

Amendment No. 393

Assembly Amendment to Assembly Bill No. 313 (BDR 14-421)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

MNM/BAW



Date: 4/15/2013

A.B. No. 313—Prohibits the installation or use of a pen register, trap and trace device or mobile tracking device without a court order in certain circumstances. (BDR 14-421)



ASSEMBLY BILL NO. 313—ASSEMBLYWOMAN PIERCE

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Prohibits the ~~installation or use of a pen register, trap and trace device or mobile~~ tracking ~~device~~ **of a mobile phone by an investigative or law enforcement officer** without a court order in certain circumstances. (BDR 14-421)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; generally prohibiting ~~the installation or use of a pen register, trap and trace device or mobile~~ **an investigative or law enforcement officer from** tracking ~~device~~ **a mobile phone** without a court order; authorizing certain investigative or law enforcement officers to apply to the district court for such an order or extension thereof; authorizing district courts to enter an order authorizing the ~~use of a pen register, trap and trace device or mobile~~ tracking ~~device~~ **of a mobile phone** in certain circumstances; ~~providing penalties;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law authorizes the district courts of this State to issue orders authorizing the use of a pen register or trap and trace device upon the application of a district attorney, the Attorney General or their deputies, supported by an affidavit of a peace officer under the circumstances and upon the conditions prescribed by federal law. (NRS 179.530) Section 17 of this bill repeals this provision.~~ **Section 4** of this bill authorizes an investigative or law enforcement officer who is responsible for an ongoing criminal investigation to apply to the district court for an order or an extension of an order which authorizes the ~~use of a pen register, trap and trace device or mobile~~ tracking ~~device~~ **of a mobile phone**. **Section 5** of this bill authorizes the district court to enter an ex parte order authorizing the ~~use of a pen register, trap and trace device or mobile~~ tracking ~~device within the territorial jurisdiction of the court~~ **of a mobile phone** if the court determines that there is probable cause for belief that the information likely to be obtained by such ~~use~~ **tracking** is relevant to the ongoing criminal investigation. Such an order or extension of an order cannot exceed 30 days. **Section 3** of this bill generally prohibits ~~a person~~ **an investigative or law enforcement officer** from ~~installing or using a pen register, trap and trace device or mobile~~ tracking ~~device~~ **a mobile phone** without obtaining such an order, ~~and provides that a person who knowingly violates such a provision is guilty of a gross misdemeanor.~~

~~Existing law also provides that it is unlawful for certain persons to give notice or attempt to give notice of the use of a pen register or trap and trace device to any person with the intent to obstruct, impede or prevent such use. A person who violates this provision is guilty of a category D felony. (NRS 190.540) Section 16 of this bill provides that it is also unlawful for certain persons to give notice or attempt to give notice of the use of a mobile tracking device to any person with the intent to obstruct, impede or prevent such use.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Delete existing sections 1 through 17 of this bill and replace with the following new sections 1 through 5:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. As used in sections 2 to 5, inclusive, of this act, unless the context otherwise requires, "investigative or law enforcement officer" has the meaning ascribed to it in NRS 179.435.

Sec. 3. 1. Except as otherwise provided in this section, an investigative or law enforcement officer shall not track a mobile phone without first obtaining a court order authorizing the tracking of the mobile phone pursuant to section 5 of this act.

2. The provisions of subsection 1 do not apply to:

(a) The tracking of a mobile phone when the consent of the owner of the mobile phone has been obtained; or

(b) A request for call location information concerning the mobile phone of a user by a law enforcement agency in response to a call for emergency services or in an emergency situation that involves the immediate risk of death or serious harm.

Sec. 4. 1. An investigative or law enforcement officer who is responsible for an ongoing criminal investigation may apply to the district court in writing upon oath or affirmation for an order or an extension thereof pursuant to section 5 of this act which authorizes the tracking of a mobile phone.

2. Each application made pursuant to subsection 1 must include the following information:

(a) The identity of the investigative or law enforcement officer making the application;

(b) The identity of any other officer or employee authorizing or directing the application;

(c) The identity of the law enforcement agency conducting the criminal investigation; and

(d) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued.

Sec. 5. 1. Upon receipt of an application made pursuant to section 4 of this act, the court may enter an ex parte order, as requested or as modified, authorizing the tracking of a mobile phone if the court determines on the basis of the facts submitted by the applicant that there is probable cause for belief that the information likely to be obtained by the tracking of the mobile phone is relevant to an ongoing criminal investigation.

2. Each order authorizing the tracking of a mobile phone pursuant to subsection 1 must specify:

(a) The identity of the owner of the mobile phone;

1 (b) The identity of the person, if known, who is the subject of the ongoing
2 criminal investigation;

3 (c) A statement of the particular offense to which the information likely to be
4 obtained by the tracking of the mobile phone relates;

5 (d) The identity of the investigative or law enforcement officer responsible
6 for tracking the mobile phone; and

7 (e) The period during which the tracking of the mobile phone is authorized.

8 3. No order entered pursuant to this section may authorize the tracking of a
9 mobile phone for any period longer than is necessary to achieve the objective of
10 the authorization, and in no event longer than 30 days. Extensions of an order
11 may be granted, but only in accordance with the provisions of subsection 1 and
12 upon application for an extension made in accordance with the procedures
13 provided in section 4 of this act. The period of extension must not be longer than
14 the authorizing judge deems necessary to achieve the purposes for which it was
15 granted, and in no event longer than 30 days. Every order and extension thereof
16 must:

17 (a) Include a statement of any changes in the information required pursuant
18 to subsection 2; and

19 (b) Contain a provision that the tracking of the mobile phone must begin as
20 soon as practicable and terminates upon attainment of the authorized objective,
21 or in any event in 30 days.