

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 804
Senate Judiciary I Committee Substitute Adopted 7/23/15

Short Title: Kelsey Smith Act.

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR WARRANTLESS ACCESS BY LAW ENFORCEMENT TO
3 TELECOMMUNICATIONS DEVICE LOCATION INFORMATION UNDER CERTAIN
4 CIRCUMSTANCES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. This act shall be known as the Kelsey Smith Act.

7 SECTION 2. Chapter 15A of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 16C.

10 "Provision of Wireless Call Location Information to Law Enforcement.

11 "**§ 15A-300.10. Provision of call location information by wireless service provider to law**
12 **enforcement.**

13 (a) The following definitions apply in this section:

14 (1) Call location data. – Global positioning system, triangulation, and per-call
15 measurement data indicating the location of a telecommunications device.
16 Call location data does not include the contents of any communication made
17 using a telecommunications device.

18 (2) Imminent. – With respect to a risk of death or serious physical harm, means
19 that the length of time necessary to comply with otherwise applicable
20 provisions of law pertaining to obtaining authorization for electronic
21 surveillance would, in the professional judgment of the law enforcement
22 agency based upon generally accepted surveillance and investigation
23 protocols, significantly reduce the chance of preventing death or serious
24 physical harm.

25 (3) Public safety answering point. – Defined in G.S. 62A-40.

26 (4) Wireless service provider. – A commercial mobile radio service provider, as
27 defined in G.S. 62A-40, including providers of subscription-based,
28 in-vehicle security service.

29 (b) Upon request of a law enforcement agency or a public safety answering point on
30 behalf of a law enforcement agency, a wireless service provider shall provide call location
31 information concerning the telecommunications device of a user to the requesting law
32 enforcement agency or public safety answering point. A law enforcement agency or public
33 safety answering point may request information under this section only in an emergency
34 situation that involves an imminent risk of death or serious physical harm.

35 (c) A wireless service provider may establish procedures for disclosure of call location
36 information.



1 (d) No cause of action shall lie in any court against a wireless service provider, its
2 officers, directors, employees, agents, or other specified persons for providing mobile
3 communications tracking information to a law enforcement agency or public safety answering
4 point as required by this act.

5 (e) The State Bureau of Investigation shall maintain a database containing emergency
6 contact information for all wireless telecommunications carriers registered to do business in the
7 State and shall make the information readily available upon request to all public safety
8 answering points located in the State."

9 **SECTION 3.(a)** Article 12 of Chapter 15A of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 15A-265. Warrantless use of pen register or trap and trace device.**

12 (a) Notwithstanding any other provision of this Chapter, a law enforcement officer may
13 have installed and use a pen register or trap and trace device if the law enforcement officer
14 makes the following determinations:

15 (1) An emergency situation exists that involves immediate danger of death or
16 serious bodily injury to any person that requires the installation and use of a
17 pen register or a trap and trace device before an order authorizing such
18 installation and use can, with due diligence, be obtained; and

19 (2) There are grounds upon which an order could be entered under this Chapter
20 to authorize such installation and use.

21 (b) The law enforcement officer must seek an order approving the installation or use in
22 accordance with G.S. 15A-263 within 48 hours after the installation has occurred, or begins to
23 occur, under subsection (a) of this section.

24 (c) In the absence of an authorizing order under G.S. 15A-263, the use of a pen register
25 or trap and trace device shall immediately terminate when the information sought is obtained,
26 when the application for the order is denied, or when 48 hours have lapsed since the installation
27 of the pen register or trap and trace device, whichever first occurs.

28 (d) The knowing installation or use by any law enforcement officer of a pen register or
29 trap and trace device pursuant to subsection (a) of this section without application for the
30 authorizing order within 48 hours of the installation shall constitute a violation of this Chapter.

31 (e) A provider of a wire or electronic service, landlord, custodian, or other person who
32 furnished facilities or technical assistance pursuant to this section shall be reasonably
33 compensated for such reasonable expenses incurred in providing such facilities and assistance."

34 **SECTION 3.(b)** G.S. 15A-261(b) reads as rewritten:

35 "(b) Exception. – The prohibition of subsection (a) of this section does not apply to the
36 use of a pen register or a trap and trace device by a provider of wire or electronic
37 communication service:

38 (1) Relating to the operation, maintenance, or testing of a wire or electronic
39 communication service or to the protection of the rights or property of the
40 provider, or to the protection of users of that service from abuse of service or
41 unlawful use of ~~service~~; ~~or~~ service.

42 (2) To record the fact that a wire or electronic communication was initiated or
43 completed in order to protect the provider, another provider furnishing
44 service toward the completion of the wire communication, or a user of that
45 service, from fraudulent, unlawful or abusive use of ~~service~~; ~~or~~ service.

46 (3) With the consent of the user of that service.

47 (4) Under emergency circumstances as set forth in G.S. 15A-265."

48 **SECTION 4.** This act becomes effective December 1, 2015, and applies to
49 offenses committed on or after that date.