

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 608

Short Title: SBI Emergency Pen Register/Trap and Trace. (Public)

Sponsors: Representatives McNeill and Hurley (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 8, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE SBI TO CONDUCT WARRANTLESS USE OF A PEN
3 REGISTER OR TRAP AND TRACE DEVICE IN EMERGENCY SITUATIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 15A-260 reads as rewritten:

6 "§ 15A-260. Definitions.

7 ~~As used in this Article:~~

8 (1) ~~"Electronic communication," "electronic communication service," and "wire~~
9 ~~communication" shall have the meaning as set forth in Section 2510 of Title~~
10 ~~18 of the United States Code;~~

11 (2) ~~"Pen register" means a device which records or decodes electronic or other~~
12 ~~impulses which identify numbers dialed or otherwise transmitted on the~~
13 ~~telephone line to which such device is attached, but the term does not include~~
14 ~~any device used by a provider or customer of a wire or electronic service for~~
15 ~~billing, or recording as an incident to billing, for communication services~~
16 ~~provided by the provider or any device used by a provider or customer of a~~
17 ~~wire communication service for cost accounting or other like purposes in the~~
18 ~~ordinary course of its business, nor shall the term include any device which~~
19 ~~allows the listening or recording of communications transmitted on the~~
20 ~~telephone line to which the device is attached.~~

21 (3) ~~"Trap and trace device" means a device which captures the incoming~~
22 ~~electronic or other impulses which identify the originating number of an~~
23 ~~instrument or device from which a wire or electronic communication was~~
24 ~~transmitted.~~

25 The following definitions apply in this Article:

26 (1) Electronic communication. – As defined in Section 2510 of Title 18 of the
27 United States Code.

28 (2) Electronic communication service. – As defined in Section 2510 of Title 18
29 of the United States Code.

30 (3) Law enforcement officer. – A sheriff, deputy sheriff, police officer, State
31 Highway Patrol Trooper, or State Bureau of Investigation Agent.

32 (4) Location data. – Global positioning system (GPS) coordinates, triangulation
33 and timing advance data, distance to tower measurements, location based
34 services (LBS) information, and per-call measurement data collected or
35 retained by a telecommunications provider which can be used to locate a



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1 telecommunications device either historically or prospectively. Location data
 2 does not include the contents of any communication made using a
 3 telecommunications device.

4 (5) Pen register. – A device which records or decodes electronic or other impulses
 5 which identify numbers dialed or otherwise transmitted on a
 6 telecommunications device and location data of a telecommunications device.
 7 The term does not include any device used by a provider or customer of a wire
 8 or electronic service for billing, or recording as an incident for billing, for
 9 communication services provided by the provider or any device used by a
 10 provider or customer of a wire communication service for cost accounting or
 11 other like purposes in the ordinary course of its business, nor shall the term
 12 include any device which allows the listening or recording of communications
 13 transmitted on the telephone line to which the device is attached.

14 (6) Trap and trace device. – A device which captures the incoming electronic or
 15 other impulses which identify the originating number of an instrument or
 16 device from which a wire or electronic communication was transmitted.

17 (7) Wire communication. – As defined in Section 2510 of Title 18 of the United
 18 States Code."

19 **SECTION 2.** G.S. 15A-261 reads as rewritten:

20 **"§ 15A-261. Prohibition and exceptions.**

21 (a) In General. – Except as provided in subsection (b) of this section, no person may
 22 install or use a pen register or a trap and trace device without first obtaining a court order as
 23 provided in this Article.

24 (b) Exception. – The prohibition of subsection (a) of this section does not apply to the
 25 use of a pen register or a trap and trace device by a provider of wire or electronic communication
 26 ~~service;~~service in any of the following circumstances:

27 (1) Relating to the operation, maintenance, or testing of a wire or electronic
 28 communication service or to the protection of the rights or property of the
 29 provider, or to the protection of users of that service from abuse of service or
 30 unlawful use of ~~service;~~ or service.

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

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

36 (4) Under emergency circumstances, as provided in G.S. 15A-265.

37 (c) Penalty. – A person who willfully and knowingly violates subsection (a) of this
 38 section is guilty of a Class 1 misdemeanor."

39 **SECTION 3.** G.S. 15A-263 reads as rewritten:

40 **"§ 15A-263. Issuance of order for pen register or trap and trace device.**

41 (a) In General. – Following application made under G.S. 15A-262, a superior court judge
 42 may enter an ex parte order authorizing the installation and use of a pen register or a trap and
 43 trace device within the State if the judge ~~finds;~~finds that either of the following requirements has
 44 been met:

45 (1) The judge finds all of the following:

46 a. That there is ~~reasonable suspicion~~ probable cause to believe that a
 47 felony offense, or a Class A1 or Class 1 misdemeanor offense has been
 48 ~~committed;~~ committed.

