

SENATE BILL NO. 2272

Introduced by

Senators Unruh, Grabinger, Osland

Representatives Roers Jones, Schneider

1 A BILL for an Act to create and enact chapter 29-29.6 of the North Dakota Century Code,
2 relating to the issuance of a tracking warrant for location information.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 29-29.6 of the North Dakota Century Code is created and enacted as
5 follows:

6 **29-29.6-01. Definitions.**

7 As used in this chapter:

- 8 1. "Electronic communication service" has the meaning given in subsection 2 of section
9 29-29.3-01.
- 10 2. "Electronic device" means a device that enables access to or use of an electronic
11 communication service, remote computing service, or location information service.
- 12 3. "Government entity" means a state or local agency, including a law enforcement entity
13 or any other investigative entity, agency, department, division, bureau, board, or
14 commission or an individual acting or purporting to act for or on behalf of a state or
15 local agency.
- 16 4. "Location information" means information concerning the location of an electronic
17 device that, in whole or in part, is generated or derived from or obtained by the
18 operation of an electronic device. This information could include historical cell site
19 location information, real time cell site location information, or any cell site location
20 information from a specific period of time.
- 21 5. "Location information service" means the provision of a global positioning service or
22 other mapping, locational, or directional information service.
- 23 6. "Remote computing service" means the provision to the public of computer storage or
24 processing services by means of an electronic communication system.

1 7. "Tracking warrant" means an order in writing, in the name of the state, signed by a
2 court directed to a peace officer, granting the officer access to location information of
3 an electronic device.

4 **29-29.6-02. Tracking warrant required for location information.**

5 1. Except as provided in subsection 2, a government entity may not obtain the location
6 information of an electronic device without a tracking warrant. A warrant granting
7 access to location information must be issued only if the government entity shows that
8 there is probable cause the person who possesses an electronic device is committing,
9 has committed, or is about to commit a crime. An application for a warrant must be
10 made in writing and include:

11 a. The identity of the government entity's peace officer making the application, and
12 the officer authorizing the application; and

13 b. A statement of the facts and circumstances relied on by the applicant to justify
14 the applicant's belief that a warrant should be issued, including:

15 (1) Details as to the particular offense that has been, is being, or is about to be
16 committed; and

17 (2) The identity of the person, if known, committing the offense whose location
18 information is to be obtained.

19 2. A government entity may obtain location information without a tracking warrant:

20 a. When the electronic device is reported lost or stolen by the owner;

21 b. In order to respond to the user's call for emergency services;

22 c. With the informed, affirmative, documented consent of the owner or user of the
23 electronic device;

24 d. With the informed, affirmative consent of the legal guardian or next of kin of the
25 owner or user if the owner or user is believed to be deceased or reported missing
26 and unable to be contacted; or

27 e. In an emergency situation that involves injury or death to a person who
28 possesses an electronic communications device pursuant to section 8-10-11.

1 **29-29.6-03. Time period and extensions.**

- 2 1. A tracking warrant issued under this section must authorize the collection of location
3 information for a period not to exceed sixty days, or the period of time necessary to
4 achieve the objective of the authorization, whichever is less.
- 5 2. Extensions of a tracking warrant may be granted, but only upon an application for an
6 order and upon the judicial finding required by subdivision b of subsection 1 of section
7 29-29.6-02. The period of extension must be for a period not to exceed sixty days, or
8 the period of time necessary to achieve the objective for which it is granted, whichever
9 is less.
- 10 3. Subsections 1 and 2 apply only to tracking warrants issued for the contemporaneous
11 collection of electronic device location information.

12 **29-29.6-04. Notice - Temporary nondisclosure of tracking warrant.**

- 13 1. Within a reasonable time, but not later than ninety days after the court unseals the
14 tracking warrant under this section, the issuing or denying judge shall cause to be
15 served on the persons named in the warrant and the application an inventory which
16 shall include notice of:
- 17 a. The fact of the issuance of the warrant or the application;
18 b. The date of the issuance and the period of authorized, approved, or disapproved
19 collection of location information, or the denial of the application; and
20 c. The fact that during the period location information was or was not collected.
- 21 2. A tracking warrant authorizing collection of location information must direct that:
- 22 a. The warrant be sealed for a period of ninety days; and
23 b. The warrant be filed with the court administrator within ten days of the expiration
24 of the warrant.
- 25 3. The prosecutor may request that the tracking warrant, supporting affidavits, and any
26 order granting the request not be filed. An order must be issued granting the request in
27 whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds
28 reasonable grounds exist to believe that filing the warrant may cause the search or a
29 related search to be unsuccessful, create a substantial risk of injury to an innocent
30 person, or severely hamper an ongoing investigation.

- 1 4. The tracking warrant must direct that following the commencement of any criminal
- 2 proceeding utilizing evidence obtained in or as a result of the search, the supporting
- 3 application or affidavit must be filed either immediately or at any other time as the
- 4 court directs. Until such filing, the documents and materials ordered withheld from
- 5 filing must be retained by the judge or the judge's designee.