

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 14-0903.01 Jerry Barry x4341

SENATE BILL 14-193

SENATE SPONSORSHIP

Carroll and Lundberg,

HOUSE SPONSORSHIP

Singer,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONFORMING COLORADO LAW ON LOCATION**
102 **INFORMATION WITH THE FOURTH AMENDMENT AS**
103 **INTERPRETED BY THE UNITED STATES SUPREME COURT IN**
104 **UNITED STATES V. JONES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A United States supreme court decision held that the use of a GPS device to monitor a vehicle's movement constituted a search requiring the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 30, 2014

government to obtain a search warrant. With certain specified exceptions, the bill prohibits a governmental entity from obtaining location information from an electronic device without first obtaining a search warrant.

If location information or evidence derived from location information is used in a court proceeding, all parties must receive a copy of the search warrant and application at least 10 days prior to the proceeding. A judge may waive the 10-day requirement in certain circumstances.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Without a valid search warrant, federal government agents
5 attached a GPS device on a vehicle owned by a suspect's wife, tracked the
6 movement of that vehicle for 28 days, and used that information to obtain
7 an indictment against the suspect;

8 (b) The court of appeals held that the warrantless use of the GPS
9 device constituted a search, violated the fourth amendment's protection
10 against unreasonable searches, and prohibited the use of the information
11 obtained by the GPS device;

12 (c) In 2012, in the case of *United States v. Jones*, the United States
13 supreme court unanimously affirmed the ruling of the court of appeals
14 and stated that "the Government's installation of a GPS device on a
15 target's vehicle and its use of that device to monitor the vehicle's
16 movements constituted a 'search'";

17 (d) The right to be protected from unreasonable searches and
18 seizures has been guaranteed by the fourth amendment to the United
19 States constitution for over 220 years;

20 (e) The right of people in Colorado to be protected from

1 unreasonable searches and seizures has been guaranteed by section 7 of
2 article II of the Colorado constitution since its adoption in 1876; and

3 (f) It is necessary to clarify that people in Colorado are protected
4 from searches conducted by the government using electronic devices to
5 track the location of the device unless the government first obtains a
6 lawful search warrant or is acting in accordance with a constitutionally
7 recognized exception to the search warrant requirement.

8 (2) It is the intent of the general assembly to implement and give
9 full effect to the fourth amendment of the United States constitution and
10 section 7 of article II of the Colorado constitution, as applied to the
11 government's use of location information of an electronic device.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 16-3-303.5 as
13 follows:

14 **16-3-303.5. Location information - search warrant required**
15 **- definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
16 OTHERWISE REQUIRES:

17 (a) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE
18 THAT PROVIDES THE ABILITY TO SEND OR RECEIVE WIRE OR ELECTRONIC
19 COMMUNICATIONS TO USERS OF THE SERVICE.

20 (b) "ELECTRONIC DEVICE" MEANS A DEVICE THAT ENABLES ACCESS
21 TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, REMOTE
22 COMPUTING SERVICE, OR LOCATION INFORMATION SERVICE.

23 (c) "GOVERNMENT ENTITY" MEANS A STATE OR LOCAL AGENCY,
24 INCLUDING BUT NOT LIMITED TO A LAW ENFORCEMENT ENTITY OR ANY
25 OTHER INVESTIGATIVE ENTITY, AGENCY, DEPARTMENT, DIVISION, BUREAU,
26 BOARD, OR COMMISSION, OR AN INDIVIDUAL ACTING OR PURPORTING TO
27 ACT FOR OR ON BEHALF OF A STATE OR LOCAL AGENCY.

1 (d) "LOCATION INFORMATION" MEANS INFORMATION CONCERNING
2 THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR IN PART, IS
3 GENERATED OR DERIVED FROM OR OBTAINED BY THE OPERATION OF AN
4 ELECTRONIC DEVICE ON A CELLULAR TELEPHONE NETWORK OR A
5 LOCATION INFORMATION SERVICE RATHER THAN OBTAINED FROM A
6 SERVICE PROVIDER.

7 (e) "LOCATION INFORMATION SERVICE" MEANS THE PROVISION OF
8 A GLOBAL POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR
9 DIRECTIONAL INFORMATION SERVICE.

10 (f) "REMOTE COMPUTING SERVICE" MEANS THE PROVISION OF
11 COMPUTER STORAGE OR PROCESSING SERVICES BY MEANS OF AN
12 ELECTRONIC COMMUNICATIONS SYSTEM.

13 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OR (4) OF THIS
14 SECTION, A GOVERNMENT ENTITY SHALL NOT OBTAIN THE LOCATION
15 INFORMATION OF AN ELECTRONIC DEVICE WITHOUT A SEARCH WARRANT
16 ISSUED BY A COURT PURSUANT TO THE PROVISIONS OF THIS PART 3.

