



HOUSE BILL 608: SBI Emergency Pen Register/Trap and Trace.

2019-2020 General Assembly

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| Committee: | House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House | Date: | April 29, 2019 |
| Introduced by: | Reps. McNeill, Hurley | Prepared by: | Susan Sitze |
| Analysis of: | First Edition | | Staff Attorney |

OVERVIEW: House Bill 608 would allow the State Bureau of Investigation (SBI) to use a pen register or trap and trace device in emergency situations for a limited period of time without a warrant.

BILL ANALYSIS:

Section 1 of House Bill 608 would amend G.S. 15A-260, the definitions section for Article 12 of Chapter 15A (Pen Registers; Trap and Trace Devices) to reorganize the existing definitions and create new definitions for "location data" and "law enforcement officer."

Section 2 would amend G.S. 15A-261, which provides that a warrant is required to install a pen register or trap and trace device unless an exception is met, to add an exception for emergency situations as provided in the new statute created by **Section 4**.

Section 3 and Section 4 would amend G.S. 15A-263 and enact a new G.S. 15A-265 to allow an agent of the SBI to install and use a pen register or trap and trace device (device) in emergency situations for a limited period of time without a warrant. These sections would provide as follows:

- The SBI agent would make a determination that one of the following situations exists:
 - An emergency situation that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a device before an order authorizing the installation and use can, with due diligence, be obtained, and there are grounds upon which an order could be entered to authorize the installation and use.
 - An emergency situation that involves the disappearance of an individual, a runaway child, or a missing person for which no criminal charge may be readily apparent, but where the individual may be in immediate danger of death or serious bodily injury based on, but not limited to, the age, physical condition, or circumstances surrounding the disappearance of the individual.
- If the SBI agent installed a device without a warrant due to an emergency situation, the agent would be required to seek an order approving the installation within 48 hours after the installation begins.
- Unless an order for the installation of the device is issued, the use of the device shall immediately terminate when the information sought is obtained, when the application for an order is denied, or when 48 hours have lapsed since the installation, whichever occurs first.
- Failure to seek an order within 48 hours of installation, or failure to terminate usage of the device when required would be a Class 1 misdemeanor.

Karen Cochrane-Brown
Director



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Division
919-733-2578

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- **Section 3** would increase the standard for issuing orders to allow installation of a device when there is reason to believe a felony offense, or a Class A1 or Class 1 misdemeanor has been committed from reasonable suspicion to probable cause.
- **Section 3** would also create a standard for issuance of an order in an emergency situation where no criminal charge is readily apparent.

EFFECTIVE DATE: This act would become effective December 1, 2019, and apply to installations occurring on or after that date. Any criminal penalties created by this act would apply to offenses committed on or after that date.