



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0092/1
EAW:klm

2023 SENATE BILL 331

June 14, 2023 - Introduced by Senators JACQUE and TOMCZYK, cosponsored by Representatives MURSAU, PENTERMAN and DONOVAN. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to amend** 968.27 (13), 968.27 (15), 968.35 (1), 968.36 (2) (a), 968.36 (2)
2 (c), 968.36 (5) (b) and 968.37 (2); and **to create** 968.36 (6) of the statutes;
3 **relating to:** pen registers and trap and trace devices.

Analysis by the Legislative Reference Bureau

This bill expands the definitions of “pen register” and “trap and trace device,” which are two types of wiretapping devices. Under current law, a “pen register” is defined as a device that records or decodes electronic or other impulses that identify the numbers dialed or transmitted on a telephone line. A “trap and trace device” is defined under current law as a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Under the bill, the definition of “pen register” includes a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted on a telephone line or by an instrument or facility from which a wire or electronic communication is transmitted. The definition of “trap and trace device” includes a device or process that identifies the originating number or other dialing, routing, addressing, and signaling information of an instrument or facility from which a wire or electronic communication was received.

Current law provides that the attorney general or a district attorney may apply for a court order from the circuit court for the county where the device is to be located to install a pen register or a trap and trace device to further a criminal investigation. This bill allows the attorney general or a district attorney to apply for the court order for a pen register or trap and trace device from the circuit court for any county.

SENATE BILL 331

Under the bill, a person is considered to be doing business in this state, for the purpose of a pen register or trap and trace device order, if the person contracts with or engages in a terms of service agreement with any other person for the use of a line, instrument, or facility, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

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

1 **SECTION 1.** 968.27 (13) of the statutes is amended to read:

2 968.27 (13) “Pen register” means a device or process that records or decodes
3 ~~electronic or other impulses that identify the numbers dialed or otherwise dialing,~~
4 routing, addressing, or signaling information transmitted on the telephone line to
5 ~~which the device is attached or by an instrument or facility from which a wire or~~
6 electronic communication is transmitted. “Pen register” does not include any device
7 or process used by a provider or customer of a wire or electronic communication
8 service for billing, or recording as an incident to billing, for communications services
9 provided by the provider or any device or process used by a provider or customer of
10 a wire communication service for cost accounting or other like purposes in the
11 ordinary course of its business.

12 **SECTION 2.** 968.27 (15) of the statutes is amended to read:

13 968.27 (15) “Trap and trace device” means a device or process that captures the
14 incoming electronic or other impulses that identify the originating number or other
15 dialing, routing, addressing, and signaling information of an instrument or device
16 reasonably likely to identify the source from which a wire or electronic
17 communication was ~~transmitted~~ received.

18 **SECTION 3.** 968.35 (1) of the statutes is amended to read:

SENATE BILL 331

1 968.35 (1) The attorney general or a district attorney may make application for
2 an order or an extension of an order under s. 968.36 authorizing or approving the
3 installation and use of a pen register or a trap and trace device, in writing under oath
4 or equivalent affirmation, to a circuit court for the any county where the device is to
5 be located.

6 **SECTION 4.** 968.36 (2) (a) of the statutes is amended to read:

7 968.36 (2) (a) Specify the identity, if known, of the person to whom is leased or
8 in whose name is listed the telephone line, instrument, or facility to which the pen
9 register or trap and trace device is to be attached.

10 **SECTION 5.** 968.36 (2) (c) of the statutes is amended to read:

11 968.36 (2) (c) Specify the number and, if known, the physical location of the
12 telephone line, instrument, or facility to which the pen register or trap and trace
13 device is to be attached and, in the case of a trap and trace device, the geographic
14 limits of the trap and trace order.

15 **SECTION 6.** 968.36 (5) (b) of the statutes is amended to read:

16 968.36 (5) (b) The person owning or leasing the line, instrument, or facility to
17 which the pen register or a trap and trace device is attached, or who has been ordered
18 by the court to provide assistance to the applicant, not disclose the existence of the
19 pen register or trap and trace device or the existence of the investigation to the listed
20 subscriber, or to any other person, unless or until otherwise ordered by the court.

21 **SECTION 7.** 968.36 (6) of the statutes is created to read:

22 968.36 (6) For purposes of this section, a person is considered to be doing
23 business in this state, and is subject to service and execution of process from this
24 state, if the person makes a contract with or engages in a terms of service agreement
25 with any other person for the use of a line, instrument, or facility, whether or not the

SENATE BILL 331**SECTION 7**

1 other person is a resident of this state, and any part of the performance of the contract
2 or provision of service takes place within this state on any occasion.

3 **SECTION 8.** 968.37 (2) of the statutes is amended to read:

4 968.37 (2) Upon the request of the attorney general, a district attorney or an
5 officer of a law enforcement agency authorized to receive the results of a trap and
6 trace device under ss. 968.28 to 968.37, a provider of a wire or electronic
7 communication service, landlord, custodian or other person shall install the trap and
8 trace device forthwith on the appropriate line, instrument, or facility and shall
9 furnish the investigative or law enforcement officer all additional information,
10 facilities and technical assistance including installation and operation of the trap
11 and trace device unobtrusively and with a minimum of interference with the services
12 that the person so ordered by the court accords the party with respect to whom the
13 installation and use is to take place, if the installation and assistance is directed by
14 a court order under s. 968.36 (5) (b). Unless otherwise ordered by the court, the
15 results of the trap and trace device shall be furnished to the officer of a law
16 enforcement agency, designated by the court, at reasonable intervals during regular
17 business hours for the duration of the order.

18

(END)