

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 14-0903	Date: July 22, 2014
Prime Sponsor(s): Sen. Carroll; Lundberg Rep. Singer	Bill Status: Signed into Law
	Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: LOCATION INFORMATION AFTER US V JONES

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures General Fund	Minimal workload increase.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill prohibits a state or local agency from obtaining location information from an electronic device without first obtaining a search warrant, subpoena, or court order. Exceptions are provided:

- when the device is reported stolen by its owner;
- in order to respond to the user's call for emergency services;
- with the informed, affirmative consent of the owner or user of the electronic device, the next of kin if the owner or user is believed to be deceased or is reported missing and is unable to be contacted, or the child's parent or legal guardian if the owner or user is under 18 years of age;
- when exigent circumstances exist and the search would be recognized as constitutionally permissible without the warrant;
- when a representative of a state or local government entity has a good faith belief that his or her actions were legal;
- when the owner or user of the electronic device has voluntarily or publicly disclosed the location information;
- if the electronic device has been abandoned by the owner or user;
- for probation departments within the Judicial Department or to the Division of Adult Parole within the Department of Corrections;
- for a law enforcement agency obtaining basic subscriber information from an electronic communications service provider in accordance with a valid subpoena, court order, or search warrant; or
- when any other judicially recognized exception to the search warrant requirement exists.

If location information or evidence arising from the location information is to be used in a court proceeding, all parties must receive copies of the search warrant, subpoena, or court order and accompanying affidavit as required under Rule 16 of the Colorado Rules of Criminal Procedure, or any successor rule. A court may waive this requirement if it finds that it is not possible to comply with the requirement and that the party will not be prejudiced by the delay in receiving the information. In order to seek the suppression of evidence obtained as a result of this bill, the person challenging its admissibility must have an ownership, leasehold, rental, or legitimate possessory interest in or a reasonable expectation of privacy related to the electronic device.

The bill clarifies that an electronic communication service provider is not liable for providing information, facilities, or assistance in compliance with the terms of a search warrant, subpoena, or court order.

Background

In 2012, in the case of *United States v. Jones*, the United States Supreme Court unanimously affirmed the ruling of the Court of Appeals for the District of Columbia Circuit that held that the warrantless use of a global positioning system (GPS) device constituted a search in violation of the Fourth Amendment's protection against unreasonable searches.

State Expenditures

By requiring a search warrant to be secured prior to obtaining location information from electronic devices, this bill will increase workload for the trial courts. This increase in workload is anticipated to be minimal and will not require an increase in appropriations for any state law enforcement agency or for the Judicial Department.

Local Government Impact

This bill will increase workload for local law enforcement agencies to secure search warrants for obtaining location information from electronic devices. The increase in workload is anticipated to be minimal.

Effective Date

The bill was signed into law by the Governor and took effect on June 6, 2014.

State and Local Government Contacts

Counties
Law
Sheriffs

District Attorneys
Municipalities

Judicial
Public Safety