

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 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.

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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 tracking device 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 in certain circumstances; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes the district courts of this State to issue orders  
2 authorizing the use of a pen register or trap and trace device upon the application of  
3 a district attorney, the Attorney General or their deputies, supported by an affidavit  
4 of a peace officer under the circumstances and upon the conditions prescribed by  
5 federal law. (NRS 179.530) **Section 17** of this bill repeals this provision. **Section**  
6 **11** of this bill authorizes an investigative or law enforcement officer who is  
7 responsible for an ongoing criminal investigation to apply to the district court for an  
8 order or an extension of an order which authorizes the use of a pen register, trap  
9 and trace device or mobile tracking device. **Section 12** of this bill authorizes the  
10 district court to enter an ex parte order authorizing the use of a pen register, trap  
11 and trace device or mobile tracking device within the territorial jurisdiction of the  
12 court if the court determines that there is probable cause for belief that the  
13 information likely to be obtained by such use is relevant to the ongoing criminal  
14 investigation. Such an order or extension of an order cannot exceed 30 days.  
15 **Section 10** of this bill generally prohibits a person from installing or using a pen



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16 register, trap and trace device or mobile tracking device without obtaining such an  
17 order, and provides that a person who knowingly violates such a provision is guilty  
18 of a gross misdemeanor.

19 Existing law also provides that it is unlawful for certain persons to give notice  
20 or attempt to give notice of the use of a pen register or trap and trace device to any  
21 person with the intent to obstruct, impede or prevent such use. A person who  
22 violates this provision is guilty of a category D felony. (NRS 199.540) **Section 16**  
23 of this bill provides that it is also unlawful for certain persons to give notice or  
24 attempt to give notice of the use of a mobile tracking device to any person with the  
25 intent to obstruct, impede or prevent such use.

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

1 **Section 1.** Chapter 179 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 15, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in sections 2 to 15, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 9, inclusive, of this act have the meanings ascribed*  
7 *to them in those sections.*

8 **Sec. 3.** *“Electronic communication” means a transfer of*  
9 *signs, signals, writings, images, sounds, data or intelligence of any*  
10 *nature transmitted in whole or in part by a wire, radio,*  
11 *electromagnetic, photoelectronic or photo-optical system. The term*  
12 *does not include a:*

- 13 1. *Wire or oral communication;*
- 14 2. *Communication made through a tone-only paging device;*
- 15 *or*
- 16 3. *Communication from a mobile tracking device.*

17 **Sec. 4.** *“Electronic communication service” means a service*  
18 *that provides to users of the service the ability to send or receive a*  
19 *wire or electronic communication.*

20 **Sec. 5.** *“Investigative or law enforcement officer” has the*  
21 *meaning ascribed to it in NRS 179.435.*

22 **Sec. 6.** *“Mobile tracking device” means an electronic or*  
23 *mechanical device that permits the tracking of the movement of a*  
24 *person or an object.*

25 **Sec. 7.** *“Pen register” means a device that records or decodes*  
26 *electronic or other impulses that identify the number dialed or*  
27 *otherwise transmitted on the telephone line to which the device is*  
28 *attached. The term does not include a device used by a*  
29 *communications common carrier or customer for:*

- 30 1. *Billing, or recording as an incident to billing, for services*  
31 *provided; or*



1       2. *Cost accounting or any other similar purposes in the*  
2 *ordinary course of business.*

3       **Sec. 8.** *“Trap and trace device” means a device which*  
4 *captures the incoming electronic or other impulses that identify*  
5 *the originating number of an instrument or device from which a*  
6 *wire or electronic communication was transmitted.*

7       **Sec. 9.** *“Wire communication” has the meaning ascribed to*  
8 *it in NRS 179.455.*

9       **Sec. 10. 1.** *Except as otherwise provided in this section, a*  
10 *person shall not install or use a pen register, trap and trace device*  
11 *or mobile tracking device without first obtaining a court order*  
12 *authorizing the use of the pen register, trap and trace device or*  
13 *mobile tracking device pursuant to section 12 of this act.*

