



Senate

General Assembly

File No. 434

February Session, 2004

Substitute Senate Bill No. 511

Senate, April 5, 2004

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO SUBPOENA TELEPHONE RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2004*) (a) As used in this
2 section, "call-identifying information" means dialing or signaling
3 information that identifies the origin, direction, destination or
4 termination of each communication generated or received by a
5 subscriber by means of any equipment, facility or service of a
6 telecommunications carrier.

7 (b) A state's attorney, the chief of police of an organized local police
8 department or the commanding officer of the state police troop having
9 jurisdiction over a municipality without an organized local police
10 department may, in exigent circumstances, issue a subpoena to compel
11 a telecommunications carrier to disclose call-identifying information
12 pertaining to a subscriber, provided such state's attorney, chief of
13 police or commanding officer has probable cause to believe that a

14 crime has been committed and that such information is relevant and
 15 material to an ongoing criminal investigation, except that, if the
 16 records sought are those of a subject of an ongoing criminal
 17 investigation, such state's attorney, chief of police or commanding
 18 officer has reasonable grounds to believe that such information is
 19 relevant and material to such criminal investigation. Such state's
 20 attorney, chief of police or commanding officer shall specify in such
 21 subpoena the case number assigned to such investigation.

22 (c) Not later than forty-eight hours after the issuance of a subpoena
 23 pursuant to subsection (b) of this section, the state's attorney, chief of
 24 police or commanding officer who issued such subpoena shall mail
 25 notice of the issuance of such subpoena to the subscriber whose call-
 26 identifying information is the subject of such subpoena.

27 (d) A telecommunications carrier that provides information
 28 pursuant to a subpoena issued under this section shall be compensated
 29 for the reasonable expenses incurred in providing such information.

30 (e) Any telecommunications carrier that provides information in
 31 good faith reliance upon a subpoena issued under this section shall be
 32 afforded the legal protections provided under 18 USC 3124, as
 33 amended from time to time, with regard to such actions.

This act shall take effect as follows:	
Section 1	October 1, 2004

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Public Safety, Dept.; Criminal Justice, Div.	GF - Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 05 \$	FY 06 \$
Municipal Police Departments	Cost	Minimal	Minimal

Explanation

The bill allows designated law enforcement agencies to issue subpoenas that compel telecommunications carriers to disclose call-identifying information in certain circumstances. The bill requires that carriers be reimbursed for reasonable costs related to providing such information to law enforcement agencies in these matters. Consequently, passage of the bill would result in minimal costs to the Division of Criminal Justice, the Department of Public Safety and municipal police departments.

OLR BILL ANALYSIS

sSB 511

**AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO
SUBPOENA TELEPHONE RECORDS****SUMMARY:**

This bill permits designated law enforcement officers issue administrative subpoenas in certain emergencies ("exigent circumstances"). Telecommunications carriers served with such subpoenas must turn over call-identifying information for each communication generated or received by the person named in the subpoena by means of any of its equipment, facilities, or services. Neither the bill nor current state law define the term "telecommunications carriers," although federal law does (see BACKGROUND).

The bill adopts the federal definition of "call identifying information:" dialing or signaling information that identifies the origin, direction, destination, and termination of each communication. The devices that are used to collect this information on traditional land-based systems are called "pen registers" and "trap and trace" devices. Other methods are used for telecommunications traveling over digital, cellular, and wireless systems. It appears that a grand jury subpoena or court-approved search warrant is currently required to compel carriers to disclose this information to state law enforcement officials.

The bill requires the carrier's reasonable compliance costs to be reimbursed. It makes carriers who turn over the information in good faith reliance on the validity of the subpoena immune from civil and criminal liability.

EFFECTIVE DATE: October 1, 2004

EXIGENT CIRCUMSTANCES

Generally, exigent circumstances are those that would cause a reasonable person to believe that prompt action was necessary to

prevent physical harm to the officers or other persons, the destruction of relevant evidence, a suspect's escape, or some other consequence improperly frustrating the administration of justice.

ISSUING AUTHORITY AND STANDARDS

State's attorneys, local police chiefs, and the commanding officer of the state police troop having jurisdiction over a municipality without an organized local police department may issue subpoenas for call identifying information.

The person issuing the subpoena must have probable cause to believe that a crime has been committed and that such information is relevant and material to an ongoing criminal investigation. When the subscriber is the subject of an ongoing criminal investigation, the bill permits the issuance of a subpoena based on a lesser showing—reasonable grounds to believe that such information is relevant and material to the investigation. In such cases, the subpoena must list the investigation's case number. The issuing officer must mail a copy of the subpoena to the affected subscriber within 48 hours of its issuance.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Communications Carrier: Federal Definition

In federal law, the term "telecommunications carrier" means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire. It includes (1) commercial mobile service providers and (2) a person or entity that provides wire or electronic communication switching or transmission service to the extent that the Federal Communications Commission (FCC) finds that (a) the service is a replacement for a substantial portion of the local telephone exchange service and (b) it is in the public interest to deem such a person or entity to be a telecommunications carrier. It excludes information services providers and allows the commissioner to exempt any class or category of carriers.

Federal Pen Register/Trap And Trace Law

The pen register/trap and trace statute authorizes U. S. attorneys of

any rank to apply to federal judges or magistrates for an order authorizing the installation of a pen register and/or trap and trace device to record numbers dialed to and from a targeted phone line. Applications must identify the law enforcement agency conducting the investigation and contain the applicant's certification of his belief that the information likely to be obtained is relevant to an ongoing criminal investigation. They need not include supporting facts or describe the crime that is being investigated.

Courts must issue an order for applications that meet these requirements. They may authorize use of a pen/trap device for up to 60 days, and where extensions are requested, for an indefinite number of additional 60-day periods. The law authorizes the use of pen registers without a court order in exigent circumstances.

Communications Assistance for Law Enforcement Act of 1994 (CALEA)

The federal CALEA law requires telecommunications carriers to ensure that their systems are technically capable of enabling law enforcement agencies operating with proper legal authority to intercept individual telephone calls and to obtain certain "call identifying information." Among other things, each carrier must ensure that its equipment, facilities, or services are capable of expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier.

The scope of call-identifying information is unclear. One federal appeals court has held that it includes the physical location of the nearest antenna tower through which a cellular telephone communicates at the beginning and end of a call. And the FCC is engaged in rulemaking on access to "punch list" data. This includes telephone numbers of calls completed using calling cards as well as signaling information related to custom calling features such as call waiting and conference calling.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 32 Nay 6

