

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1104
SENATE BILL 1868

AN ACT TO PROVIDE FOR THE USE OF PEN REGISTERS AND TRAP AND
TRACE DEVICES IN CONFORMITY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding the following new Article 12 to read:

"Article 12.

"Pen Registers; Trap and Trace Devices.

"§15A-260. **Definitions.** – As used in this Article:

(1) 'Electronic communication,' 'electronic communication service,' and 'wire communication' shall have the meaning as set forth in Section 2510 of Title 18 of the United States Code;

(2) 'Pen register' means a device which records or decodes electronic or other impulses which identify numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but the term does not include any device used by a provider or customer of a wire or electronic service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business, nor shall the term include any device which allows the listening or recording of communications transmitted on the telephone line to which the device is attached.

(3) 'Trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

"§15A-261. **Prohibition and exceptions.** – (a) In General. Except as provided in subsection (b) of this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order as provided in this Article.

(b) Exception. The prohibition of subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

- (1) Relating to the operation, maintenance, or testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or
- (2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider

furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(3) With the consent of the user of that service.

(c) Penalty. A person who willfully and knowingly violates subsection (a) of this section is guilty of a misdemeanor punishable by a fine, imprisonment of not more than one year, or both.

"§15A-262. Application for order for pen register or trap and trace device. – (a) Application. A law enforcement officer may make an application for an order or an extension of an order under G.S. 15A-263 authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or affirmation, to a superior court judge.

(b) Contents of application. An application under subsection (a) of this section shall include:

- (1) The identity of the law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and
- (2) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§15A-263. Issuance of order for pen register or trap and trace device. – (a) In General. Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

- (1) That there is reasonable suspicion to believe that an offense punishable by imprisonment for more than one year has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and
- (3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense.

(b) Contents of Order. An order issued under this section:

- (1) Shall specify:
 - a. The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
 - b. The identity, if known, of the person who is the subject of the criminal investigation;
 - c. The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

- d. The offense to which the information likely to be obtained by the pen register or trap and trace device relates; and
 - (2) Shall direct, upon request of the applicant, the furnishing of information, facilities, or technical assistance necessary to accomplish the installation of the pen register or trap and trace device under G.S. 15A-264.
- (c) Time Period and Extension.
- (1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.
 - (2) An extension of an order issued under this section may be granted, but only upon an application for an order under G.S. 15A-262 and upon the judicial finding required by subsection (a) of this section. The period of extension shall not exceed 60 days.
- (d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:
- (1) The order be sealed until otherwise ordered by the judge; and
 - (2) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the judge to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any person, unless otherwise ordered by the judge.

The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article.

"§15A-264. Assistance in installation and use of a pen register or a trap and trace device. – (a) Pen Registers. Upon the request of a law enforcement officer authorized to install and use a pen register under this Article, a provider of wire or electronic communication service, a landlord, a custodian, or other person shall furnish the officer promptly with all information, facilities, or technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the communication services, if the assistance is directed by a court order as provided in G.S. 15A-263(b)(2).

(b) Trap and Trace Devices. Upon the request of a law enforcement officer authorized to receive the results of a trap and trace device under this Article, a provider of a wire or electronic communication service, a landlord, a custodian, or other person shall install the device immediately on the appropriate line and shall furnish the officer all additional information, facilities, or technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the communication services, if the installation and assistance are directed by court order as provided in G.S. 15A-263(b)(2). Unless otherwise ordered by the judge, the results of the trap and trace device shall be furnished to the law enforcement officer designated in the court order at reasonable intervals during regular business hours for the duration of the order.

(c) Compensation. A provider of a wire or electronic communication service, a landlord, a custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for the reasonable expenses incurred in providing the facilities and assistance.

(d) No Cause of Action Against a Provider Giving Information or Assistance Under this Article. No cause of action shall be allowed in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Article.

(e) Defense. A good faith reliance on a court order or a statutory authorization is a complete defense against any civil or criminal action brought under this Article or any other law."

Sec. 2. This act shall become effective October 1, 1988, and shall apply to the installation and use of pen registers and trap and trace devices on or after that date.

In the General Assembly read three times and ratified this the 12th day of July, 1988.