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

15       (a) *The installation or use of a pen register or trap and trace*  
16 *device by a communications common carrier:*

17       (1) *In relation to the operation, maintenance and testing of*  
18 *a wire or electronic communication service, the protection of the*  
19 *rights or property of the carrier or the protection of users of the*  
20 *service from unlawful or abusive use of the service;*

21       (2) *To record the fact that a wire or electronic*  
22 *communication was initiated or completed for the protection of the*  
23 *carrier, another carrier furnishing service toward the completion*  
24 *of the wire or electronic communication or users of the service*  
25 *from fraudulent, unlawful or abusive use of the service; or*

26       (3) *When the consent of the user of the electronic*  
27 *communication service has been obtained.*

28       (b) *The installation or use of a mobile tracking device when*  
29 *the consent of the owner of the object to which the mobile tracking*  
30 *device is to be attached has been obtained.*

31       3. *Any person who knowingly violates the provisions of*  
32 *subsection 1 is guilty of a gross misdemeanor.*

33       **Sec. 11. 1.** *An investigative or law enforcement officer who*  
34 *is responsible for an ongoing criminal investigation may apply to*  
35 *the district court in writing upon oath or affirmation for an order*  
36 *or an extension thereof pursuant to section 12 of this act which*  
37 *authorizes the use of a pen register, trap and trace device or*  
38 *mobile tracking device.*

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

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

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



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

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

6 **Sec. 12. 1.** *Upon receipt of an application made pursuant*  
7 *to section 11 of this act, the court may enter an ex parte order, as*  
8 *requested or as modified, authorizing the use of a pen register,*  
9 *trap and trace device or mobile tracking device within the*  
10 *territorial jurisdiction of the court if the court determines on the*  
11 *basis of the facts submitted by the applicant that there is probable*  
12 *cause for belief that the information likely to be obtained by the*  
13 *use of the pen register, trap and trace device or mobile tracking*  
14 *device is relevant to an ongoing criminal investigation.*

15 2. *Each order authorizing the use of a pen register, trap and*  
16 *trace device or mobile tracking device pursuant to subsection 1*  
17 *must specify:*

18 (a) *The identity of the person:*

19 (1) *If known, to whom the telephone line to which the pen*  
20 *register or trap and trace device is to be attached is leased or in*  
21 *whose name it is listed; or*

22 (2) *To be traced by the mobile tracking device;*

23 (b) *The identity of the person, if known, who is the subject of*  
24 *the ongoing criminal investigation;*

25 (c) *The number and, if known, the physical location of the*  
26 *telephone line to which the pen register or trap and trace device is*  
27 *to be attached or the identity or nature of the object to which the*  
28 *mobile tracking device is to be attached;*

29 (d) *If the device to be used is a trap and trace device, the*  
30 *geographical limits of the order;*

31 (e) *A statement of the particular offense to which the*  
32 *information likely to be obtained by the use of the pen register,*  
33 *trap and trace device or mobile tracking device relates;*

34 (f) *The identity of the investigative or law enforcement officer*  
35 *responsible for the use of the pen register, trap and trace device or*  
36 *mobile tracking device; and*

37 (g) *The period during which the use of the pen register, trap*  
38 *and trace device or mobile tracking device is authorized.*

39 3. *No order entered pursuant to this section may authorize*  
40 *the use of a pen register, trap and trace device or mobile tracking*  
41 *device for any period longer than is necessary to achieve the*  
42 *objective of the authorization, and in no event longer than 30*  
43 *days. Extensions of an order may be granted, but only in*  
44 *accordance with the provisions of subsection 1 and upon*  
45 *application for an extension made in accordance with the*



1 *procedures provided in section 11 of this act. The period of*  
2 *extension must not be longer than the authorizing judge deems*  
3 *necessary to achieve the purposes for which it was granted and in*  
4 *no event longer than 30 days. Every order and extension thereof*  
5 *must:*

