

113TH CONGRESS  
1ST SESSION

# S. 639

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 21, 2013

Mr. WYDEN (for himself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4 This Act may be cited as the “Geolocational Privacy  
5 and Surveillance Act” or the “GPS Act”.

6 **SEC. 2. PROTECTION OF GEOLOCATION INFORMATION.**

7 (a) IN GENERAL.—Part 1 of title 18, United States  
8 Code, is amended by inserting after chapter 119 the fol-  
9 lowing:

1                   **“CHAPTER 120—GEOLOCATION**  
 2                                   **INFORMATION**

“Sec.

“2601. Definitions.

“2602. Interception and disclosure of geolocation information.

“2603. Prohibition of use as evidence of acquired geolocation information.

“2604. Emergency situation exception.

“2605. Recovery of civil damages authorized.

3   **“§ 2601. Definitions**

4            “In this chapter:

5                    “(1) COVERED SERVICE.—The term ‘covered  
 6                    service’ means an electronic communication service,  
 7                    a geolocation information service, or a remote com-  
 8                    puting service.

9                    “(2) ELECTRONIC COMMUNICATION SERVICE.—  
 10                    The term ‘electronic communication service’ has the  
 11                    meaning given that term in section 2510.

12                   “(3) ELECTRONIC SURVEILLANCE.—The term  
 13                    ‘electronic surveillance’ has the meaning given that  
 14                    term in section 101 of the Foreign Intelligence Sur-  
 15                    veillance Act of 1978 (50 U.S.C. 1801).

16                   “(4) GEOLOCATION INFORMATION.—The term  
 17                    ‘geolocation information’ means, with respect to a  
 18                    person, any information, that is not the content of  
 19                    a communication, concerning the location of a wire-  
 20                    less communication device or tracking device (as  
 21                    that term is defined section 3117) that, in whole or  
 22                    in part, is generated by or derived from the oper-

1        ation of that device and that could be used to deter-  
2        mine or infer information regarding the location of  
3        the person.

4            “(5) GEOLOCATION INFORMATION SERVICE.—

5        The term ‘geolocation information service’ means the  
6        provision of a global positioning service or other  
7        mapping, locational, or directional information serv-  
8        ice to the public, or to such class of users as to be  
9        effectively available to the public, by or through the  
10       operation of any wireless communication device, in-  
11       cluding any mobile telephone, global positioning sys-  
12       tem receiving device, mobile computer, or other simi-  
13       lar or successor device.

14           “(6) INTERCEPT.—The term ‘intercept’ means

15       the acquisition of geolocation information through  
16       the use of any electronic, mechanical, or other de-  
17       vice.

18           “(7) INVESTIGATIVE OR LAW ENFORCEMENT

19       OFFICER.—The term ‘investigative or law enforce-  
20       ment officer’ means any officer of the United States  
21       or of a State or political subdivision thereof, who is  
22       empowered by law to conduct investigations of, or to  
23       make arrests for, offenses enumerated in this chap-  
24       ter, and any attorney authorized by law to prosecute  
25       or participate in the prosecution of such offenses.

1           “(8) PERSON.—The term ‘person’ means any  
2 employee or agent of the United States, or any State  
3 or political subdivision thereof, and any individual,  
4 partnership, association, joint stock company, trust,  
5 or corporation.

6           “(9) REMOTE COMPUTING SERVICE.—The term  
7 ‘remote computing service’ has the meaning given  
8 that term in section 2711.

9           “(10) STATE.—The term ‘State’ means any  
10 State of the United States, the District of Columbia,  
11 the Commonwealth of Puerto Rico, and any territory  
12 or possession of the United States.

13           “(11) WIRELESS COMMUNICATION DEVICE.—  
14 The term ‘wireless communication device’ means any  
15 device that enables access to, or use of, an electronic  
16 communication system or service or a covered serv-  
17 ice, if that device utilizes a radio or other wireless  
18 connection to access such system or service.

