



House of Representatives

General Assembly

File No. 614

February Session, 2016

Substitute House Bill No. 5640

House of Representatives, April 14, 2016

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING COMPELLED DISCLOSURE OF CELLULAR TELEPHONE AND INTERNET RECORDS.

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

1 Section 1. Section 54-47aa of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) For the purposes of this section:

4 (1) "Basic subscriber information" means: (A) Name, (B) address, (C)
5 local and long distance telephone connection records or records of
6 session times and durations, (D) length of service, including start date,
7 and types of services utilized, (E) telephone or instrument number or
8 other subscriber number or identity, including any assigned Internet
9 protocol address, and (F) means and source of payment for such
10 service, including any credit card or bank account number;

11 (2) "Call-identifying information" means dialing or signaling
12 information that identifies the origin, direction, destination or

13 termination of each communication generated or received by a
14 subscriber or customer, excluding geo-location data, by means of any
15 equipment, facility or service of a telecommunications carrier;

16 (3) "Electronic communication service" means "electronic
17 communication service" as defined in 18 USC 2510, as amended from
18 time to time;

19 (4) "Geo-location data" means information concerning the location
20 of an electronic device, including the real-time and historical location
21 of the device, that, in whole or in part, is generated by, derived from or
22 obtained by the operation of an electronic device, including, but not
23 limited to, a cellular telephone surveillance device;

24 [(4)] (5) "Law enforcement official" means the Chief State's Attorney,
25 a state's attorney, an inspector with the Division of Criminal Justice, a
26 sworn member of the Division of State Police within the Department of
27 Emergency Services and Public Protection or a sworn member of an
28 organized local police department;

29 [(5)] (6) "Remote computing service" means "remote computing
30 service" as defined in section 18 USC 2711, as amended from time to
31 time; and

32 [(6)] (7) "Telecommunications carrier" means "telecommunications
33 carrier" as defined in 47 USC 1001, as amended from time to time.

34 (b) A law enforcement official may [request] apply for an ex parte
35 order from a judge of the Superior Court to compel (1) a
36 telecommunications carrier to disclose call-identifying information
37 pertaining to a subscriber or customer, or (2) a provider of electronic
38 communication service or remote computing service to disclose basic
39 subscriber information pertaining to a subscriber or customer. The
40 judge shall grant such order if the law enforcement official [states]
41 swears under oath to a statement of (A) a reasonable and articulable
42 suspicion that a crime has been or is being committed [or that exigent
43 circumstances exist] and such call-identifying or basic subscriber

44 information is relevant and material to an ongoing criminal
45 investigation, [The order] in which case such order shall not authorize
46 disclosure of the content of any communication, or (B) probable cause
47 to believe that a crime has been or is being committed or that exigent
48 circumstances exist and the content of such subscriber's or customer's
49 communications or the geo-location data associated with such
50 subscriber's or customer's call-identifying information is relevant and
51 material to an ongoing criminal investigation, in which case such order
52 shall authorize the disclosure of such information, content or geo-
53 location data. Any such order entered pursuant to this subsection shall
54 state upon its face the case number assigned to such investigation, the
55 date and time of issuance and the name of the judge authorizing the
56 order. The law enforcement official shall have any ex parte order
57 issued pursuant to this subsection signed by the authorizing judge
58 within forty-eight hours or not later than the next business day,
59 whichever is earlier. No order pursuant to this subsection shall
60 authorize the disclosure of any such information, content or data for a
61 period in excess of fourteen days.

62 (c) A law enforcement official may apply directly to a
63 telecommunications carrier or provider of electronic communication
64 service or remote computing service for production of geo-location
65 data for a period not in excess of forty-eight hours, including real-time
66 or historical geo-location data, or any combination of such data,
67 pertaining to an identified subscriber or customer. The
68 telecommunications carrier or provider of electronic
69 telecommunication service or remote computing service shall provide
70 the requested geo-location data upon the applicant stating under oath:
71 (1) That facts exist upon which to base a belief that the data sought is
72 relevant and material to an ongoing criminal investigation; (2) a belief
73 that exigent circumstances exist; and (3) the facts supporting the belief
74 that exigent circumstances exist. Any subsequent application for
75 information from the same telecommunication carrier or provider of
76 electronic communication service or remote computing service for
77 production of geo-location data in connection with the same
78 investigation shall be made pursuant to subsection (b) of this section.

79 [(c)] (d) A telecommunications carrier shall disclose call-identifying
80 information and a provider of electronic communication service or
81 remote computing service shall disclose basic subscriber information
82 to a law enforcement official when an order is issued pursuant to
83 subsection (b) of this section.

