

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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.

7 (2) It is the intent of the general assembly to implement and give
8 full effect to the opinion in *United States v. Jones* as written by Justice
9 Scalia.

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

12 **16-3-303.5. Location information - search warrant required**

13 **- definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
14 OTHERWISE REQUIRES:

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

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

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

26 (d) "LOCATION INFORMATION" MEANS INFORMATION CONCERNING
27 THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR IN PART, IS

1 GENERATED OR DERIVED FROM OR OBTAINED BY THE OPERATION OF AN
2 ELECTRONIC DEVICE.

3 (e) "LOCATION INFORMATION SERVICE" MEANS THE PROVISION OF
4 A GLOBAL POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR
5 DIRECTIONAL INFORMATION SERVICE.

6 (f) "REMOTE COMPUTING SERVICE" MEANS THE PROVISION OF
7 COMPUTER STORAGE OR PROCESSING SERVICES BY MEANS OF AN
8 ELECTRONIC COMMUNICATIONS SYSTEM.

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

13 (3) A GOVERNMENT ENTITY MAY OBTAIN LOCATION INFORMATION
14 OF AN ELECTRONIC DEVICE WITHOUT A WARRANT UNDER ANY OF THE
15 FOLLOWING CIRCUMSTANCES:

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

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

19 (c) WITH THE INFORMED, AFFIRMATIVE CONSENT OF THE OWNER
20 OR USER OF THE ELECTRONIC DEVICE; OR

21 (d) A REPRESENTATIVE OF THE GOVERNMENT ENTITY SIGNS AN
22 AFFIDAVIT STATING THAT THERE EXISTS A POSSIBLE LIFE-THREATENING
23 SITUATION.

24 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PROBATION
25 DEPARTMENTS WITHIN THE JUDICIAL DEPARTMENT OR TO THE DIVISION OF
26 ADULT PAROLE WITHIN THE DEPARTMENT OF CORRECTIONS.

27 (5) ANY EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS

1 NOT ADMISSIBLE IN A CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING
2 AND SHALL NOT BE USED IN AN AFFIDAVIT OF PROBABLE CAUSE IN AN
3 EFFORT TO OBTAIN A SEARCH WARRANT.

4 (6) (a) A COURT SHALL NOT ADMIT LOCATION INFORMATION
5 OBTAINED PURSUANT TO THIS SECTION OR EVIDENCE DERIVED FROM THAT
6 INFORMATION AT A TRIAL, HEARING, OR OTHER PROCEEDING UNLESS THE
7 PARTY SEEKING TO INTRODUCE THE EVIDENCE PROVIDES A COPY OF THE
8 WARRANT AND ACCOMPANYING AFFIDAVIT TO EACH PARTY PURSUANT TO
9 RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY
10 SUCCESSOR RULE.

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

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.