19 **“§ 2602. Interception and disclosure of geolocation in-**  
20 **formation**

21           “(a) IN GENERAL.—

22           “(1) PROHIBITION ON DISCLOSURE OR USE.—  
23 Except as otherwise specifically provided in this  
24 chapter, it shall be unlawful for any person to—

1           “(A) intentionally intercept, endeavor to  
2 intercept, or procure any other person to inter-  
3 cept or endeavor to intercept, geolocation infor-  
4 mation pertaining to another person;

5           “(B) intentionally disclose, or endeavor to  
6 disclose, to any other person geolocation infor-  
7 mation pertaining to another person, knowing  
8 or having reason to know that the information  
9 was obtained through the interception of such  
10 information in violation of this paragraph;

11           “(C) intentionally use, or endeavor to use,  
12 any geolocation information, knowing or having  
13 reason to know that the information was ob-  
14 tained through the interception of such infor-  
15 mation in violation of this paragraph; or

16           “(D)(i) intentionally disclose, or endeavor  
17 to disclose, to any other person the geolocation  
18 information pertaining to another person inter-  
19 cepted by means authorized by subsections (b)  
20 through (h), except as provided in such sub-  
21 sections;

22           “(ii) knowing or having reason to know  
23 that the information was obtained through the  
24 interception of such information in connection  
25 with a criminal investigation;

1           “(iii) having obtained or received the infor-  
2           mation in connection with a criminal investiga-  
3           tion; and

4           “(iv) with intent to improperly obstruct,  
5           impede, or interfere with a duly authorized  
6           criminal investigation.

7           “(2) PENALTY.—Any person who violates para-  
8           graph (1) shall be fined under this title, imprisoned  
9           not more than five years, or both.

10          “(b) EXCEPTION FOR INFORMATION ACQUIRED IN  
11 THE NORMAL COURSE OF BUSINESS.—It shall not be un-  
12 lawful under this chapter for an officer, employee, or agent  
13 of a provider of a covered service, whose facilities are used  
14 in the transmission of geolocation information, to inter-  
15 cept, disclose, or use that information in the normal course  
16 of the officer, employee, or agent’s employment while en-  
17 gaged in any activity which is a necessary incident to the  
18 rendition of service or to the protection of the rights or  
19 property of the provider of that service, except that a pro-  
20 vider of a geolocation information service to the public  
21 shall not utilize service observing or random monitoring  
22 except for mechanical or service quality control checks.

23          “(c) EXCEPTION FOR CONDUCTING FOREIGN INTEL-  
24 LIGENCE SURVEILLANCE.—Notwithstanding any other  
25 provision of this chapter, it shall not be unlawful for an

1 officer, employee, or agent of the United States in the nor-  
2 mal course of the official duty of the officer, employee,  
3 or agent to conduct electronic surveillance, as authorized  
4 by the Foreign Intelligence Surveillance Act of 1978 (50  
5 U.S.C. 1801 et seq.).

6 “(d) EXCEPTION FOR CONSENT.—

7 “(1) IN GENERAL.—It shall not be unlawful  
8 under this chapter for a person to intercept  
9 geolocation information pertaining to another person  
10 if such other person has given prior consent to such  
11 interception unless such information is intercepted  
12 for the purpose of committing any criminal or  
13 tortious act in violation of the Constitution or laws  
14 of the United States or of any State.

15 “(2) CHILDREN.—The exception in paragraph  
16 (1) permits a parent or legal guardian of a child to  
17 intercept geolocation information pertaining to that  
18 child or to give consent for another person to inter-  
19 cept such information.

20 “(e) EXCEPTION FOR PUBLIC INFORMATION.—It  
21 shall not be unlawful under this chapter for any person  
22 to intercept or access geolocation information relating to  
23 another person through any system that is configured so  
24 that such information is readily accessible to the general  
25 public.

1       “(f) EXCEPTION FOR EMERGENCY INFORMATION.—  
2 It shall not be unlawful under this chapter for any inves-  
3 tigative or law enforcement officer or other emergency re-  
4 sponder to intercept or access geolocation information re-  
5 lating to a person if such information is used—

6               “(1) to respond to a request made by such per-  
7 son for assistance; or

8               “(2) in circumstances in which it is reasonable  
9 to believe that the life or safety of the person is  
10 threatened, to assist the person.

11       “(g) EXCEPTION FOR THEFT OR FRAUD.—It shall  
12 not be unlawful under this chapter for a person acting  
13 under color of law to intercept geolocation information  
14 pertaining to the location of another person who has un-  
15 lawfully taken the device sending the geolocation informa-  
16 tion if—

17               “(1) the owner or operator of such device au-  
18 thORIZES the interception of the person’s geolocation  
19 information;

20               “(2) the person acting under color of law is  
21 lawfully engaged in an investigation; and

22               “(3) the person acting under color of law has  
23 reasonable grounds to believe that the geolocation  
24 information of the other person will be relevant to  
25 the investigation.



