

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 719
Committee Substitute Favorable 4/26/23

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

(Public)

Sponsors:

Referred to:

April 19, 2023

A BILL TO BE ENTITLED
AN ACT TO ALLOW THE SBI TO USE A PEN REGISTER OR TRAP AND TRACE DEVICE
IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

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

"§ 15A-260. Definitions.

As used in this Article:

- (1) ~~"Electronic communication," "electronic communication service," and "wire communication" shall have the meaning as set forth in Section 2510 of Title 18 of the United States Code;~~
- (2) ~~"Pen register" means a device which records or decodes electronic or other impulses which identify numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but the term does not include any device used by a provider or customer of a wire or electronic service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business, nor shall the term include any device which allows the listening or recording of communications transmitted on the telephone line to which the device is attached.~~
- (3) ~~"Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.~~

The following definitions apply in this Article:

- (1) Electronic communication. – As defined in Section 2510 of Title 18 of the United States Code.
- (2) Electronic communication service. – As defined in Section 2510 of Title 18 of the United States Code.
- (3) Law enforcement officer. – A sheriff, deputy sheriff, police officer, State Highway Patrol trooper, State Bureau of Investigation agent, or an Alcohol Law Enforcement agent.
- (4) Location data. – Global positioning system (GPS) coordinates, triangulation and timing advance data, distance to tower measurements, location-based services (LBS) information, and per-call measurement data collected or retained by a telecommunications provider which can be used to locate a



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

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

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

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

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

"§ 15A-261. Prohibition and exceptions.

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

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

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

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

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

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

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

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

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

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

(1) The judge finds all of the following:

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

~~(2)~~b. That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if 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~~offense and the applicant
4 is not requesting location data.
- 5 (2) The judge finds all of the following:
6 a. That there is probable cause to believe that a felony offense or a Class
7 A1 or Class 1 misdemeanor offense has been committed.
8 b. That there is probable cause to suspect that the person named or
9 described in the affidavit committed the offense, if that person is
10 known and can be named or described.
11 c. That the results of procedures involving pen registers or trap and trace
12 devices will be of material aid in determining whether the person
13 named in the affidavit committed the offense and the applicant is also
14 requesting location data.
- 15 (3) The judge finds all of the following:
16 a. That there exists an emergency situation which involves the
17 disappearance of an individual, a runaway child, or a missing person
18 for which no criminal charge provided in this subsection may be
19 readily apparent, that involves an imminent risk of death or serious
20 physical harm.
21 b. That the information gained from the use of pen registers or trap and
22 trace devices will be of material aid in locating an individual described
23 in sub-subdivision a. of this subdivision who is at risk of death or
24 serious physical harm.
- 25 (b) Contents of Order. – An order issued under this ~~section~~section shall do all of the
26 following:
- 27 (1) ~~Shall specify:~~Specify all of the following:
28 a. The identity, if known, of the person to whom is leased or in whose
29 name is listed the telephone line to which the pen register or trap and
30 trace device is to be ~~attached~~attached.
31 b. The identity, if known, of ~~the any~~ person who is the subject of the
32 criminal ~~investigation~~investigation.
33 c. The number and, if known, physical location of the telephone line to
34 which the pen register or trap and trace device is to be attached and, in
35 the case of a trap and trace device, the geographic limits of the trap
36 and trace ~~order~~and order.
37 d. The criminal offense or emergency situation to which the information
38 likely to be obtained by the pen register or trap and trace device ~~relates;~~
39 and relates.
- 40 (2) ~~Shall direct,~~Direct, upon request of the applicant, the furnishing of
41 information, facilities, or technical assistance necessary to accomplish the
42 installation of the pen register or trap and trace device under G.S. 15A-264.
- 43 (c) Time Period and Extension.
44 (1) An order issued under this section shall authorize the installation and use of a
45 pen register or a trap and trace device for a period not to exceed 60 days.
46 (2) An extension of an order issued under this section may be granted, but only
47 upon an application for an order under G.S. 15A-262 and upon the judicial
48 finding required by subsection (a) of this section. The period of extension shall
49 not exceed 60 days.

(d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. – An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct ~~that~~ all of the following:

(1) ~~The~~ That the order be sealed until otherwise ordered by the judge, ~~and judge.~~

(2) ~~The~~ That the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the judge to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any person, unless otherwise ordered by the judge.

The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article."

SECTION 4. G.S. 15A-264 reads as rewritten:

"§ 15A-264. Assistance in installation and use of a pen register or a trap and trace device.

...

(d) No Cause of Action Against a Provider Giving Information or Assistance Under this Article. – No cause of action shall be allowed in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this ~~Article~~ Article or a request made pursuant to G.S. 15A-265.

(e) Defense. – A good faith reliance on a court ~~order or order,~~ a statutory ~~authorization~~ authorization, or a request made pursuant to G.S. 15A-265 is a complete defense against any civil or criminal action brought under this Article or any other law."

SECTION 5. Article 12 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-265. Emergency warrantless use of pen register or trap and trace device.

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

(1) An emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register or a trap and trace device before an order authorizing the installation and use can, with due diligence, be obtained, and there are grounds upon which an order could be entered pursuant to G.S. 15A-263(a)(1) or (a)(2) to authorize the installation and use.

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

(b) When an agent installs a pen register or trap and trace device pursuant to subsection (a) of this section, the agent must seek an order approving the installation or use in accordance with G.S. 15A-263 within 48 hours after the installation begins regardless of whether the use of the pen register or trap and trace device is terminated prior to seeking the order. If an order approving the installation or use of a pen register or trap and trace device is not issued pursuant to G.S. 15A-263, any information obtained is not admissible as evidence in a criminal prosecution unless the information is otherwise admissible under another law or exception.

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

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

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

6 (f) Notwithstanding G.S. 121-5, any information gained from the use of pen registers or
7 trap and trace devices pursuant to this section that is not required to be retained for discovery
8 purposes in a criminal prosecution shall be destroyed as soon as practicable upon the resolution
9 of the emergency situation."

10 **SECTION 6.** This act becomes effective December 1, 2023, and applies to
11 installations occurring on or after that date, and any criminal penalties created by this act apply
12 to offenses committed on or after that date.