84 [(d)] (e) Not later than forty-eight hours after the issuance of an
85 order pursuant to subsection (b) of this section, the law enforcement
86 official shall mail notice of the issuance of such order to the subscriber
87 or customer whose call-identifying information or basic subscriber
88 information is the subject of such order, except that such notification
89 may be delayed for a period of up to ninety days upon the execution of
90 a written certification of such official to the judge who authorized the
91 order that there is reason to believe that notification of the existence of
92 the order may result in (1) endangering the life or physical safety of an
93 individual, (2) flight from prosecution, (3) destruction of or tampering
94 with evidence, (4) intimidation of potential witnesses, or (5) otherwise
95 seriously jeopardizing the investigation. The law enforcement official
96 shall maintain a true copy of such certification. During such ninety-day
97 period, the law enforcement official may request the court to extend
98 such period of delayed notification. Such period may be extended
99 beyond ninety days only upon approval of the court. The applicant
100 shall file a copy of the notice with the clerk of the court that issued
101 such order. If information is provided in response to the order, the
102 applicant shall, not later than ten days after receiving such
103 information, file with the clerk a return containing an inventory of the
104 information received. If a judge issues an order authorizing delayed
105 notification under this subsection, the telecommunications carrier or
106 provider of electronic communication service or remote computing
107 service from whom the call-identifying information or basic subscriber
108 information is sought shall not notify any person, other than the law
109 enforcement official that requested the ex parte order, of the existence
110 of the ex parte order. Any information provided in response to the
111 court order shall be disclosed to the defense counsel.

112 [(e)] (f) A telecommunications carrier or provider of electronic

113 communication service or remote computing service that provides
114 information pursuant to an order issued pursuant to subsection (b) of
115 this section or pursuant to an application made pursuant to subsection
116 (c) of this section shall be compensated for the reasonable expenses
117 incurred in providing such information.

118 ~~[(f)]~~ (g) Any telecommunications carrier or provider of electronic
119 communication service or remote computing service that provides
120 information in good faith pursuant to an order issued pursuant to
121 subsection (b) of this section or an application made pursuant to
122 subsection (c) of this section shall be afforded the legal protections
123 provided under 18 USC 3124, as amended from time to time, with
124 regard to such actions.

125 (h) No information obtained pursuant to subsection (b) or (c) of this
126 section shall be retained for a period in excess of fourteen days, unless
127 such information relates to an ongoing criminal investigation. Any
128 information provided pursuant to said subsection (b) or (c) shall be
129 disclosed to the defense counsel.

130 ~~[(g)]~~ (i) Not later than January fifteenth of each year, each law
131 enforcement official shall report to the Chief State's Attorney the
132 information required by this subsection with respect to each order
133 issued pursuant to subsection (b) of this section and each application
134 made pursuant to subsection (c) of this section in the preceding
135 calendar year. The Chief State's Attorney shall, based upon the reports
136 filed by each law enforcement official and not later than January thirty-
137 first of each year, submit a report, in accordance with the provisions of
138 section 11-4a, to the joint standing committee of the General Assembly
139 having cognizance of matters relating to criminal law and procedure
140 concerning orders issued pursuant to subsection (b) of this section and
141 applications made pursuant to subsection (c) of this section in the
142 preceding calendar year. The report shall include the following
143 information: (1) The number of orders issued pursuant to subsection
144 (b) of this subsection and the number of applications submitted to
145 telecommunications carriers or providers of electronic communication

146 service or remote computing service pursuant to subsection (c) of this
 147 section, (2) whether the order was directed to a telecommunications
 148 carrier, provider of electronic communication service or provider of
 149 remote computing service, (3) whether the information sought was
 150 call-identifying information or basic subscriber information, (4) the
 151 statutory offense or offenses that were the subject of the investigation,
 152 (5) the number of notifications that were delayed pursuant to
 153 subsection [(d)] (e) of this section, and the reason for such delayed
 154 notification, (6) the number of motions to vacate an order that were
 155 filed, and the number of motions granted or denied, (7) the number of
 156 investigations concluded and the final result of such investigations,
 157 and (8) the status of any criminal prosecution resulting from the
 158 investigation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	54-47aa

Statement of Legislative Commissioners:

In Section 1(b), "affirms" was changed to "swears" for conformity with the general statutes and "subscriber's" was changed to "subscriber's or customer's" for internal consistency, in Section 1(c), "material and relevant" was changed to "relevant and material", "investigation" was changed to "criminal investigation" and "or remote computing service" was added for internal consistency and in Section 1(e), "provider of electronic communication service or" was added for internal consistency.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which alters the standard for disclosure of communication's contents or geo-location data, does not result in a fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5640

AN ACT CONCERNING COMPELLED DISCLOSURE OF CELLULAR TELEPHONE AND INTERNET RECORDS.

SUMMARY:

Under current law, telecommunications carriers must disclose call-identifying information, and electronic communication or remote computing service providers must disclose basic subscriber information, to law enforcement officials based on ex parte court orders (i.e., orders issued without a hearing or prior notice to the customer), under specified conditions.