1 “(h) EXCEPTION FOR WARRANT.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) COURT OF COMPETENT JURISDIC-  
4 TION.—The term ‘court of competent jurisdic-  
5 tion’ includes—

6 “(i) any district court of the United  
7 States (including a magistrate judge of  
8 such a court) or any United States court  
9 of appeals that—

10 “(I) has jurisdiction over the of-  
11 fense being investigated;

12 “(II) is in or for a district in  
13 which the provider of a geolocation in-  
14 formation service is located or in  
15 which the geolocation information is  
16 stored; or

17 “(III) is acting on a request for  
18 foreign assistance pursuant to section  
19 3512; or

20 “(ii) a court of general criminal juris-  
21 diction of a State authorized by the law of  
22 that State to issue search warrants.

23 “(B) GOVERNMENTAL ENTITY.—The term  
24 ‘governmental entity’ means a department or

1           agency of the United States or any State or po-  
2           litical subdivision thereof.

3           “(2) WARRANT.—A governmental entity may  
4           intercept geolocation information or require the dis-  
5           closure by a provider of a covered service of  
6           geolocation information only pursuant to a warrant  
7           issued using the procedures described in the Federal  
8           Rules of Criminal Procedure (or, in the case of a  
9           State court, issued using State warrant procedures)  
10          by a court of competent jurisdiction, or as otherwise  
11          provided in this chapter or the Foreign Intelligence  
12          Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

13          “(i) PROHIBITION ON DIVULGING GEOLOCATION IN-  
14          FORMATION.—

15                 “(1) IN GENERAL.—Except as provided in para-  
16                 graph (2), a person providing a covered service shall  
17                 not intentionally divulge geolocation information per-  
18                 taining to another person.

19                 “(2) EXCEPTIONS.—A person providing a cov-  
20                 ered service may divulge geolocation information—

21                         “(A) as otherwise authorized in subsections  
22                         (b) through (h);

23                         “(B) with the lawful consent of such other  
24                         person;

1           “(C) to another person employed or au-  
2           thorized, or whose facilities are used, to forward  
3           such geolocation information to its destination;  
4           or

5           “(D) which was inadvertently obtained by  
6           the provider of the covered service and which  
7           appears to pertain to the commission of a  
8           crime, if such divulgence is made to a law en-  
9           forcement agency.

10 **“§ 2603. Prohibition of use as evidence of acquired**  
11 **geolocation information**

12           “Whenever any geolocation information has been ac-  
13           quired, no part of such information and no evidence de-  
14           rived therefrom may be received in evidence in any trial,  
15           hearing, or other proceeding in or before any court, grand  
16           jury, department, officer, agency, regulatory body, legisla-  
17           tive committee, or other authority of the United States,  
18           a State, or a political subdivision thereof if the disclosure  
19           of that information would be in violation of this chapter.

20 **“§ 2604. Emergency situation exception**

21           “(a) EMERGENCY SITUATION EXCEPTION.—Not-  
22           withstanding any other provision of this chapter, any in-  
23           vestigative or law enforcement officer, specially designated  
24           by the Attorney General, the Deputy Attorney General,  
25           the Associate Attorney General, or by the principal pros-

1 ecuting attorney of any State or subdivision thereof acting  
2 pursuant to a statute of that State, may intercept  
3 geolocation information if—

4 “(1) such officer reasonably determines that an  
5 emergency situation exists that—

6 “(A) involves—

7 “(i) immediate danger of death or se-  
8 rious physical injury to any person;

9 “(ii) conspiratorial activities threat-  
10 ening the national security interest; or

11 “(iii) conspiratorial activities char-  
12 acteristic of organized crime; and

13 “(B) requires geolocation information be  
14 intercepted before an order authorizing such  
15 interception can, with due diligence, be ob-  
16 tained;

17 “(2) there are grounds upon which an order  
18 could be entered to authorize such interception; and

19 “(3) an application for an order approving such  
20 interception is made within 48 hours after the inter-  
21 ception has occurred or begins to occur.

22 “(b) FAILURE TO OBTAIN COURT ORDER.—

23 “(1) TERMINATION OF ACQUISITION.—In the  
24 absence of an order, an interception of geolocation  
25 information carried out under subsection (a) shall

1 immediately terminate when the information sought  
2 is obtained or when the application for the order is  
3 denied, whichever is earlier.

4 “(2) PROHIBITION ON USE AS EVIDENCE.—In  
5 the event such application for approval is denied, the  
6 geolocation information shall be treated as having  
7 been obtained in violation of this chapter and an in-  
8 ventory shall be served on the person named in the  
9 application.

