

2016 Regular Session

HOUSE BILL NO. 254

BY REPRESENTATIVE HAVARD

CRIMINAL/PROCEDURE: Provides with respect to certain electronic tracking devices

1 AN ACT

2 To amend and reenact R.S. 15:1302(2) and 1316(C) and to enact R.S. 14:222.3 and R.S.
3 15:1302(3.1) and (16.1), 1316(D) and (E), 1317, and 1318, relative to electronic
4 surveillance; to create the crime of unlawful use of a cellular tracking device; to
5 provide definitions; to provide criminal penalties; to provide exceptions; to provide
6 for applicability; to provide procedures for use of a cellular tracking device by law
7 enforcement officers and investigative officers; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:222.3 is hereby enacted to read as follows:

10 §222.3. Unlawful use of a cellular tracking device; penalty

11 A. It shall be unlawful for any person to possess or use a cellular tracking
12 device.

13 B. For the purposes of this Section:

14 (1) "Cellular tracking device" means a device that transmits or receives radio
15 waves for the purpose of conducting one or more of the following operations:

16 (a) Identifying, locating, or tracking the movements of a telecommunications
17 device.

18 (b) Affecting the hardware or software operations or functions of a
19 telecommunications device.

1 (c) Forcing transmissions from or connections to a telecommunications
2 device.

3 (d) Denying, spoofing, or simulating a telecommunications device access to
4 other communications devices or services including but not limited to an
5 international mobile subscriber identity catcher or other invasive cell phone or
6 telephone surveillance or eavesdropping device that mimics a cell phone tower and
7 sends out signals to cause cellular telephones in the area to transmit their locations,
8 identifying information, and communications content.

9 (2) "Telecommunications device" means any type of instrument, device, or
10 machine that is capable of transmitting or receiving telephonic, electronic, radio,
11 text, or data communications, including but not limited to a cellular telephone, a text-
12 messaging device, a personal digital assistant, a computer, or any other similar
13 wireless device that is designed to engage in a call or communicate text or data. It
14 does not include citizens band radios, citizens band radio hybrids, commercial two-
15 way radio communication devices, or electronic communication devices with a push-
16 to-talk function.

17 C. The provisions of this Section shall not apply to any of the following:

18 (1) An investigative or law enforcement officer, judicial officer, probation
19 or parole officer, or employee of the Department of Public Safety and Corrections
20 using a cellular tracking device when that person is engaged in the lawful
21 performance of official duties and in accordance with other state or federal law,
22 including using a cellular tracking device in accordance with the Electronic
23 Surveillance Act and pursuant to a court order as provided for in R.S. 15:1317 and
24 1318.

25 (2) An operator of a switchboard, or any officer, employee, or agent of any
26 electronic communications carrier, whose facilities are used in the transmission of
27 a wire communication, to intercept, disclose, or use that communication in the
28 normal course of his employment while engaged in any activity which is necessary
29 to his service or to the protection of the rights or property of the carrier of such

1 communication; however, such communications common carriers shall not utilize
2 service observing or random monitoring, except for mechanical or service quality
3 control checks.

4 (3) An officer, employee, or agent of the Federal Communications
5 Commission, in the normal course of his employment and in discharge of the
6 monitoring responsibilities exercised by the commission in the enforcement of
7 Chapter 5 of Title 47 of the United States Code.

8 (4) The owner of a motor vehicle, including the owner of a vehicle available
9 for rent, who has consented to the use of the tracking device with respect to that
10 vehicle.

11 (5) The lessor or lessee of a motor vehicle and the person operating the
12 motor vehicle who have consented to the use of a tracking device with respect to that
13 vehicle.

14 (6) An automobile manufacturer, its affiliates, subsidiaries, or a related
15 telematics provider installing a feature that could be considered a tracking device
16 with respect to that vehicle.

17 (7)(a) A parent or legal guardian of a minor child whose location or
18 movements are being tracked by the parent or legal guardian.

19 (b) When the parents of the minor child are living separate and apart or are
20 divorced from one another, this exception shall apply only if both parents consent to
21 the tracking of the minor child's location and movements, unless one parent has been
22 granted sole custody, in which case consent of the noncustodial parent shall not be
23 required.

24 (8) The Department of Public Safety and Corrections tracking an offender
25 who is under its custody or supervision.

26 (9) Any provider of a commercial mobile radio service (CMRS), such as a
27 mobile telephone service or vehicle safety or security service, which allows the
28 provider of CMRS to determine the location or movement of a device provided to
29 a customer of such service.

1 to this Section shall be compensated for such reasonable expenses incurred in
2 providing such facilities and assistance.

3 ~~D.E.~~ E. No cause of action shall lie in any Louisiana court against any provider
4 of a wire or electronic communication service, its officers, employees, agents, or
5 other specified persons for providing information, facilities, or assistance in
6 accordance with the terms of a court order ~~under~~ pursuant to this Part.

7 §1317. Application for an order for use of a cellular tracking device

8 A. An investigative or law enforcement officer shall not use a cellular
9 tracking device unless either of the following occur:

10 (1) The investigative or law enforcement agency has obtained an order
11 issued by a court to use the tracking instrument.

12 (2) Exigent circumstances exist that necessitate using the tracking instrument
13 without first obtaining a court order.

14 (3) If an investigative or law enforcement agency uses a cellular tracking
15 device based upon the existence of exigent circumstances, the investigative or law
16 enforcement agency shall seek to obtain an order issued by a court not later than
17 seventy-two hours after the initial use of the cellular tracking device.