6 *(a) Include a statement of any changes in the information*  
7 *required pursuant to subsection 2; and*

8 *(b) Contain a provision that the use of the pen register, trap*  
9 *and trace device or mobile tracking device must be executed as*  
10 *soon as practicable and terminates upon attainment of the*  
11 *authorized objective, or in any event in 30 days.*

12 *4. An order for the use of a mobile tracking device issued*  
13 *pursuant to this section may authorize the use of a mobile tracking*  
14 *device within and outside the territorial jurisdiction of the court if*  
15 *the device is installed within the territorial jurisdiction of the*  
16 *court.*

17 *5. A public utility that relies, in good faith, upon an order of a*  
18 *district court authorizing the use of a pen register or trap and*  
19 *trace device is not liable in any civil or criminal action brought*  
20 *against the public utility for the use of the pen register or trap and*  
21 *trace device in accordance with the order of the court.*

22 **Sec. 13.** *1. An order authorizing the use of a pen register,*  
23 *trap and trace device or mobile tracking device issued pursuant to*  
24 *section 12 of this act must, upon request of the investigative or law*  
25 *enforcement officer authorized to use the pen register, trap and*  
26 *trace device or mobile tracking device, direct that a*  
27 *communications common carrier, landlord, custodian or other*  
28 *person furnish the investigative or law enforcement officer with*  
29 *all information, facilities and technical assistance necessary to use*  
30 *the pen register, trap and trace device or mobile tracking device*  
31 *unobtrusively and with a minimum of interference with the*  
32 *services that such carrier, landlord, custodian or person is*  
33 *accordng the person with respect to whom the use of the pen*  
34 *register, trap and trace device or mobile tracking device is to take*  
35 *place.*

36 *2. Unless otherwise ordered by the court, the results of a trap*  
37 *and trace device must be furnished to the investigative or law*  
38 *enforcement officer at reasonable intervals during regular*  
39 *business hours for the period during which the use of the trap and*  
40 *trace device is authorized by the court.*

41 *3. Any communications common carrier, landlord, custodian*  
42 *or other person furnishing facilities or technical assistance*  
43 *pursuant to this section is entitled to be compensated therefor by*  
44 *the investigative or law enforcement officer at the prevailing rates.*



1 4. No cause of action may be brought against a  
2 communications common carrier, its officers, employees or  
3 agents, or a landlord, custodian or other person for furnishing  
4 information, facilities or technical assistance in accordance with  
5 the terms of a court order pursuant to this section.

6 **Sec. 14.** 1. Applications made and orders granted pursuant  
7 to sections 2 to 15, inclusive, of this act must be sealed by the  
8 judge. Custody of the applications and orders must be placed with  
9 whomever the judge orders. Such applications and orders must be  
10 disclosed only upon a showing of good cause before a judge of a  
11 court of competent jurisdiction and must not be destroyed except  
12 on order of the judge who issued or denied the order, and in any  
13 event must be kept for 10 years.

14 2. Any violation of the provisions of this section may be  
15 punished as contempt of court.

16 **Sec. 15.** 1. Except as otherwise provided in subsection 2,  
17 within a reasonable time but not later than 90 days after the:

18 (a) Denial of an application filed pursuant to section 11 of this  
19 act, the judge who denied the application shall cause to be served  
20 on the persons named in the application an inventory which must  
21 include notice of the fact of the denial and a copy of the  
22 application.

23 (b) Termination of the period of an order issued pursuant to  
24 section 12 of this act or any extension thereof, the judge who  
25 issued the order shall cause to be served on the persons named in  
26 the order an inventory which must include notice of:

27 (1) The fact of the entry and a copy of the order.

28 (2) The fact that during the period activity did or did not  
29 take place under the order.

30 (3) The date of the entry and the period of authorized or  
31 unauthorized activity under the order.

