

State of Wisconsin



2013 Assembly Bill 536

Date of enactment: **April 23, 2014**
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2013 WISCONSIN ACT 375

AN ACT *to amend* 134.43 (3), 968.27 (10) and 995.50 (7); and *to create* 968.373 and 968.375 (4) (c) of the statutes; relating to: prohibition on tracking the location of a cellular telephone by law enforcement without a warrant.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.43 (3) of the statutes is amended to read:

134.43 (3) Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. 995.50 (1) and (4) unless the act is permissible under ss. 968.27 to ~~968.37~~ 968.373.

SECTION 2. 968.27 (10) of the statutes is amended to read:

968.27 (10) "Investigative or law enforcement officer" means any officer of this state or political subdivision thereof, who is empowered by the laws of this state to conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to 968.37 violations of the laws that he or she is employed to enforce, and any attorney authorized by law to prosecute or participate in the prosecution of those offenses.

SECTION 3. 968.373 of the statutes is created to read:

968.373 Warrant to track a communications device. (1) DEFINITION. In this section, "communications device" includes any wireless or mobile device that transmits wire or electronic communications.

(2) PROHIBITION. Except as provided in sub. (8), no investigative or law enforcement officer may identify or track the location of a communications device without first obtaining a warrant under sub. (4).

(3) APPLICATION FOR WARRANT. Upon the request of a district attorney or the attorney general, an investigative or law enforcement officer may apply to a judge for a warrant to authorize a person to identify or track the location of a communications device. The application shall be under oath or affirmation, may be in writing or oral, and may be based upon personal knowledge or information and belief. In the application, the investigative or law enforcement officer shall do all of the following:

(a) Identify the communications device.

(b) Identify, if known, the owners or possessors of the communications device.

(c) Identify, if known, the person who is the subject of the investigation.

(d) Provide a statement of the criminal offense to which the information likely to be obtained relates.

(e) Provide a statement that sets forth facts and circumstances that provide probable cause to believe the criminal activity has been, is, or will be in progress and that identifying or tracking the communications device will yield information relevant to an ongoing criminal investigation.

(4) WARRANT. A judge shall issue a warrant authorizing a person to identify or track the location of a communications device if the judge finds that the application satisfies the requirements under sub. (3). A warrant issued under this subsection may not authorize the action for a period that exceeds 60 days. A judge may extend the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

authorized period upon the request of the attorney general or a district attorney if the request satisfies the requirements under sub. (3). Each extension may not exceed 60 days but there is no limit on the number of extensions a judge may grant.

(4m) SECRECY. A warrant under sub. (4) shall be issued with all practicable secrecy and the request, application, or other information upon which the warrant is based may not be filed with the clerk or made public until the warrant has been executed and returned to the court. The judge may issue an order sealing the application, request, or other information upon which the warrant is based. The judge may issue an order prohibiting any person who has been ordered by the judge to provide assistance to the applicant from disclosing the existence of the warrant or of the investigation to any other person unless ordered by a judge.

(5) ASSISTANCE. Upon the request of the attorney general, a district attorney, or a law enforcement agency authorized by a warrant issued under sub. (4) to track or identify the location of a communications device, the court shall order a provider of electronic communication service or other person to provide to an investigative or law enforcement officer information, facilities, and technical assistance to identify or track the location of the communications device. A person who is ordered under this subsection to provide assistance shall be compensated for the reasonable expenses incurred.

(6) CONFIDENTIALITY OF INFORMATION. (a) Information obtained under this section regarding the location of a communications device is not subject to the right of inspection and copying under s. 19.35 (1).

(b) The attorney general, a law enforcement agency, or a district attorney that obtains under this section information regarding the location of a communications device, or evidence derived from the information, shall destroy any information or evidence derived from it if the trial court reaches final disposition for all charges in connection with the investigation that was the subject of the warrant under sub. (4) and no person was adjudged guilty of a crime in connection with the investigation.

(c) Information regarding the location of a communications device that is obtained under this section may be disclosed to other investigative or law enforcement officers.

(6m) RETURN. A warrant issued under sub. (4) shall be returned, including in the form of a summary description of the information received, to the court not later than 5 days after the records or information described in the warrant are received by the attorney general, district attorney, or law enforcement agency, whichever is designated in the warrant.

(7) DEFENSE AND IMMUNITY. (a) A person on whom a warrant issued under sub. (4) is served is immune from civil liability for acts or omissions in providing records

or information, facilities, or assistance in accordance with the terms of the warrant.

(b) A person who discloses the location of a communications device under sub. (8) (b) is immune from civil liability for the acts or omissions in making the disclosure in accordance with sub. (8) (b).

(c) No cause of action may arise against any provider of electronic communication service, or its officers, employees, or agents or other persons specified in the court order under sub. (5), for providing information, facilities, or assistance in accordance with the terms of a court order under sub. (5).

(7m) TECHNICAL IRREGULARITIES. Evidence disclosed under a warrant issued under sub. (4) may not be suppressed because of technical irregularities or errors not affecting the substantial rights of the defendant.

(8) EXCEPTION. (a) The prohibition in sub. (2) does not apply to an investigative or law enforcement officer who identifies or tracks the location of a communications device if any of the following applies:

1. The customer or subscriber provides consent for the action.

2. An emergency involving danger of death or serious physical injury to any person exists and identifying or tracking the location of the communications device is relevant to preventing the death or injury or to mitigating the injury.

(b) A provider of electronic communication service may disclose the location of a communications device without a warrant if any of the following applies:

1. The customer or subscriber provides consent for the particular disclosure.

2. The provider of electronic communication service believes in good faith that an emergency involving the danger of death or serious physical injury to any person exists and that disclosure of the location is relevant to preventing the death or injury or to mitigating the injury.

(8m) JURISDICTION. For purposes of this section, a person is considered to be doing business in this state and is subject to service and execution of process from this state, if the person makes a contract with or engages in a terms of service agreement with any other person, whether or not the other person is a resident of this state, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

(9) SEIZURE. Any device used in violation of sub. (2) may be seized as contraband by any law enforcement officer and forfeited to this state in an action under s. 973.075.

SECTION 4. 968.375 (4) (c) of the statutes is created to read:

968.375 (4) (c) A record or information that identifies the location of a device used to transmit electronic or wire communications.

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SECTION 5. 995.50 (7) of the statutes is amended to read:

995.50 (7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. 196.63 or 968.27 to ~~968.37~~ 968.373.

SECTION 6. Initial applicability.

(1) This act first applies to information regarding the location of a communications device obtained on the effective date of this subsection.