10 **“§ 2605. Recovery of civil damages authorized**

11 “(a) IN GENERAL.—Any person whose geolocation  
12 information is intercepted, disclosed, or intentionally used  
13 in violation of this chapter may in a civil action recover  
14 from the person, other than the United States, which en-  
15 gaged in that violation such relief as may be appropriate.

16 “(b) RELIEF.—In an action under this section, ap-  
17 propriate relief includes—

18 “(1) such preliminary and other equitable or  
19 declaratory relief as may be appropriate;

20 “(2) damages under subsection (c) and punitive  
21 damages in appropriate cases; and

22 “(3) a reasonable attorney’s fee and other liti-  
23 gation costs reasonably incurred.

1       “(c) COMPUTATION OF DAMAGES.—The court may  
2 assess as damages under this section whichever is the  
3 greater of—

4           “(1) the sum of the actual damages suffered by  
5 the plaintiff and any profits made by the violator as  
6 a result of the violation; or

7           “(2) statutory damages of whichever is the  
8 greater of \$100 a day for each day of violation or  
9 \$10,000.

10       “(d) DEFENSE.—It is a complete defense against any  
11 civil or criminal action brought against an individual for  
12 conduct in violation of this chapter if such individual acted  
13 in a good faith reliance on—

14           “(1) a court warrant or order, a grand jury  
15 subpoena, a legislative authorization, or a statutory  
16 authorization;

17           “(2) a request of an investigative or law en-  
18 forcement officer under section 2604; or

19           “(3) a good-faith determination that an excep-  
20 tion under section 2602 permitted the conduct com-  
21 plained of.

22       “(e) LIMITATION.—A civil action under this section  
23 may not be commenced later than two years after the date  
24 upon which the claimant first has a reasonable oppor-  
25 tunity to discover the violation.

1           “(f) ADMINISTRATIVE DISCIPLINE.—If a court or ap-  
2     propriate department or agency determines that the  
3     United States or any of its departments or agencies has  
4     violated any provision of this chapter, and the court or  
5     appropriate department or agency finds that the cir-  
6     cumstances surrounding the violation raise serious ques-  
7     tions about whether or not an officer or employee of the  
8     United States acted willfully or intentionally with respect  
9     to the violation, the department or agency shall, upon re-  
10    ceipt of a true and correct copy of the decision and find-  
11    ings of the court or appropriate department or agency  
12    promptly initiate a proceeding to determine whether dis-  
13    ciplinary action against the officer or employee is war-  
14    ranted. If the head of the department or agency involved  
15    determines that disciplinary action is not warranted, such  
16    head shall notify the Inspector General with jurisdiction  
17    over the department or agency concerned and shall provide  
18    the Inspector General with the reasons for such deter-  
19    mination.

20           “(g) IMPROPER DISCLOSURE IS VIOLATION.—Any  
21    willful disclosure or use by an investigative or law enforce-  
22    ment officer or governmental entity of information beyond  
23    the extent permitted by this chapter is a violation of this  
24    chapter for purposes of this section.

1       “(h) CONSTRUCTION.—Nothing in this section may  
 2 be construed to establish a new cause of action against  
 3 any electronic communication service provider, remote  
 4 computing service provider, geolocation service provider,  
 5 or law enforcement or investigative officer, or eliminate  
 6 or affect any cause of action that exists under section  
 7 2520, section 2707, or any other provision of law.”.

8       (b) CLERICAL AMENDMENT.—The table of chapters  
 9 for part 1 of title 18, United States Code, is amended by  
 10 inserting after the item relating to chapter 119 the fol-  
 11 lowing:

“120. Geolocation information ..... 2601”.

12       (c) CONFORMING AMENDMENTS.—Section 3512(a) of  
 13 title 18, United States Code, is amended—

14           (1) in paragraph (2)—

15                   (A) by redesignating subparagraphs (B),  
 16                   (C), and (D) as subparagraphs (C), (D), and  
 17                   (E), respectively; and

18                   (B) by inserting after subparagraph (A)  
 19                   the following:

20                           “(B) a warrant or order for geolocation in-  
 21                           formation or records related thereto, as pro-  
 22                           vided under section 2602 of this title;”.



1 **SEC. 3. REQUIREMENT FOR SEARCH WARRANTS TO AC-**  
2 **QUIRE GEOLOCATION INFORMATION.**

3 Rule 41(a) of the Federal Rules of Criminal Proce-  
4 dure is amended—

5 (1) in paragraph (2)(A), by striking the period  
6 at the end and inserting a comma and “including  
7 geolocation information.”; and

8 (2) by adding at the end the following:

9 “(F) ‘Geolocation information’ has the  
10 meaning given that term in section 2601 of title  
11 18, United States Code.”.

