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CRIMINAL PROCEDURE (725 ILCS 168/) Freedom From Location Surveillance Act.

(725 ILCS 168/1)

Sec. 1. Short title. This Act may be cited as the Freedom From Location Surveillance Act.

(Source: P.A. 98-1104, eff. 8-26-14.)

(725 ILCS 168/5)

Sec. 5. Definitions. For the purpose of this Act:

"Basic subscriber information" means name, address, local and long distance telephone connection records or records of session time and durations; length of services, including start dates, and types of services utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and the means and source of payment for the service, including the credit card or bank account number.

"Electronic device" means any device that enables access to, or use of:

- (1) an electronic communication service that provides the ability to send or receive wire or electronic communications;
- (2) a remote computing service that provides computer storage or processing services by means of an electronic communications system; or
- (3) a location information service such as a global positioning service or other mapping, locational, or directional information service.

"Electronic device" does not mean devices used by a governmental agency or by a company operating under a contract with a governmental agency for toll collection, traffic enforcement, or license plate reading.

"Law enforcement agency" means any agency of this State or a political subdivision of this State which is vested by law with the duty to maintain public order or enforce criminal laws.

"Location information" means any information concerning the location of an electronic device that, in whole or in part, is generated by or derived from the operation of that device.

"Social networking website" has the same meaning ascribed to the term in subsection (b) of Section 10 of the Right to Privacy in the Workplace Act.

(Source: P.A. 98-1104, eff. 8-26-14; 99-610, eff. 1-1-17.)

(725 ILCS 168/10)

Sec. 10. Court authorization. Except as provided in Section 15, a law enforcement agency shall not obtain location information pertaining to a person or his or her effects without first obtaining a court order under Section 108-4 of the Code of Criminal Procedure of 1963 based on probable cause to believe that the person whose location information is sought has committed, is committing, or is about to commit a crime or the effect is evidence of a crime, or if the location information is

authorized under an arrest warrant issued under Section 107-9 of the Code of Criminal Procedure of 1963 to aid in the apprehension or the arrest of the person named in the arrest warrant. An order issued under a finding of probable cause under this Section must be limited to a period of 60 days, renewable by the judge upon a showing of good cause for subsequent periods of 60 days. A court may grant a law enforcement entity's request to obtain location information under this Section through testimony made by electronic means using a simultaneous video and audio transmission between the requestor and a judge, based on sworn testimony communicated in the transmission. The entity making the request, and the court authorizing the request shall follow the procedure under subsection (c) of Section 108-4 of the Code of Criminal Procedure of 1963 which authorizes the electronic issuance of search warrants.
(Source: P.A. 101-460, eff. 8-23-19.)

(725 ILCS 168/15)

Sec. 15. Exceptions. This Act does not prohibit a law enforcement agency from seeking to obtain location information:

(1) to respond to a call for emergency services concerning the user or possessor of an electronic device;

(2) with the lawful consent of the owner of the electronic device or person in actual or constructive possession of the item being tracked by the electronic device;

(3) to lawfully obtain location information broadly available to the general public without a court order when the location information is posted on a social networking website, or is metadata attached to images and video, or to determine the location of an Internet Protocol (IP) address through a publicly available service;

(4) to obtain location information generated by an electronic device used as a condition of release from a penal institution, as a condition of pre-trial release, probation, conditional discharge, parole, mandatory supervised release, or other sentencing order, or to monitor an individual released under the Sexually Violent Persons Commitment Act or the Sexually Dangerous Persons Act;

(5) to aid in the location of a missing person;

(6) in emergencies as follows:

(A) Notwithstanding any other provisions of this Act, any investigative or law enforcement officer may seek to obtain location information in an emergency situation as defined in this paragraph (6). This paragraph (6) applies only when there was no previous notice of the emergency to the investigative or law enforcement officer sufficient to obtain prior judicial approval, and the officer reasonably believes that an order permitting the obtaining of location information would issue were there prior judicial review. An emergency situation exists when:

(i) the use of the electronic device is necessary for the protection of the investigative or law enforcement officer or a person acting at the direction of law enforcement; or

(ii) the situation involves:

(aa) a clear and present danger of imminent death or great bodily harm to persons resulting from:

(I) the use of force or the threat of the imminent use of force,

(II) a kidnapping or the holding of a

hostage by force or the threat of the imminent use of force, or

(III) the occupation by force or the threat of the imminent use of force of any premises, place, vehicle, vessel, or aircraft;

(bb) an abduction investigation;

(cc) conspiratorial activities characteristic of organized crime;

(dd) an immediate threat to national security interest;

(ee) an ongoing attack on a computer comprising a felony; or

(ff) escape under Section 31-6 of the Criminal Code of 2012.

(B) In all emergency cases, an application for an order approving the previous or continuing obtaining of location information must be made within 72 hours of its commencement. In the absence of the order, or upon its denial, any continuing obtaining of location information gathering shall immediately terminate. In order to approve obtaining location information, the judge must make a determination (i) that he or she would have granted an order had the information been before the court prior to the obtaining of the location information and (ii) there was an emergency situation as defined in this paragraph (6).

(C) In the event that an application for approval under this paragraph (6) is denied, the location information obtained under this exception shall be inadmissible in accordance with Section 20 of this Act; or

(7) to obtain location information relating to an electronic device used to track a vehicle or an effect which is owned or leased by that law enforcement agency.

(Source: P.A. 101-460, eff. 8-23-19.)

(725 ILCS 168/20)

Sec. 20. Admissibility. If the court finds by a preponderance of the evidence that a law enforcement agency obtained location information pertaining to a person or his or her effects in violation of Section 10 or 15 of this Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. The State may overcome this presumption by proving the applicability of a judicially recognized exception to the exclusionary rule of the Fourth Amendment to the United States Constitution or Article I, Section 6 of the Illinois Constitution, or by a preponderance of the evidence that the law enforcement officer was acting in good faith and reasonably believed that one or more of the exceptions identified in Section 15 existed at the time the location information was obtained.

(Source: P.A. 101-460, eff. 8-23-19.)

(725 ILCS 168/25)

Sec. 25. Providing location information to a law enforcement agency not required. Nothing in this Act shall be construed to require a person to provide location information to a law enforcement agency under Section 15.

(Source: P.A. 101-460, eff. 8-23-19.)

(725 ILCS 168/30)

Sec. 30. Inapplicability. This Act does not apply to a law enforcement agency obtaining basic subscriber information from a

service provider under a valid subpoena, court order, or search warrant.

(Source: P.A. 98-1104, eff. 8-26-14.)

(725 ILCS 168/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 98-1104, eff. 8-26-14.)