18 B. An application made pursuant to this Section shall include:

19 (1) The identity of the investigative or law enforcement officer making the
20 application and the identity of the law enforcement agency conducting the
21 investigation.

22 (2) A certification by the applicant attesting that the information sought is
23 relevant to an ongoing felony criminal investigation being conducted by that agency,
24 and includes in that certification a recital of facts or information constituting the
25 reasonable suspicion upon which the application is based.

26 §1318. Issuance of an order for a cellular tracking device

27 A. Upon an application made pursuant to R.S. 15:1317, the court may enter
28 an ex parte order authorizing the use of the cellular tracking device if the court finds
29 that the investigative or law enforcement officer has certified to the court that the

1 information likely to be obtained by such use is relevant to an ongoing felony
2 criminal investigation, and that the certification does include reasonable suspicion
3 as required by R.S. 15:1317.

4 B. An order issued pursuant to the provisions of this Section shall specify,
5 if applicable:

6 (1) The telephone number or other unique subscriber account number
7 identifying the wire or electronic communications service account used by the device
8 to which the cellular tracking device is to be attached or used.

9 (2) The physical location, if known, of the device for which the cellular
10 tracking device is to be attached or used.

11 (3) The type of device to which the cellular tracking device is to be attached
12 or used.

13 (4) All categories of metadata, data, or information to be collected by the
14 cellular tracking device from the targeted device including but not limited to
15 geolocation information.

16 (5) Whether or not the cellular tracking device will incidentally collect
17 metadata, data, or information from any parties or devices not specified in the court
18 order, and if so, what categories of information or metadata will be collected.

19 (6) Any disruptions to access or use of a communications or internet access
20 network that may be created by use of the cellular tracking device.

21 (7) A statement of the offense to which the information is likely to be
22 obtained by the cellular tracking device.

23 C. An order issued under this Section shall direct, upon request of the
24 applicant, the furnishing of information, facilities, and technical assistance necessary
25 to accomplish the use of the cellular tracking device under R.S. 15:1316 and 1317.

26 D.(1) An order issued under this Section shall authorize the use of a cellular
27 tracking device for a period not to exceed sixty days.

28 (2) Extensions of such an order may be granted, but only upon an application
29 for an order pursuant to R.S. 15:1317 and upon the judicial finding required by the

1 provisions of this Section. The period of extension shall be for a period not to
2 exceed sixty days.

3 E. An order authorizing or approving the use of a cellular tracking device
4 shall direct that:

5 (1) The order be sealed until otherwise ordered by the court.

6 (2) The person who has been ordered by the court to provide assistance to
7 the applicant not disclose the existence of the cellular tracking device or the
8 existence of the investigation to the listed subscriber, or to any other person, unless
9 or until otherwise ordered by the court.

10 F. The head of each law enforcement agency possessing or making
11 application for the use of a cellular tracking device shall establish and implement
12 procedures which shall provide for and ensure the following:

13 (1) That only the chief officer of the law enforcement agency or specifically
14 authorized representative of the agency chief shall have the authority to authorize the
15 use of a cellular tracking device and only pursuant to this Section and R.S. 15:1317.

16 (2) That no cellular tracking device in the possession of the law enforcement
17 agency shall be subject to unauthorized use.

18 G. A law enforcement agency authorized to use a cellular tracking device in
19 accordance with this Part shall do all of the following, if applicable:

20 (1) Take all steps necessary to limit the collection of any information or
21 metadata to the target specified in the applicable court order.

22 (2) Take all steps necessary to permanently delete any information or
23 metadata collected from any party not specified in the applicable court order
24 immediately following such collection and shall not transmit, use, or retain such
25 information or metadata for any purpose whatsoever.

26 (3) Delete any information or metadata collected from the target specified
27 in the court order within thirty-five days if there is no probable cause to support the
28 belief that such information or metadata is evidence of a crime.

1 H. For the purposes of this Section and R.S. 15:1317, "investigative or law
2 enforcement officer" means:

3 (1) Any commissioned officer of the office of state police.

4 (2) Any full-time commissioned city police officer of a municipality of this
5 state.

6 (3) Any sheriff or deputy sheriff of a parish of this state which has been
7 specifically designated by the sheriff of that parish as responsible for preparation of
8 applications for use of cellular tracking devices.

9 (4) The attorney general, or any assistant attorney general or attorney
10 general's investigator which has been specifically designated by the attorney general
11 as responsible for preparation of applications for use of cellular tracking devices.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 254 Engrossed

2016 Regular Session

Havard

Abstract: Prohibits the use of a cellular tracking device by anyone except a law enforcement or investigative officer, telecommunication employee, or an FCC employee, and provides procedures for law enforcement to obtain a court order to utilize cellular tracking devices.

Proposed law creates the crime of unlawful use of a cellular tracking device. A cellular tracking device mimics a cell tower providing cell phone services and downloads or copies the personal information of cell phone users. Makes exceptions for law enforcement and investigative officers, telecommunications employees, and FCC employees in the performance of their duties.

Proposed law provides penalties of a fine of not more than \$3,000, imprisonment with or without hard labor for not more than two years, or both.

Present law provides procedures for law enforcement and investigative officers to obtain warrants from the court to use a trap and trace device or pen register (wire tapping equipment).

Proposed law retains present law and adds similar provisions for the use of cellular tracking devices.

(Amends R.S. 15:1302(2) and 1316(C); Adds R.S. 14:222.3 and R.S. 15:1302(3.1) and (16.1), 1316(D) and (E), 1317, and 1318)