49 (2)b. That there ~~are reasonable grounds~~ is probable cause to suspect that the
 50 person named or described in the affidavit committed the offense, if
 51 that person is known and can be named or ~~described;~~ and described.

- 1 ~~(3)~~c. That the results of procedures involving pen registers or trap and trace
2 devices will be of material aid in determining whether the person
3 named in the affidavit committed the offense.
- 4 (2) The judge finds all of the following:
- 5 a. That there exists an emergency situation which involves the
6 disappearance of an individual, a runaway child, or a missing person
7 for which no criminal charge provided in G.S. 15A-263(a)(1)a. may
8 be readily apparent, that involves an imminent risk of death or serious
9 physical harm.
- 10 b. That the results of procedures involving pen registers or trap and trace
11 devices will be of material aid in locating an individual at imminent
12 risk of death or serious physical harm.
- 13 (b) Contents of Order. – An order issued under this section:
- 14 (1) Shall specify:
- 15 a. The identity, if known, of the person to whom is leased or in whose
16 name is listed the telephone line to which the pen register or trap and
17 trace device is to be attached;
- 18 b. The identity, if known, of ~~the~~ any person who is the subject of the
19 criminal investigation;
- 20 c. The number and, if known, physical location of the telephone line to
21 which the pen register or trap and trace device is to be attached and, in
22 the case of a trap and trace device, the geographic limits of the trap
23 and trace order; and
- 24 d. The criminal offense or emergency situation to which the information
25 likely to be obtained by the pen register or trap and trace device relates;
26 and
- 27 (2) Shall direct, upon request of the applicant, the furnishing of information,
28 facilities, or technical assistance necessary to accomplish the installation of
29 the pen register or trap and trace device under G.S. 15A-264.
- 30 (c) Time Period and Extension.
- 31 (1) An order issued under this section shall authorize the installation and use of a
32 pen register or a trap and trace device for a period not to exceed 60 days.
- 33 (2) An extension of an order issued under this section may be granted, but only
34 upon an application for an order under G.S. 15A-262 and upon the judicial
35 finding required by subsection (a) of this section. The period of extension shall
36 not exceed 60 days.
- 37 (d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. – An order
38 authorizing or approving the installation and use of a pen register or a trap and trace device shall
39 direct that:
- 40 (1) The order be sealed until otherwise ordered by the judge; and
- 41 (2) The person owning or leasing the line to which the pen register or a trap and
42 trace device is attached, or who has been ordered by the judge to provide
43 assistance to the applicant, not disclose the existence of the pen register or trap
44 and trace device or the existence of the investigation to the listed subscriber,
45 or to any person, unless otherwise ordered by the judge.
- 46 The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article."
- 47 **SECTION 4.** Article 12 of Chapter 15A of the General Statutes is amended by
48 adding a new section to read:
- 49 "§ 15A-265. Emergency warrantless use of pen register or trap and trace device.

1 (a) Notwithstanding any other provision of this Article, an agent of the State Bureau of
2 Investigation may have installed and use a pen register or trap and trace device if the agent makes
3 either of the following determinations:

4 (1) An emergency situation exists that involves immediate danger of death or
5 serious bodily injury to any person that requires the installation and use of a
6 pen register or a trap and trace device before an order authorizing the
7 installation and use can, with due diligence, be obtained, and there are grounds
8 upon which an order could be entered pursuant to G.S. 15A-263(a)(1) to
9 authorize the installation and use.

10 (2) An emergency situation exists which involves the disappearance of an
11 individual, a runaway child, or a missing person for which no criminal charge
12 provided in G.S. 15A-263(a)(1)a. may be readily apparent, but where the
13 individual may be in immediate danger of death or serious bodily injury based
14 on, but not limited to, the age, physical condition, or circumstances
15 surrounding the disappearance of the individual.

16 (b) When an agent installs a pen register or trap and trace device pursuant to subsection
17 (a) of this section, the agent must seek an order approving the installation or use in accordance
18 with G.S. 15A-263 within 48 hours after the installation begins.

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

23 (d) Any agent who knowingly violates subsection (b) or (c) of this section is guilty of a
24 Class 1 misdemeanor.

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

28 **SECTION 5.** This act becomes effective December 1, 2019, and applies to
29 installations occurring on or after that date, and any criminal penalties created by this act apply
30 to offenses committed on or after that date.