

CHAPTER 214

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 13-1308

BY REPRESENTATIVE(S) Kagan and Gardner, Buckner, Court, Fields, Foote, Hamner, Labuda, Lee, McLachlan, Melton, Mitsch Bush, Moreno, Pettersen, Rosenthal, Schafer, Williams, Young;
also SENATOR(S) Ulibarri and King, Newell, Morse.

AN ACT

CONCERNING ALLOWING A LAW ENFORCEMENT AGENCY TO ACQUIRE CALL LOCATION INFORMATION FROM A TELECOMMUNICATIONS DEVICE WITHOUT A COURT ORDER IN AN EMERGENCY SITUATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-9-312, **add** (1.5) as follows:

18-9-312. Hostage, endangered person, or armed person in geographical area - telephone, electronic, cellular, or digital communications.

(1.5) (a) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 18-9-302 TO 18-9-311, ANY SUPERVISING REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY MAY ORDER A PREVIOUSLY DESIGNATED SECURITY EMPLOYEE OF A WIRELESS TELECOMMUNICATIONS PROVIDER TO PROVIDE TO THE LAW ENFORCEMENT AGENCY, WITHOUT REQUIRING THE AGENCY TO OBTAIN A COURT ORDER, LOCATION INFORMATION CONCERNING THE TELECOMMUNICATIONS DEVICE OF A NAMED PERSON IF THE SUPERVISING REPRESENTATIVE HAS PROBABLE CAUSE TO BELIEVE THAT:

(I) AN EMERGENCY SITUATION EXISTS THAT INVOLVES THE RISK OF DEATH OR SERIOUS BODILY INJURY TO THE NAMED PERSON OR TO ANOTHER PERSON WHO IS IN THE NAMED PERSON'S COMPANY; AND

(II) THE TIME REQUIRED TO OBTAIN A SEARCH WARRANT OR OTHER COURT ORDER AUTHORIZING THE ACQUISITION OF THE INFORMATION WOULD INCREASE SUCH RISK.

(b) A WIRELESS TELECOMMUNICATIONS PROVIDER MAY ESTABLISH PROTOCOLS BY WHICH THE PROVIDER DISCLOSES LOCATION INFORMATION, PROVIDED THAT SUCH

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PROTOCOLS SHALL INCLUDE KEEPING A RECORD OF:

(I) THE NAME OF THE SUPERVISING REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY THAT REQUESTED THE LOCATION INFORMATION; AND

(II) THE TIME AND DATE WHEN THE REQUEST WAS MADE.

(c) WITH REGARD TO COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (1.5), NO CAUSE OF ACTION MAY BE BROUGHT AGAINST ANY WIRELESS TELECOMMUNICATIONS PROVIDER, ITS OFFICERS, EMPLOYEES, AGENTS, OR OTHER SPECIFIED PERSONS FOR PROVIDING LOCATION INFORMATION IN RESPONSE TO A REQUEST FROM A LAW ENFORCEMENT AGENT WITH ACTUAL OR APPARENT AUTHORITY TO ACT AS A SUPERVISING REPRESENTATIVE UNDER THIS SUBSECTION (1.5).

(d) A LAW ENFORCEMENT AGENCY THAT ACQUIRES INFORMATION PURSUANT TO THIS SUBSECTION (1.5) SHALL NOT DIVULGE THE ACQUIRED INFORMATION TO ANY PERSON OTHER THAN TO ANOTHER LAW ENFORCEMENT AGENCY, OR AN EMPLOYEE THEREOF, UNLESS THE LAW ENFORCEMENT AGENCY HAS OBTAINED A COURT ORDER STATING THAT THE INFORMATION WAS LAWFULLY OBTAINED AND AUTHORIZING THE LAW ENFORCEMENT AGENCY TO RETAIN THE INFORMATION, AS DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (d) OF THIS SUBSECTION (1.5).

(e) (I) NOT MORE THAN FORTY-EIGHT HOURS AFTER ORDERING A PREVIOUSLY DESIGNATED SECURITY EMPLOYEE OF A WIRELESS TELECOMMUNICATIONS PROVIDER TO PROVIDE INFORMATION AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1.5), A LAW ENFORCEMENT AGENCY SHALL REQUEST A COURT ORDER STATING WHETHER:

(A) AT THE TIME THAT THE SUPERVISING REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY ORDERED THE PREVIOUSLY DESIGNATED SECURITY EMPLOYEE OF A WIRELESS TELECOMMUNICATIONS PROVIDER TO PROVIDE THE INFORMATION, THE SUPERVISING REPRESENTATIVE HAD PROBABLE CAUSE TO BELIEVE THAT THE CONDITIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1.5) EXISTED; AND

(B) THE LAW ENFORCEMENT AGENCY MAY RETAIN THE INFORMATION FOR A BONA FIDE INVESTIGATIVE PURPOSE.

(II) UNLESS A COURT ORDERS THAT THE LAW ENFORCEMENT AGENCY MAY RETAIN THE INFORMATION FOR A BONA FIDE INVESTIGATIVE PURPOSE, AS DESCRIBED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e), THE LAW ENFORCEMENT AGENCY SHALL DESTROY THE INFORMATION AND NOT RETAIN ANY COPY OF THE INFORMATION FOR ANY PURPOSE.

(III) IF THE COURT ISSUES AN ORDER STATING THAT THE SUPERVISING REPRESENTATIVE OF THE LAW ENFORCEMENT AGENCY DID NOT HAVE PROBABLE CAUSE TO BELIEVE THAT THE CONDITIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1.5) EXISTED AND THAT THE INFORMATION WAS NOT LAWFULLY OBTAINED, THEN NEITHER THE INFORMATION NOR ANY OTHER EVIDENCE THAT IS OBTAINED AS A RESULT OF THE LAW ENFORCEMENT AGENCY'S ACQUISITION OF THE

INFORMATION MAY BE ADMITTED IN ANY SUBSEQUENT CRIMINAL PROCEEDING UNLESS THE INFORMATION OR OTHER EVIDENCE WAS ALSO ACQUIRED INDEPENDENTLY IN A LAWFUL MANNER.

(IV) ANY RULING BY A COURT THAT THE INFORMATION OBTAINED MAY BE RETAINED FOR A BONA FIDE INVESTIGATIVE PURPOSE SHALL NOT BE CONSIDERED A RULING ON THE ADMISSIBILITY OF THE EVIDENCE IN ANY CRIMINAL PROCEEDING UNDER THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE UNITED STATES OR COLORADO.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 13, 2013