



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2134

by Rep. Ann M. Williams

SYNOPSIS AS INTRODUCED:

725 ILCS 168/5
725 ILCS 168/10
725 ILCS 168/15
725 ILCS 168/20
725 ILCS 168/25
725 ILCS 168/30

Amends the Freedom From Location Surveillance Act. Provides that "electronic device" means any device that enables access to, or use of an electronic communication service that provides the ability to send or receive wire or electronic communications, including wireless communications connecting the device to a telephone network. Modifies the definition of "location information" to include information concerning the location of an electronic device that, in whole or in part, is generated by or derived from the possession of the device (rather than only operation of the device). Provides that a law enforcement agency shall not obtain location information (rather than current or future location information) pertaining to a person or his or her effects without first obtaining a court order under the Code of Criminal Procedure of 1963 based on probable cause. Provides that the Act does not apply to a law enforcement agency obtaining basic subscriber information from a service provider under a valid court order or search warrant (removes subpoena). Makes other changes. Effective immediately.

LRB101 09879 SLF 54981 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom From Location Surveillance Act is
5 amended by changing Sections 5, 10, 15, 20, 25, and 30 as
6 follows:

7 (725 ILCS 168/5)

8 Sec. 5. Definitions. For the purpose of this Act:

9 "Basic subscriber information" means name, address, local
10 and long distance telephone connection records or records of
11 session time and durations; length of services, including start
12 dates, and types of services utilized; telephone or instrument
13 number or other subscriber number or identity, including any
14 temporarily assigned network address; and the means and source
15 of payment for the service, including the credit card or bank
16 account number.

17 "Electronic device" means any device that enables access
18 to, or use of:

19 (1) an electronic communication service that provides
20 the ability to send or receive wire or electronic
21 communications, including wireless communications
22 connecting the device to a telephone network;

23 (2) a remote computing service that provides computer

1 storage or processing services by means of an electronic
2 communications system; or

3 (3) a location information service such as a global
4 positioning service or other mapping, locational, or
5 directional information service.

6 "Electronic device" does not mean devices used by a
7 governmental agency or by a company operating under a contract
8 with a governmental agency for toll collection, traffic
9 enforcement, or license plate reading.

10 "Law enforcement agency" means any agency of this State or
11 a political subdivision of this State which is vested by law
12 with the duty to maintain public order or enforce criminal
13 laws.

14 "Location information" means any information concerning
15 the location of an electronic device that, in whole or in part,
16 is generated by or derived from the operation or possession of
17 that device.

18 "Social networking website" has the same meaning ascribed
19 to the term in subsection (b) of Section 10 of the Right to
20 Privacy in the Workplace Act.

21 (Source: P.A. 98-1104, eff. 8-26-14; 99-610, eff. 1-1-17.)

22 (725 ILCS 168/10)

23 Sec. 10. Court authorization. Except as provided in
24 Section 15, a law enforcement agency shall not obtain ~~current~~
25 ~~or future~~ location information pertaining to a person or his or

1 her effects without first obtaining a court order under Section
2 108-4 of the Code of Criminal Procedure of 1963 based on
3 probable cause to believe that the person whose location
4 information is sought has committed, is committing, or is about
5 to commit a crime or the effect is evidence of a crime, or if
6 the location information is authorized under an arrest warrant
7 issued under Section 107-9 of the Code of Criminal Procedure of
8 1963 to aid in the apprehension or the arrest of the person
9 named in the arrest warrant. An order issued under a finding of
10 probable cause under this Section must be limited to a period
11 of 60 days, renewable by the judge upon a showing of good cause
12 for subsequent periods of 60 days. A court may grant a law
13 enforcement entity's request to obtain ~~current or future~~
14 location information under this Section through testimony made
15 by electronic means using a simultaneous video and audio
16 transmission between the requestor and a judge, based on sworn
17 testimony communicated in the transmission. The entity making
18 the request, and the court authorizing the request shall follow
19 the procedure under subsection (c) of Section 108-4 of the Code
20 of Criminal Procedure of 1963 which authorizes the electronic
21 issuance of search warrants.

22 (Source: P.A. 98-1104, eff. 8-26-14; 99-798, eff. 1-1-17.)