17 (3) A GOVERNMENT ENTITY MAY OBTAIN LOCATION INFORMATION
18 OF AN ELECTRONIC DEVICE WITHOUT A WARRANT UNDER ANY OF THE
19 FOLLOWING CIRCUMSTANCES:

20 (a) THE DEVICE IS REPORTED STOLEN BY THE OWNER;

21 (b) IN ORDER TO RESPOND TO THE USER'S CALL FOR EMERGENCY
22 SERVICES;

23 (c) WITH THE INFORMED, AFFIRMATIVE CONSENT OF:

24 (I) THE OWNER OR USER OF THE ELECTRONIC DEVICE;

25 (II) THE NEXT OF KIN OF THE OWNER OR USER OF THE ELECTRONIC
26 DEVICE IF THE OWNER OR USER IS BELIEVED TO BE DECEASED OR IS
27 REPORTED MISSING AND UNABLE TO BE CONTACTED; OR

1 (III) THE CHILD'S PARENT OR LEGAL GUARDIAN IF THE OWNER OR
2 USER IS UNDER EIGHTEEN YEARS OF AGE;

3 (d) THERE EXIST EXIGENT CIRCUMSTANCES SUCH THAT THE
4 SEARCH WOULD BE RECOGNIZED AS CONSTITUTIONALLY PERMISSIBLE
5 WITHOUT THE WARRANT;

6 (e) A REPRESENTATIVE OF THE GOVERNMENT ENTITY HAS A GOOD
7 FAITH BELIEF THAT HIS OR HER ACTIONS WERE LEGAL AND, UNDER THE
8 INFORMATION AVAILABLE AT THE TIME, A REASONABLE PERSON WOULD
9 BELIEVE THAT HIS OR HER ACTIONS WERE LEGAL;

10 (f) THE OWNER OR USER OF THE ELECTRONIC DEVICE HAS
11 VOLUNTARILY OR PUBLICLY DISCLOSED THE LOCATION INFORMATION;

12 (g) THE ELECTRONIC DEVICE HAS BEEN ABANDONED BY THE
13 OWNER OR USER; OR

14 (h) IN ACCORDANCE WITH ANY OTHER JUDICIALLY RECOGNIZED
15 EXCEPTION TO THE SEARCH WARRANT REQUIREMENT.

16 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PROBATION
17 DEPARTMENTS WITHIN THE JUDICIAL DEPARTMENT OR TO THE DIVISION OF
18 ADULT PAROLE WITHIN THE DEPARTMENT OF CORRECTIONS.

19 (5) ANY EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS
20 NOT ADMISSIBLE IN A CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING
21 AND SHALL NOT BE USED IN AN AFFIDAVIT OF PROBABLE CAUSE IN AN
22 EFFORT TO OBTAIN A SEARCH WARRANT.

23 (6) (a) A COURT SHALL NOT ADMIT LOCATION INFORMATION
24 OBTAINED PURSUANT TO THIS SECTION OR EVIDENCE DERIVED FROM THAT
25 INFORMATION AT A TRIAL, HEARING, OR OTHER PROCEEDING UNLESS THE
26 PARTY SEEKING TO INTRODUCE THE EVIDENCE PROVIDES A COPY OF THE
27 WARRANT AND ACCOMPANYING AFFIDAVIT TO EACH PARTY PURSUANT TO

1 RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY
2 SUCCESSOR RULE.

3 (b) A COURT MAY WAIVE THE _____ REQUIREMENT UNDER
4 PARAGRAPH (a) OF THIS SUBSECTION (6) IF THE COURT FINDS THAT IT WAS
5 NOT POSSIBLE TO PROVIDE A PARTY WITH THE WARRANT AND
6 ACCOMPANYING APPLICATION WITHIN THE TIME REQUIRED BY RULE 16 OF
7 THE COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY SUCCESSOR
8 RULE, ___ AND THAT THE PARTY WILL NOT BE PREJUDICED BY THE DELAY
9 IN RECEIVING THE INFORMATION.

10 (7) AN ELECTRONIC COMMUNICATION SERVICE PROVIDER, ITS
11 OFFICERS, EMPLOYEES, OR AGENTS ARE NOT LIABLE FOR PROVIDING
12 INFORMATION, FACILITIES, OR ASSISTANCE IN COMPLIANCE WITH THE
13 TERMS OF A SEARCH WARRANT ISSUED PURSUANT TO THIS SECTION.

14 (8) THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT
15 AGENCY OBTAINING BASIC SUBSCRIBER INFORMATION FROM AN
16 ELECTRONIC COMMUNICATIONS SERVICE PROVIDER PURSUANT TO A VALID
17 SUBPOENA, COURT ORDER, OR SEARCH WARRANT.

18 **SECTION 3. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.