12 **SEC. 4. FRAUD AND RELATED ACTIVITY IN CONNECTION**  
13 **WITH OBTAINING GEOLOCATION INFORMA-**  
14 **TION.**

15 (a) **CRIMINAL VIOLATION.**—Section 1039(h) of title  
16 18, United States Code, is amended—

17 (1) in paragraph (2)—

18 (A) in subparagraph (A), by striking  
19 “and” at the end;

20 (B) in subparagraph (B), by striking the  
21 period at the end and inserting a semicolon and  
22 “and”; and

23 (C) by adding at the end the following new  
24 subparagraph:

25 “(C) includes any geolocation information  
26 service.”;

1           (2) by redesignating paragraph (4) as para-  
2 graph (5); and

3           (3) by inserting after paragraph (3) the fol-  
4 lowing:

5           “(4) GEOLOCATION INFORMATION SERVICE.—  
6 The term ‘geolocation information service’ has the  
7 meaning given that term in section 2601.”.

8 (b) CONFORMING AMENDMENTS.—

9           (1) DEFINITION AMENDMENTS.—Section  
10 1039(h)(1) of title 18, United States Code, is  
11 amended—

12           (A) in the paragraph heading, by inserting  
13 “OR GPS” after “PHONE”; and

14           (B) in the matter preceding subparagraph  
15 (A), by inserting “or GPS” after “phone”.

16           (2) CONFORMING AMENDMENTS.—Section 1039  
17 of title 18, United States Code, is amended—

18           (A) in the section heading by inserting “**or**  
19 **GPS**” after “**phone**”;

20           (B) in subsection (a)—

21           (i) in the matter preceding paragraph  
22 (1), by inserting “or GPS” after “phone”;  
23 and

24           (ii) in paragraph (4), by inserting “or  
25 GPS” after “phone”;

1 (C) in subsection (b)—

2 (i) in the subsection heading, by in-  
3 serting “OR GPS” after “PHONE”;

4 (ii) in paragraph (1), by inserting “or  
5 GPS” after “phone” both places that term  
6 appears; and

7 (iii) in paragraph (2), by inserting “or  
8 GPS” after “phone”; and

9 (D) in subsection (c)—

10 (i) in the subsection heading, by in-  
11 serting “OR GPS” after “PHONE”;

12 (ii) in paragraph (1), by inserting “or  
13 GPS” after “phone” both places that term  
14 appears; and

15 (iii) in paragraph (2), by inserting “or  
16 GPS” after “phone”.

17 (3) CHAPTER ANALYSIS.—The table of sections  
18 for chapter 47 of title 18, United States Code, is  
19 amended by striking the item relating to section  
20 1039 and inserting the following:

“1039. Fraud and related activity in connection with obtaining confidential  
phone or GPS records information of a covered entity.”.

21 (c) SENTENCING GUIDELINES.—

22 (1) REVIEW AND AMENDMENT.—Not later than  
23 180 days after the date of enactment of this Act, the  
24 United States Sentencing Commission, pursuant to

1 its authority under section 994 of title 28, United  
2 States Code, and in accordance with this section,  
3 shall review and, if appropriate, amend the Federal  
4 sentencing guidelines and policy statements applica-  
5 ble to persons convicted of any offense under section  
6 1039 of title 18, United States Code, as amended by  
7 this section.

8 (2) AUTHORIZATION.—The United States Sen-  
9 tencing Commission may amend the Federal sen-  
10 tencing guidelines in accordance with the procedures  
11 set forth in section 21(a) of the Sentencing Act of  
12 1987 (28 U.S.C. 994 note) as though the authority  
13 under that section had not expired.

14 **SEC. 5. STATEMENT OF EXCLUSIVE MEANS OF ACQUIRING**  
15 **GEOLOCATION INFORMATION.**

16 (a) IN GENERAL.—No person may acquire the  
17 geolocation information of a person for protective activities  
18 or law enforcement or intelligence purposes except pursu-  
19 ant to a warrant issued pursuant to rule 41 of the Federal  
20 Rules of Criminal Procedure, as amended by section 3,  
21 or the amendments made by this Act, or the Foreign Intel-  
22 ligence Surveillance Act of 1978 (50 U.S.C. 1801).

23 (b) GEOLOCATION INFORMATION DEFINED.—In this  
24 section, the term “geolocation information” has the mean-

1 ing given that term in section 2601 of title 18, United  
2 States Code, as amended by section 2.

○