (60) days after the
35 date the device is installed or ten (10) days after the date the order is
36 entered, whichever occurs first, unless before the expiration of the order

1 the attorney for the state applies for and obtains from the court an
2 extension of the order.

3 (2) The period of extension may not exceed sixty (60) days for
4 each extension granted, except that with the consent of the subscriber or
5 customer of the service on which the pen register or trap and trace device is
6 utilized, the circuit court may extend an order for a period not to exceed
7 one (1) year.

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

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

14 (h) A law enforcement officer is not required to file an application
15 or obtain an order under this section before the officer makes an otherwise
16 lawful search, with or without a warrant, to determine the contents of a
17 caller identification message, pager message, or voice message that is
18 contained within the memory of an end-user's identification, paging, or
19 answering device.

20 SECTION 3. Emergency pen register and trap and trace device
21 installation.

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

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

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

33 (b) If an authorized law enforcement officer installs a pen register
34 or trap and trace device under subsection (a) of this section, the officer
35 must obtain an order approving installation and use within forty-eight (48)
36 hours after the installation begins. If authorization is not obtained within

1 forty-eight (48) hours, the officer shall terminate use of the pen register
2 or the trap and trace device on the expiration of the forty-eight (48) hours
3 or at the time the order is denied, whichever is earlier.

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

8
9 SECTION 4. Requirements for government access to stored
10 communications.

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

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

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

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

23 (A) A prosecuting attorney's subpoena authorized by
24 statute;

25 (B) A grand jury subpoena; or

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

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

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

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

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

35 (i) A prosecuting attorney's subpoena authorized by
36 statute;

1 (ii) A grand jury subpoena; or
2 (iii) A court order issued under section 5 of this
3 act; or

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

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

7 (A) On behalf of a subscriber or customer of the service,
8 and is received by means of electronic transmission from or created by means
9 of computer processing of communications received by means of electronic
10 transmission from the subscriber or customer; and

11 (B) Solely for the purpose of providing storage or
12 computer processing services to the subscriber or customer if the provider of
13 the service is not authorized to obtain access to the contents of those
14 communications for purposes of providing any service other than storage or
15 computer processing.

16 (d) An authorized law enforcement officer may require a provider of
17 remote computing service to disclose records or other information pertaining
18 to a subscriber or customer of the service, other than communications
19 described in subsection (c) of this section, without giving the subscriber or
20 customer notice:

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

23 (2) By obtaining a grand jury subpoena;

24 (3) By obtaining a warrant;

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

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

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

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

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

35 (2) Is solely for use in the dispatch of emergency vehicles and
36 personnel responding to a distress call directed to an emergency dispatch

1 system, or if the information is reasonably necessary to aid in the
2 dispatching of emergency vehicles and personnel for the immediate prevention
3 of death, personal injury, or destruction of property.

4 (f) A provider of telephonic communications service shall provide an
5 authorized law enforcement officer with the name of the subscriber of record
6 whose published telephone number is provided to the service by an authorized
7 law enforcement officer.

8
9 SECTION 5. Court order to obtain access to stored communications.

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

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

20
21 SECTION 6. Backup preservation.

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) The motion must contain an affidavit or sworn statement
31 stating that:

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

35 (B) The applicant's reasons for believing that the
36 information sought is not relevant to a legitimate law enforcement inquiry or

1 that there has not been substantial compliance with this act in some other
2 respect.

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

5 (B) The authorized law enforcement officer or law
6 enforcement agency requesting the subpoena or court order shall be served a
7 copy of the papers filed, by personal delivery or by registered or certified
8 mail.

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

13 (2) On request of the law enforcement officer, the court may
14 permit the response to be filed *in camera*.

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

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

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

25 (6) The court shall quash the subpoena or vacate the order if
26 the court finds that the applicant is the subscriber or customer whose stored
27 communications are the subject of the subpoena or court order and that there
28 is not a reason to believe that the communications sought are relevant to a
29 legitimate law enforcement inquiry or that there has not been substantial
30 compliance with this act.

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

34
35 SECTION 7. Delay of notification.