23 (725 ILCS 168/15)

24 Sec. 15. Exceptions. This Act does not prohibit a law
25 enforcement agency from seeking to obtain ~~current or future~~

1 location information:

2 (1) to respond to a call for emergency services
3 concerning the user or possessor of an electronic device;

4 (2) with the lawful consent of the owner of the
5 electronic device or person in actual or constructive
6 possession of the item being tracked by the electronic
7 device;

8 (3) to lawfully obtain location information broadly
9 available to the general public without a court order when
10 the location information is posted on a social networking
11 website, or is metadata attached to images and video, or to
12 determine the location of an Internet Protocol (IP) address
13 through a publicly available service;

14 (4) to obtain location information generated by an
15 electronic device used as a condition of release from a
16 penal institution, as a condition of pre-trial release,
17 probation, conditional discharge, parole, mandatory
18 supervised release, or other sentencing order, or to
19 monitor an individual released under the Sexually Violent
20 Persons Commitment Act or the Sexually Dangerous Persons
21 Act;

22 (5) to aid in the location of a missing person;

23 (6) in emergencies as follows:

24 (A) Notwithstanding any other provisions of this
25 Act, any investigative or law enforcement officer may
26 seek to obtain location information in an emergency

1 situation as defined in this paragraph (6). This
2 paragraph (6) applies only when there was no previous
3 notice of the emergency to the investigative or law
4 enforcement officer sufficient to obtain prior
5 judicial approval, and the officer reasonably believes
6 that an order permitting the obtaining of location
7 information would issue were there prior judicial
8 review. An emergency situation exists when:

9 (i) the use of the electronic device is
10 necessary for the protection of the investigative
11 or law enforcement officer or a person acting at
12 the direction of law enforcement; or

13 (ii) the situation involves:

14 (aa) a clear and present danger of
15 imminent death or great bodily harm to persons
16 resulting from:

17 (I) the use of force or the threat of
18 the imminent use of force,

19 (II) a kidnapping or the holding of a
20 hostage by force or the threat of the
21 imminent use of force, or

22 (III) the occupation by force or the
23 threat of the imminent use of force of any
24 premises, place, vehicle, vessel, or
25 aircraft;

26 (bb) an abduction investigation;

1 (cc) conspiratorial activities
2 characteristic of organized crime;

3 (dd) an immediate threat to national
4 security interest;

5 (ee) an ongoing attack on a computer
6 comprising a felony; or

7 (ff) escape under Section 31-6 of the
8 Criminal Code of 2012.

9 (B) In all emergency cases, an application for an
10 order approving the previous or continuing obtaining
11 of location information must be made within 72 hours of
12 its commencement. In the absence of the order, or upon
13 its denial, any continuing obtaining of location
14 information gathering shall immediately terminate. In
15 order to approve obtaining location information, the
16 judge must make a determination (i) that he or she
17 would have granted an order had the information been
18 before the court prior to the obtaining of the location
19 information and (ii) there was an emergency situation
20 as defined in this paragraph (6).

21 (C) In the event that an application for approval
22 under this paragraph (6) is denied, the location
23 information obtained under this exception shall be
24 inadmissible in accordance with Section 20 of this Act;
25 or

26 (7) to obtain location information relating to an

1 electronic device used to track a vehicle or an effect
2 which is owned or leased by that law enforcement agency.

3 (Source: P.A. 98-1104, eff. 8-26-14; 99-798, eff. 1-1-17.)

4 (725 ILCS 168/20)

5 Sec. 20. Admissibility. If the court finds by a
6 preponderance of the evidence that a law enforcement agency
7 obtained ~~current or future~~ location information pertaining to a
8 person or his or her effects in violation of Section 10 or 15
9 of this Act, then the information shall be presumed to be
10 inadmissible in any judicial or administrative proceeding. The
11 State may overcome this presumption by proving the
12 applicability of a judicially recognized exception to the
13 exclusionary rule of the Fourth Amendment to the United States
14 Constitution or Article I, Section 6 of the Illinois
15 Constitution, or by a preponderance of the evidence that the
16 law enforcement officer was acting in good faith and reasonably
17 believed that one or more of the exceptions identified in
18 Section 15 existed at the time the location information was
19 obtained.

20 (Source: P.A. 98-1104, eff. 8-26-14.)

21 (725 ILCS 168/25)

22 Sec. 25. Providing location information to a law
23 enforcement agency not required. Nothing in this Act shall be
24 construed to require a person to provide ~~current or future~~

1 location information to a law enforcement agency under Section
2 15.

3 (Source: P.A. 98-1104, eff. 8-26-14.)

4 (725 ILCS 168/30)

5 Sec. 30. Inapplicability. This Act does not apply to a law
6 enforcement agency obtaining basic subscriber information from
7 a service provider under a valid ~~subpoena~~ court order~~7~~ or
8 search warrant.

9 (Source: P.A. 98-1104, eff. 8-26-14.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.