

HB 1567-FN – AS AMENDED BY THE HOUSE

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2014 SESSION

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HOUSE BILL ***1567-FN***

AN ACT requiring a warrant to obtain electronic device location information.

SPONSORS: Rep. Kurk, Hills 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill regulates the use of electronic device location information.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT requiring a warrant to obtain electronic device location information.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Electronic Device Location Information. Amend RSA by inserting after chapter
2 644 the following new chapter:

3 CHAPTER 644-A

4 ELECTRONIC DEVICE LOCATION INFORMATION

5 644-A:1 Definitions. In this chapter:

6 I. “Electronic communication service” means a service that provides users the ability to send
7 or receive wire or electronic communications.

8 II. “Electronic device” means a device that enables access to or use of an electronic
9 communication service, remote computing service, or location information service, including without
10 limitation a cellular telephone.

11 III. “Government entity” means a federal, state, or local agency, including but not limited to
12 a law enforcement agency or any other investigative entity, department, division, bureau, board, or
13 commission, or an individual acting or purporting to act for or on behalf of a federal, state, or local
14 agency. “Government entity” shall not apply to a federal government agency to the extent that
15 federal statute preempts such application.

16 IV. “Location information” means information concerning the location of an electronic
17 device, including both the current location and any prior location of the device that, in whole or in
18 part, is generated, derived from, or obtained by the operation of an electronic device.

19 V. “Location information service” means a global positioning service or other mapping or
20 directional information service.

21 VI. “Owner” means the individual or person having the legal title, claim, or right to an
22 electronic device.

23 VII. “Person” means a corporation, trust, estate, partnership, limited liability company,
24 association, firm, or any other legal entity.

25 VIII. “Remote computing service” means computer storage or processing services provided
26 by means of an electronic communication service.

27 IX. “User” means an individual, person, or government entity that uses an electronic device.

28 644-A:2 Warrant Required for Acquisition of Location Information.

29 I. Except as provided in this chapter, a government entity shall not obtain location
30 information from an electronic device without a warrant issued by a judge based on probable cause

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1 and on a case-by-case basis.

2 II. No government entity shall place, locate, or install an electronic device on the person or
3 property of another, or obtain location information from such an electronic device, without a warrant
4 issued by a judge based on probable cause and on a case-by-case basis.

5 644-A:3 Exceptions to Warrant Requirement. A government entity may obtain the location
6 information without a warrant:

7 I. To respond to a call for emergency services;

8 II. With the informed consent of the owner or user of the electronic device concerned, except
9 when the device is known or believed by the owner or user to be in the possession of a third party
10 known to the owner or user;

11 III. With the informed consent of the parent or foster parent of a minor who is the owner or
12 user, or the legal guardian or next of kin of the owner or user, if the owner or user is believed to be
13 deceased or reported missing and unable to be contacted;

14 IV. If the government entity reasonably believes that an emergency involving immediate
15 danger of death or serious physical injury to a person requires the disclosure, without delay, of
16 location information concerning a specific person and that a warrant cannot be obtained in time to
17 prevent the identified danger, and the possessor of the location information, in good faith, believes
18 that an emergency involving danger of death or serious physical injury to a person requires the
19 disclosure without delay;

20 V. Pursuant to a legally-recognized exception to the warrant requirement;

21 VI. With the informed consent of the employee, if the government entity is the owner of the
22 electronic device and the user is employed by the government entity or the device is attached to
23 personal property owned by the government entity; or

24 VII. Pursuant to a court-ordered ignition interlock device installed in a motor vehicle.

25 644-A:4 Conditions of Use of Location Information. No individual or person shall, without
26 consent, place, locate, or install an electronic device on the person or property of another and obtain
27 location information from such electronic device. No such consent shall be required by the parent,
28 foster parent, or legal guardian of a minor or by the legal guardian for the subject of his or her
29 guardianship.

30 644-A:5 Action Against a Corporation. This chapter shall not be construed to create a cause of
31 action against a corporation or its officers, employees, or agents for providing location information to
32 a government entity in accordance with the provisions of this chapter.

33 644-A:6 Penalties.

34 I. A government entity that purposely violates this chapter shall be guilty of a class B
35 misdemeanor.

36 II. An individual or person who is injured as a result of a violation of this chapter may file a
37 civil action against a government entity, individual, or person that fails to comply with the

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1 provisions of this chapter.

2 2 Effective Date. This act shall take effect July 1, 2014.

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HB 1567-FN FISCAL NOTE

AN ACT requiring a warrant to obtain electronic device location information.

FISCAL IMPACT:

The Judicial Branch and Department of Justice state this bill, as amended by the House (Amendment #2014-0747h), may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill adds RSA 644-A to regulate the use of electronic device location information. RSA 644-A:2 requires that a warrant issued by a judge is necessary to obtain location information of an electronic tracking device or to place an electronic device on the person or property of another. This bill also provides for the potential of class B misdemeanors and civil damages. This bill could result in additional warrant requests, additional class B misdemeanors and additional civil damage actions, however the Branch has no information to estimate the additional activity. A warrant request in the district division of the circuit court is classified at the same level case as a class A misdemeanor. The Branch estimates a class A misdemeanor will cost \$66.17 per case in FY 2015, and \$67.64 per case in FY 2016 and each year thereafter. A warrant request in the superior court is classified as a simple criminal case which will cost \$256.30 in FY 2015, and \$261.84 in FY 2016 and each year thereafter. The Branch estimates a class B misdemeanor will cost \$46.99 per case in FY 2015, and \$48.08 per case in FY 2016 and each year. The Branch states the civil actions resulting from this bill would be processed as average complex civil cases, which will cost \$686.96 in FY 2015, and \$699.09 in FY 2016 and each year thereafter. Appeals would result in additional costs. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since that timeframe there have been various changes that may impact the costs, such as the creation of the circuit court, the increase in self-represented litigants, and the change to presume that an unspecified misdemeanor can be treated as a class B misdemeanor.

The Department of Justice states this bill will cause an indeterminable increase in state expenditures. The Department states its Public Integrity Unit investigates and prosecutes criminal conduct by government officials undertaken in their official capacity. The Department would defend and indemnify a state law enforcement official who faces civil actions pursuant to

this statute. The Department is not able to determine how many if any cases it would be involved with as a result of this bill to predict the fiscal impact.