

2019 SENATE JUDICIARY COMMITTEE

SB 2272

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2272
1/21/2019
#31105 (7:47)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for 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.

Minutes:

1 Attachment

Chair Larson opens the hearing on SB 2272.

Jessica Unruh, District 33 Senator, testifies in favor of the bill

Senator Unruh: This bill was brought by the Attorney General's Office. This addresses cell site location information (CSLI) which is commonly used by law enforcement when they are investigating a crime to determine the location of a perpetrator or the route the perpetrator took. It can be used to discredit an individual's statement on their whereabouts at the time of the crime based upon the GPS coordinates from their phone. CSLI is the information exchanged between the cell phone and the cell tower. The cell phone sends a signal to the closest tower in that provider's network and creates a digital footprint that is recorded by that specific cell phone provider. Our current law addressing similar types of warrants does not include the issuance of a tracking warrant for a cell site location information although the pen statute is commonly relied on when law enforcement seeks warrants for tracking information. This bill adds a new section directly behind the pen register in section 29-29. The bill requires law enforcement to obtain a search from the court before obtaining cell site location information.

(3:15) Britta Demello Rice, Assistant Attorney General, testifies in favor of the bill (see attachment #1)

Chair Larson: This just puts it in code that it must be done that way. It's informally being done already and really isn't going to change anything other than to codify it?

Rice: Correct.

Senator Myrdal: Line 19 of subsection 2 says “A government entity may obtain location information without a tracking warrant”. Please clarify those points.

Rice: There are some exceptions to when we don’t need a warrant: when the device is reported lost or stolen by the owner, emergency services, with the consent of the owner or the legal guardian or next of kin of the owner of the user if the user is believed to be deceased or reported missing and unable to be contacted. The last one is in “an emergency situation that involves injury or death to a person who possesses an electronic communications device pursuant to section 8-10-11”.

Senator Myrdal: It also says on line 15 an offense that “is about to be committed”. From a legal point of view, what defines a crime about to be committed?

Rice: Let’s say it’s a drug case and there is intel that a shipment of 500 pounds of methamphetamine will be driven across our boarder and that intel indicates it will be in Fargo at a certain drop location or a certain time. Maybe they’re trying to get the GPS, real-time coordinates of where that vehicle is so that they can meet it and do a takedown. They would get the warrant to get those real-time coordinates.

Chair Larson closes the hearing on SB 2272.

Senator Luick: Moves a Do Pass.

Senator Bakke: Seconds.

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2272: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2272 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2272

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2272
3/6/2019
33271

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the issuance of a tracking warrant for location information.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2272.

Senators Unruh: It requires law enforcement to obtain a search warrant from the court before obtaining site location information. This is based on a U S Supreme Court ruling.

Rep. Satrom: What about a situation where someone is lost; does it apply to that kind of situation where they would have to get a search warrant to find out where the person is?

Britta Demello Rice, Assistant Attorney General: (Attachment #1) Went over testimony.

Rep. Satrom: I had a friend who had a problem and she got lost. Is that a case where you need to get a search warrant?

Britta Rice: That would be an exception. A government agency does not need a warrant if the owner or user is considered missing or deceased and unable to be contacted.

Chairman K. Koppelman: Is this patterned after the federal law?

Britta Rice: It was a Supreme Court case that said a person needs that tracking or search warrant to get that cell phone location information. This language is taken from what Minnesota did to revamp their laws with compliance of Carpenter.

Rep. Vetter: Does this in any way impose on citizens fourth amendment's rights as far as seizure?

Britta Rice: Because it is requiring law enforcement to get that search warrant that preserves a suspect's reasonable expectation of privacy under the fourth amendment. No this says no law enforcement. If we were going to get that cell site location of information which the Supreme Court says you have a reasonable expectation of privacy in. if law enforcement

was going to get that without the courts permission, absolutely it would be a violation of the fourth amendment.

Rep. Vetter: Since you said they were currently doing it; wouldn't that be violating it?

Britta Rice: Law enforcement right now are getting a search warrant. It is just not required by our state statute and law enforcement right now are not violating people's rights. We want to make it that it is in the law.

Rep. Jones: Usually we are way behind the criminals on this type of stuff. I know this is a real effective tool for tracking criminal activity because the phones will show exactly where they were and what they were doing. Are they buying temporary phones while they are doing the criminal activities and then throwing them in the river when they get done with them.

Britta Rice: This is still an effective tool. You are correct a lot of drug traffickers are using phones that you just buy at Walmart; throw away phones. Yes, they do use those phones, but usually we have the intel ahead of time. Then we are able to get that warrant to get the cell site location. There are three different cell site locations; historical, real time and another kind. We usually know the information ahead of time before they get rid of the phone.

Chairman K. Koppelman: Prior to that Supreme Court case; was that the practice or did they do this as an investiture tool?

Britta Rice: All of the above.

Chairman K. Koppelman: We had a piece of legislation earlier this session on civil assets forfeiture and one of the discussions there centered around this very thing on tracking suspected drug traffickers who come into our state and are using cell phones and moving from one place to another. Is it the phone itself they are tracking; not the phone number.

Britta Rice: I do know it is from the phone they have because that is what is pinging with the nearest tower.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. Satrom; Seconded by Rep. Hanson

Discussion:

Roll Call Vote: 12 Yes 0 No 2 Absent Carrier: Vice Chairman Karls

Closed.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 SB 2272**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Satrom Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	----				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	----				
Rep. Vetter	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Karls

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2272: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2272 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2272

SENATE BILL 2272 TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 21ST, 2019
FORT LINCOLN ROOM

#1
SB 2272
1/21

By Britta Demello Rice, Assistant Attorney General

Madame Chair and Members of the Committee:

My name is Demello Rice and I appear on behalf of the Attorney General. I wish to testify in favor of Senate Bill 2272.

Cell site location information (CSLI) is commonly used by law enforcement when they are investigating a crime to determine the location of a suspect or the route a suspect took. It can be used to discredit an individual's statement on their whereabouts at the time of the crime based upon the GPS coordinates from their phone.

CSLI is the information exchanged between a cell phone and a cell tower. The cell phone sends a signal to the closest tower in that provider's network and creates a digital footprint that is recorded by that specific cell phone provider.

The U.S. Supreme Court issued an opinion in Carpenter v. United States, 585 U.S. ____ (2018) which requires law enforcement to obtain a search warrant from a judge prior to receiving cell site location information. Law enforcement is already in compliance with this requirement; however, our state needs a statute requiring the same.

SENATE BILL 2272 TESTIMONY
HOUSE JUDICIARY COMMITTEE
MARCH 6, 2019
PRAIRIE ROOM

#1
SB 2272
3-6-19
P. 1

By Britta Demello Rice, Assistant Attorney General

Chair Koppelman and Members of the Committee:

My name is Britta Demello Rice and I appear on behalf of the Attorney General. I wish to testify in favor of Senate Bill 2272.

The U.S. Supreme Court issued an opinion in Carpenter v. United States, 585 U.S. ____ (2018) which requires law enforcement to obtain a search warrant from a judge prior to receiving cell site location information (CSLI).

CSLI is the information exchanged between a cell phone and a cell tower. The cell phone sends a signal to the closest tower in that provider's network and creates a digital footprint that is recorded by that specific cell phone provider.

CSLI is commonly used by law enforcement when they are investigating a crime to determine the location of a suspect or the route a suspect took. It can be used to discredit a suspect's statement on their whereabouts at the time of the crime based upon the GPS coordinates from their phone.

Law enforcement is already in compliance with this requirement; however, our state needs a statute requiring the same.