36 (a)(1) An authorized law enforcement officer seeking a court order to

1 obtain information under section 4(c) of this act may include a request for
2 an order delaying the notification required under section 4(c) of this act
3 for a period not to exceed ninety (90) days.

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

7 (b)(1) An authorized law enforcement officer who has obtained a
8 subpoena authorized by statute or a grand jury subpoena to seek information
9 under section 4(c) of this act may delay the notification required under that
10 section for a period not to exceed ninety (90) days on the execution of a
11 written certification of a supervisory official that there is reason to
12 believe that notification of the existence of the subpoena may have an
13 adverse result.

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

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

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

24 (1) States with reasonable specificity the nature of the law
25 enforcement inquiry; and

26 (2) Informs the subscriber or customer:

27 (A) That information stored for the subscriber or customer
28 by the service provider named in the process or request was supplied to or
29 requested by the law enforcement officer and the date on which the
30 information was supplied or requested;

31 (B) That notification to the subscriber or customer was
32 delayed;

33 (C) Of the name of the supervisory official who made the
34 certification or the court that granted the request for the delay of
35 notification; and

36 (D) Of which provision of this act permitted the delay of

1 notification.

2
3 SECTION 8. Preclusion of notification.

4 (a) When an authorized law enforcement officer seeking information
5 under section (4) of this act is not required to give notice to the
6 subscriber or customer, or is delaying notification under section (7) of this
7 act, the law enforcement officer may apply to the court for an order
8 commanding the service provider to whom a warrant, subpoena, or court order
9 is directed not to disclose to any other person the existence of the warrant,
10 subpoena, or
11 court order.

12 (b) The order is effective for the period the court considers
13 appropriate.

14 (c) The court shall enter the order if the court determines that there
15 is reason to believe that notification of the existence of the warrant,
16 subpoena, or court order will have an adverse result as described in section
17 7(c) of this act.

18
19 SECTION 9. Reimbursement of costs.

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

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

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

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

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

36 (c) Subsection (a) of this section does not apply to records or other

1 information maintained by a communications common carrier that relate to
2 telephone toll records or telephone listings obtained under section 4(e) of
3 this act, unless the court determines that the amount of information required
4 was unusually voluminous, or that an undue burden was imposed on the
5 provider.

6
7 SECTION 10. No cause of action.

8 A subscriber or customer of a wire or electronic communications or
9 remote computing service does not have a cause of action against a wire or
10 electronic communications or remote computing service, its officers,
11 employees, agents, or other specified persons for providing information,
12 facilities, or assistance as required by a court order, warrant, subpoena, or
13 certification under this act.

14
15 SECTION 11. Disclosure of stored communications.

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

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

22 (1) In electronic storage;

23 (2) Stored on behalf of a subscriber or customer of the service
24 and is received by means of electronic transmission from or created by means
25 of computer processing of communications received by means of electronic
26 transmission from the subscriber or customer; and

27 (3) Solely for the purpose of providing storage or computer
28 processing services to the subscriber or customer if the provider of the
29 service is not authorized to obtain access to the contents of those
30 communications for purposes of providing any service other than storage or
31 computer processing.

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

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

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

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

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

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

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

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

13
14 SECTION 12. Cause of action.

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

20 (1) Injunctive relief;

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

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

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

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

31
32 SECTION 13. Exclusivity of remedies.

33 The remedies and sanctions described in this act are the exclusive
34 judicial remedies and sanctions for a violation of this act other than a
35 violation that infringes on a right of a party guaranteed by a state or
36 federal constitution.

1
2 SECTION 14. Mobile tracking devices.

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

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

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

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

13 (A) State the name, department, agency, and address of the
14 applicant;

15 (B) Identify the vehicle, container, or item to which, in
16 which, or on which the mobile tracking device is to be attached or placed,
17 and state the name of the owner or possessor of that vehicle, container, or
18 item;

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

21 (D) State the facts and circumstances that provide the
22 applicant with a reasonable suspicion that criminal activity has been, is, or
23 will be in progress, and that the use of a mobile tracking device is
24 reasonably likely to yield information relevant to the investigation of
25 criminal activity.

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

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

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

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

