

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2272
(Senators Unruh, Grabinger, Osland)
(Representatives Roers Jones, Schneider)

AN ACT to create and enact chapter 29-29.6 of the North Dakota Century Code, relating to the issuance of a tracking warrant for location information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 29-29.6 of the North Dakota Century Code is created and enacted as follows:

29-29.6-01. Definitions.

As used in this chapter:

1. "Electronic communication service" has the meaning given in subsection 2 of section 29-29.3-01.
2. "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.
3. "Government entity" means a state or local agency, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.
4. "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device. This information could include historical cell site location information, real time cell site location information, or any cell site location information from a specific period of time.
5. "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.
6. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system.
7. "Tracking warrant" means an order in writing, in the name of the state, signed by a court directed to a peace officer, granting the officer access to location information of an electronic device.

29-29.6-02. Tracking warrant required for location information.

1. Except as provided in subsection 2, a government entity may not obtain the location information of an electronic device without a tracking warrant. A warrant granting access to location information must be issued only if the government entity shows that there is probable cause the person who possesses an electronic device is committing, has committed, or is about to commit a crime. An application for a warrant must be made in writing and include:
 - a. The identity of the government entity's peace officer making the application, and the officer authorizing the application; and
 - b. A statement of the facts and circumstances relied on by the applicant to justify the applicant's belief that a warrant should be issued, including:

- (1) Details as to the particular offense that has been, is being, or is about to be committed; and
 - (2) The identity of the person, if known, committing the offense whose location information is to be obtained.
2. A government entity may obtain location information without a tracking warrant:
- a. When the electronic device is reported lost or stolen by the owner;
 - b. In order to respond to the user's call for emergency services;
 - c. With the informed, affirmative, documented consent of the owner or user of the electronic device;
 - d. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user if the owner or user is believed to be deceased or reported missing and unable to be contacted; or
 - e. In an emergency situation that involves injury or death to a person who possesses an electronic communications device pursuant to section 8-10-11.

29-29.6-03. Time period and extensions.

1. A tracking warrant issued under this section must authorize the collection of location information for a period not to exceed sixty days, or the period of time necessary to achieve the objective of the authorization, whichever is less.
2. Extensions of a tracking warrant may be granted, but only upon an application for an order and upon the judicial finding required by subdivision b of subsection 1 of section 29-29.6-02. The period of extension must be for a period not to exceed sixty days, or the period of time necessary to achieve the objective for which it is granted, whichever is less.
3. Subsections 1 and 2 apply only to tracking warrants issued for the contemporaneous collection of electronic device location information.

29-29.6-04. Notice - Temporary nondisclosure of tracking warrant.

1. Within a reasonable time, but not later than ninety days after the court unseals the tracking warrant under this section, the issuing or denying judge shall cause to be served on the persons named in the warrant and the application an inventory which shall include notice of:
 - a. The fact of the issuance of the warrant or the application;
 - b. The date of the issuance and the period of authorized, approved, or disapproved collection of location information, or the denial of the application; and
 - c. The fact that during the period location information was or was not collected.
2. A tracking warrant authorizing collection of location information must direct that:
 - a. The warrant be sealed for a period of ninety days; and
 - b. The warrant be filed with the court administrator within ten days of the expiration of the warrant.
3. The prosecutor may request that the tracking warrant, supporting affidavits, and any order granting the request not be filed. An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that filing the warrant may cause the search or a related search to be

unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.

4. The tracking warrant must direct that following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2272.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State