This bill raises the standard, from reasonable and articulable suspicion to probable cause, for a court order to compel the disclosure of a communication's contents or geo-location data associated with call-identifying information. However, it requires a carrier or service provider to disclose up to 48 hours of geo-location data upon the request of law enforcement, without a court order, if there are exigent (emergency) circumstances.

Among other things, the bill also:

1. prohibits law enforcement from keeping the information for more than 14 days (whether obtained through a court order or upon a direct request), unless it relates to an ongoing criminal investigation;
2. prohibits any such court order from authorizing disclosure of information covering more than 14 days;
3. requires law enforcement to disclose the information to defense counsel; and

4. adds information on direct requests to carriers or providers to existing reporting requirements for law enforcement officials and the chief state's attorney.

EFFECTIVE DATE: October 1, 2016

DISCLOSURE OF CUSTOMER INFORMATION

Definitions

The bill defines "geo-location data" as information on an electronic device's location (both real-time and historical) that, in whole or part, is generated by, derived from, or obtained by the device's operation, including a cell phone surveillance device.

Current law defines "call-identifying information" as dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber or customer by means of any equipment, facility, or service of a telecommunications carrier. The bill excludes geo-location data from this definition.

Standard to Grant Ex-Parte Court Order

Under current law, if a law enforcement official requests an ex parte order to compel disclosure of an individual's call-identifying information or basic subscriber information, the judge must grant the order if the official states (1) a reasonable and articulable suspicion that a crime has been, or is being, committed or that exigent circumstances exist and (2) that the customer information is relevant and material to an ongoing criminal investigation.

The bill requires the law enforcement official to swear under oath that the standard is met. It also reframes the standard into two tiers. It continues to allow disclosure of call-identifying information and basic subscriber information based on a reasonable suspicion of a crime and the information's relevance and materiality to an investigation, but it provides that such an order cannot authorize disclosure of geo-location data or the content of any communication.

For disclosure of geo-location data or a communication's contents, the bill requires the official to swear under oath that (1) there is probable cause to believe that a crime has been or is being committed or that exigent circumstances exist and (2) the content of the communications or the geo-location data associated with the call-identifying information is relevant and material to an ongoing criminal investigation.

In either case, the bill prohibits the order from authorizing the disclosure of more than 14 days of data.

Direct Application to Company

As an alternative to a court order, the bill allows law enforcement officials to apply directly to a telecommunications carrier or electronic communication or remote computing service provider to request production of up to 48 hours of geo-location data for a subscriber or customer. The carrier or provider must comply if the applicant states under oath:

1. that facts exist for the belief that the requested data is relevant and material to an ongoing criminal investigation,
2. a belief that exigent circumstances exists, and
3. the facts supporting the belief of these circumstances.

The bill allows a law enforcement official to apply to a given carrier or provider only once in the same investigation. An official who seeks disclosure of more information must apply for a court order as described above.

As is the case under existing law for data provided by court order, carriers and service providers (1) must be paid the reasonable expenses they incur to comply with the request and (2) are subject to the same immunity for their good faith actions as are available under federal law.

Data Retention and Disclosure to Defense Counsel

Under the bill, law enforcement officials who receive this data, whether through a court order or direct application to the company, may retain the data for more than 14 days only if it relates to an ongoing criminal investigation and must disclose any such data to defense counsel.

Delayed Notification After Court Order

By law, after the court issues an order described above, the law enforcement official who requested it must mail a notice within 48 hours to the person whose records were sought, unless the official requests a 90-day delay for certain reasons (e.g., notification would endanger someone's safety or otherwise seriously jeopardize the investigation). The court may approve delays beyond 90 days.

The bill requires the official to file a copy of the order notice with the court clerk. If the official who requested the order receives information in response to it, he or she must file with the clerk a return within 10 days, including an inventory of the information received. The official also must provide any such information to defense counsel.

The bill specifies that if the judge issues an order authorizing delayed notification, the carrier or service provider may not notify any person of the order, other than the applicant.

Reporting

Existing law requires each law enforcement official to report to the chief state's attorney by January 15 of each year on orders issued the previous year, such as the number of orders, type of information sought, and status of any resulting criminal prosecution. The chief state's attorney must compile the data in the individual reports and provide it in a report to the Judiciary Committee by January 31 of each year.

The bill requires this reporting to also include information on applications the law enforcement officials made directly to carriers or service providers as described above.

BACKGROUND

Basic Subscriber Information

Under the law, “basic subscriber information” is the:

1. subscriber’s name and address;
2. local and long distance telephone connection records or records of session times and durations;
3. length of service, including start date, and types of services utilized;
4. telephone or instrument number, or other subscriber number or identity, including any assigned Internet protocol address; and
5. payment source for the service, including any credit card or bank account number.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 43 Nay 0 (03/28/2016)