32 2. The judge, upon receipt of a written request from any  
33 person with respect to whom the use of a pen register, trap and  
34 trace device or mobile tracking device took place or from the  
35 person's attorney, shall make available to the person or the  
36 person's counsel the results of any activity obtained under an  
37 order issued pursuant to section 12 of this act which relate to the  
38 person. On an ex parte showing of good cause to a district judge,  
39 the serving of an inventory required by this section may be  
40 postponed for such time as the judge may provide.

41 3. Except as otherwise provided in NRS 239.0115, an  
42 inventory filed pursuant to this section is confidential and must  
43 not be released for inspection unless subpoenaed by a court of  
44 competent jurisdiction.



1       **Sec. 16.** NRS 199.540 is hereby amended to read as follows:  
2       199.540 1. It is unlawful for an officer or employee of a court  
3 or law enforcement agency, or any employee of a communications  
4 common carrier, landlord, custodian or other person who is ordered  
5 pursuant to subsection 2 of NRS 179.475 to furnish information,  
6 facilities and technical assistance necessary to accomplish an  
7 authorized interception of a wire or oral communication, having  
8 knowledge that an order has been applied for or has been issued  
9 authorizing the interception of a wire or oral communication in  
10 accordance with NRS 179.410 to 179.515, inclusive, to:

11       (a) Give notice of the interception; or  
12       (b) Attempt to give notice of the interception,  
13       ↳ to any person with the intent to obstruct, impede or prevent the  
14 interception of the wire or oral communication.

15       2. It is unlawful for an officer or employee of a court or law  
16 enforcement agency, or any employee of a communications  
17 common carrier, landlord, custodian or other person who is ordered  
18 pursuant to subsection 2 of NRS 179.475 to furnish information,  
19 facilities and technical assistance necessary to accomplish an  
20 authorized interception of a wire or oral communication, *or who is*  
21 *ordered pursuant to section 13 of this act to furnish information,*  
22 *facilities and technical assistance necessary to use a pen register,*  
23 *trap and trace device or mobile tracking device,* having knowledge  
24 that an order has been applied for or has been issued authorizing the  
25 use of a pen register , ~~or~~ trap and trace device *or mobile tracking*  
26 *device* to:

27       (a) Give notice of the use of the pen register , *trap and trace*  
28 *device* or *mobile tracking* device; or

29       (b) Attempt to give notice of the use of the pen register , *trap*  
30 *and trace device* or *mobile tracking* device,  
31       ↳ to any person with the intent to obstruct, impede or prevent that  
32 use.

33       3. A person who violates any provision of subsection 1 or 2 is  
34 guilty of a category D felony and shall be punished as provided in  
35 NRS 193.130.

36       **Sec. 17.** NRS 179.530 is hereby repealed.



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TEXT OF REPEALED SECTION

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**179.530 Order authorizing use of pen register or trap and trace device.**

1. District courts of this state may 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 18 U.S.C. §§ 3121-3127 as those provisions existed on July 1, 1989.

2. As used in this section, "peace officer" means:

(a) Sheriffs of counties and metropolitan police departments and their deputies;

(b) Personnel of the Department of Public Safety who have the powers of peace officers pursuant to NRS 289.270;

(c) Police officers of cities and towns;

(d) Agents of the State Gaming Control Board who are investigating any violation of subsection 2 or 3 of NRS 463.360 or chapter 465 of NRS;

(e) Special investigators employed by the Attorney General who have the powers of peace officers pursuant to NRS 289.170;

(f) Investigators employed by a district attorney who have the powers of peace officers pursuant to NRS 289.170; and

(g) The Inspector General of the Department of Corrections and the criminal investigators employed by the Department who have the powers of peace officers pursuant to NRS 289.220.

3. A public utility that relies, in good faith, upon an order of a district court authorizing the use of a pen register or trap and trace device is not liable in any civil or criminal action brought against the public utility for the use of the pen register or trap and trace device in accordance with the order of the court.

