

CHAPTER 395

CRIMINAL LAW AND PROCEDURE

SENATE BILL 14-193

BY SENATOR(S) Carroll and Lundberg, Aguilar, Baumgardner, Crowder, Guzman, Harvey, Heath, Herpin, Hill, Jahn, Jones, Kefalas, Kerr, King, Lambert, Nicholson, Rivera, Scheffel, Steadman, Tochtrop;
also REPRESENTATIVE(S) Singer, Exum, Fields, Garcia, Gardner, Holbert, Humphrey, Labuda, Lee, Melton, Schafer, Vigil, Williams, Wright, Young.

AN ACT**CONCERNING CONFORMING COLORADO LAW ON LOCATION INFORMATION WITH THE FOURTH AMENDMENT AS INTERPRETED BY THE UNITED STATES SUPREME COURT IN UNITED STATES V. JONES.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) The right to be protected from unreasonable searches and seizures has been guaranteed by the fourth amendment to the United States constitution for over 220 years;

(b) The right of people in Colorado to be protected from unreasonable searches and seizures has been guaranteed by section 7 of article II of the Colorado constitution since its adoption in 1876; and

(c) It is necessary to clarify that people in Colorado are protected from searches conducted by the government using electronic devices to track the location of the device unless the government first obtains a lawful search warrant or is acting in accordance with a constitutionally recognized exception to the search warrant requirement.

(2) It is the intent of the general assembly to implement and give full effect to the fourth amendment of the United States constitution and section 7 of article II of the Colorado constitution, as applied to the government's use of location information of an electronic device.

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

SECTION 2. In Colorado Revised Statutes, **add** 16-3-303.5 as follows:

16-3-303.5. Location information - search warrant required - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE THAT PROVIDES THE ABILITY TO SEND OR RECEIVE WIRE OR ELECTRONIC COMMUNICATIONS TO USERS OF THE SERVICE.

(b) "ELECTRONIC DEVICE" MEANS A DEVICE THAT ENABLES ACCESS TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, REMOTE COMPUTING SERVICE, OR LOCATION INFORMATION SERVICE.

(c) "GOVERNMENT ENTITY" MEANS A STATE OR LOCAL AGENCY, INCLUDING BUT NOT LIMITED TO A LAW ENFORCEMENT ENTITY OR ANY OTHER INVESTIGATIVE ENTITY, AGENCY, DEPARTMENT, DIVISION, BUREAU, BOARD, OR COMMISSION, OR AN INDIVIDUAL ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF A STATE OR LOCAL AGENCY.

(d) "LOCATION INFORMATION" MEANS INFORMATION CONCERNING THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR IN PART, IS GENERATED OR DERIVED FROM OR OBTAINED BY THE OPERATION OF AN ELECTRONIC DEVICE ON A CELLULAR TELEPHONE NETWORK OR A LOCATION INFORMATION SERVICE RATHER THAN OBTAINED FROM A SERVICE PROVIDER.

(e) "LOCATION INFORMATION SERVICE" MEANS THE PROVISION OF A GLOBAL POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR DIRECTIONAL INFORMATION SERVICE.

(f) "REMOTE COMPUTING SERVICE" MEANS THE PROVISION OF COMPUTER STORAGE OR PROCESSING SERVICES BY MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3) OR (4) OF THIS SECTION, A GOVERNMENT ENTITY SHALL NOT OBTAIN THE LOCATION INFORMATION OF AN ELECTRONIC DEVICE WITHOUT A SEARCH WARRANT ISSUED BY A COURT PURSUANT TO THE PROVISIONS OF THIS PART 3, A SUBPOENA, OR A COURT ORDER.

(3) A GOVERNMENT ENTITY MAY OBTAIN LOCATION INFORMATION OF AN ELECTRONIC DEVICE WITHOUT A WARRANT, SUBPOENA, OR COURT ORDER UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

- (a) THE DEVICE IS REPORTED STOLEN BY THE OWNER;
- (b) IN ORDER TO RESPOND TO THE USER'S CALL FOR EMERGENCY SERVICES;
- (c) WITH THE INFORMED, AFFIRMATIVE CONSENT OF:
 - (l) THE OWNER OR USER OF THE ELECTRONIC DEVICE;

(II) THE NEXT OF KIN OF THE OWNER OR USER OF THE ELECTRONIC DEVICE IF THE OWNER OR USER IS BELIEVED TO BE DECEASED OR IS REPORTED MISSING AND UNABLE TO BE CONTACTED; OR

