

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 804

Short Title: Kelsey Smith Act. (Public)

Sponsors: Representatives Hurley, Glazier, Schaffer, and Lambeth (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary IV.

April 15, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR WARRANTLESS ACCESS BY LAW ENFORCEMENT TO  
3 TELECOMMUNICATIONS DEVICE LOCATION INFORMATION UNDER CERTAIN  
4 CIRCUMSTANCES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** This act shall be known as the Kelsey Smith Act.

7 **SECTION 2.** Chapter 15A of the General Statutes is amended by adding a new  
8 Article to read:

9 "Article 16C.

10 "Provision of Wireless Call Location Information to Law Enforcement.

11 **§ 15A-300.10. Provision of call location information by wireless service provider to law  
12 enforcement.**

13 (a) The following definitions apply in this section:

14 (1) Call location data. – Global positioning system, triangulation, and per-call  
15 measurement data indicating the location of a telecommunications device.  
16 Call location data does not include the contents of any communication made  
17 using a telecommunications device.

18 (2) Imminent. – With respect to a risk of death or serious physical harm, means  
19 that the length of time necessary to comply with otherwise applicable  
20 provisions of law pertaining to obtaining authorization for electronic  
21 surveillance would, in the professional judgment of the law enforcement  
22 agency based upon generally accepted surveillance and investigation  
23 protocols, significantly reduce the chance of preventing death or serious  
24 physical harm.

25 (3) Public safety answering point. – Defined in G.S. 62A-40.

26 (4) Wireless service provider. – A commercial mobile radio service provider, as  
27 defined in G.S. 62A-40, including providers of subscription-based,  
28 in-vehicle security service.

29 (b) Upon request of a law enforcement agency or a public safety answering point on  
30 behalf of a law enforcement agency, a wireless service provider shall provide call location  
31 information concerning the telecommunications device of a user to the requesting law  
32 enforcement agency or public safety answering point. A law enforcement agency or public  
33 safety answering point may request information under this section only in an emergency  
34 situation that involves an imminent risk of death or serious physical harm.



1 (c) A wireless service provider may establish procedures for disclosure of call location  
2 information.

3 (d) No cause of action shall lie in any court against a wireless service provider, its  
4 officers, directors, employees, agents or other specified persons for providing mobile  
5 communications tracking information to a law enforcement agency or public safety answering  
6 point as required by this act.

7 (e) The State Bureau of Investigation shall maintain a database containing emergency  
8 contact information for all wireless telecommunications carriers registered to do business in the  
9 State, and shall make the information readily available upon request to all public safety  
10 answering points located in the State."

11 **SECTION 3.(a)** Article 12 of Chapter 15A of the General Statutes is amended by  
12 adding a new section to read:

13 **"§ 15A-265. Warrantless use of pen register or trap and trace device.**

14 "(a) Notwithstanding any other provision of this Chapter, a law enforcement officer may  
15 have installed and use a pen register or trap and trace device if the law enforcement officer  
16 makes the following determinations:

17 (1) An emergency situation exists that involves immediate danger of death or  
18 serious bodily injury to any person that requires the installation and use of a  
19 pen register or a trap and trace device before an order authorizing such  
20 installation and use can, with due diligence, be obtained; and

21 (2) There are grounds upon which an order could be entered under this Chapter  
22 to authorize such installation and use.

23 (b) The law enforcement officer must seek an order approving the installation or use in  
24 accordance with G.S. 15A-263 within 48 hours after the installation has occurred, or begins to  
25 occur, under subsection (a) of this section.

26 (c) In the absence of an authorizing order under G.S. 15A-263, the use a pen register or  
27 trap and trace device shall immediately terminate when the information sought is obtained,  
28 when the application for the order is denied or when 48 hours have lapsed since the installation  
29 of the pen register or trap and trace device, whichever first occurs.

30 (d) The knowing installation or use by any law enforcement officer of a pen register or  
31 trap and trace device pursuant to subsection (a) of this section without application for the  
32 authorizing order within 48 hours of the installation shall constitute a violation of this Chapter.

33 (e) A provider of a wire or electronic service, landlord, custodian, or other person who  
34 furnished facilities or technical assistance pursuant to this section shall be reasonably  
35 compensated for such reasonable expenses incurred in providing such facilities and assistance."

36 **SECTION 3.(b)** G.S. 15A-261(b) is amended by adding a new subdivision to read:

37 "(b) Exception. – The prohibition of subsection (a) of this section does not apply to the  
38 use of a pen register or a trap and trace device by a provider of wire or electronic  
39 communication service:

40 (1) Relating to the operation, maintenance, or testing of a wire or electronic  
41 communication service or to the protection of the rights or property of the  
42 provider, or to the protection of users of that service from abuse of service or  
43 unlawful use of ~~service~~; ~~or~~service.

44 (2) To record the fact that a wire or electronic communication was initiated or  
45 completed in order to protect the provider, another provider furnishing  
46 service toward the completion of the wire communication, or a user of that  
47 service, from fraudulent, unlawful or abusive use of ~~service~~; ~~or~~service.

48 (3) With the consent of the user of that service.

49 (4) Under emergency circumstances as set forth in G.S. 15A-265."

50 **SECTION 4.** This act is effective when it becomes law.