(III) THE CHILD'S PARENT OR LEGAL GUARDIAN IF THE OWNER OR USER IS UNDER EIGHTEEN YEARS OF AGE;

(d) THERE EXIST EXIGENT CIRCUMSTANCES SUCH THAT THE SEARCH WOULD BE RECOGNIZED AS CONSTITUTIONALLY PERMISSIBLE WITHOUT THE WARRANT;

(e) A REPRESENTATIVE OF THE GOVERNMENT ENTITY HAS A GOOD FAITH BELIEF THAT HIS OR HER ACTIONS WERE LEGAL AND, UNDER THE INFORMATION AVAILABLE AT THE TIME, A REASONABLE PERSON WOULD BELIEVE THAT HIS OR HER ACTIONS WERE LEGAL;

(f) THE OWNER OR USER OF THE ELECTRONIC DEVICE HAS VOLUNTARILY OR PUBLICLY DISCLOSED THE LOCATION INFORMATION;

(g) THE ELECTRONIC DEVICE HAS BEEN ABANDONED BY THE OWNER OR USER; OR

(h) IN ACCORDANCE WITH ANY OTHER JUDICIALLY RECOGNIZED EXCEPTION TO THE SEARCH WARRANT REQUIREMENT.

(4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PROBATION DEPARTMENTS WITHIN THE JUDICIAL DEPARTMENT OR TO THE DIVISION OF ADULT PAROLE WITHIN THE DEPARTMENT OF CORRECTIONS.

(5) ANY EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS NOT ADMISSIBLE IN A CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING AND SHALL NOT BE USED IN AN AFFIDAVIT OF PROBABLE CAUSE IN AN EFFORT TO OBTAIN A SEARCH WARRANT, SUBPOENA, OR COURT ORDER. IN ORDER TO SEEK SUPPRESSION OF EVIDENCE PURSUANT TO THIS SUBSECTION (5) IN ANY PROCEEDING, THE PERSON SEEKING THE SUPPRESSION OF EVIDENCE MUST HAVE AN OWNERSHIP, LEASEHOLD, RENTAL, OR LEGITIMATE POSSESSORY INTEREST IN OR A REASONABLE EXPECTATION OF PRIVACY IN THE ELECTRONIC DEVICE AT ISSUE.

(6)(a) A COURT SHALL NOT ADMIT LOCATION INFORMATION OBTAINED PURSUANT TO THIS SECTION OR EVIDENCE DERIVED FROM THAT INFORMATION AT A TRIAL, HEARING, OR OTHER PROCEEDING UNLESS THE PARTY SEEKING TO INTRODUCE THE EVIDENCE PROVIDES A COPY OF THE WARRANT, SUBPOENA, OR COURT ORDER AND ANY ACCOMPANYING AFFIDAVIT TO EACH PARTY PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY SUCCESSOR RULE.

(b) A COURT MAY WAIVE THE REQUIREMENT UNDER PARAGRAPH (a) OF THIS SUBSECTION (6) IF THE COURT FINDS THAT IT WAS NOT POSSIBLE TO PROVIDE A PARTY WITH THE WARRANT, SUBPOENA, OR COURT ORDER AND ANY ACCOMPANYING APPLICATION WITHIN THE TIME REQUIRED BY RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY SUCCESSOR RULE, AND THAT THE PARTY WILL NOT BE PREJUDICED BY THE DELAY IN RECEIVING THE INFORMATION.

(7) AN ELECTRONIC COMMUNICATION SERVICE PROVIDER, ITS OFFICERS,

EMPLOYEES, OR AGENTS ARE NOT LIABLE FOR PROVIDING INFORMATION, FACILITIES, OR ASSISTANCE IN COMPLIANCE WITH THE TERMS OF A SEARCH WARRANT, SUBPOENA, OR COURT ORDER ISSUED PURSUANT TO THIS SECTION OR WHEN PROVIDED WITHOUT A WARRANT, SUBPOENA, OR COURT ORDER ISSUED PURSUANT TO THIS SECTION OR IF OTHERWISE PROVIDED FOR BY LAW.

(8) THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT AGENCY OBTAINING BASIC SUBSCRIBER INFORMATION FROM AN ELECTRONIC COMMUNICATIONS SERVICE PROVIDER PURSUANT TO A VALID SUBPOENA, COURT ORDER, OR SEARCH WARRANT.

SECTION 3. 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: June 6, 2014