

Title 16: COURT PROCEDURE -- EVIDENCE

CHAPTER 3: RECORDS AND OTHER DOCUMENTS

SUBCHAPTER 10: PORTABLE ELECTRONIC DEVICE CONTENT INFORMATION

§641. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. Seriously jeopardizing an investigation; or
- F. Undue delay of a trial.

~~**2. Content information.** "Content information," when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.~~

2-A. Electronic communication. "Electronic communication" means the transfer of information, including but not limited to signs, signals, writings, images, sounds, data or intelligence, in whole or in part by a wire or a radio or an electromagnetic, photoelectric or photo optical system.

2-B. Electronic communication information. "Electronic communication information" means the information transferred through electronic communication or through the use of an electronic communication service, including but not limited to the format of information, the information contained under a sender or recipients folder, the location of a sender or recipient at any time during the electronic communication, the time or date the electronic communication was transferred or any information relating to an individual or an electronic device participating in the electronic communication, such as an Internet protocol address.

3. Electronic communication service. "Electronic communication service" means a service that provides to users the ability to send or receive spoken or electronic communications.

3-A. Electronic device. "Electronic device" means a device that stores, generates or transmits information in electronic form.

3-B. Electronic device information. "Electronic device information" means any information stored on, generated or transmitted through the operation of an electronic device, including the current and prior locations of the device.

4. Government entity. "Government entity" means a state or local government agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board or commission or an individual acting or purporting to act for or on behalf of a state or local government agency.

5. Owner. "Owner" means the person or entity having the legal title, claim or right to a ~~portable~~ an electronic device.

~~6. **Portable electronic device.** "Portable electronic device" means a device that is portable and electric that enables access to, or use of, an electronic communication service or remote computing service.~~

7. **Remote computing service.** "Remote computing service" means computer storage or processing services provided by means of an electronic communication service.

7-A. **Serious physical injury.** "Serious physical injury" means:

A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence for recovery of physical health; or

B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303.

7-B. **Subscriber information.** "Subscriber information" means the name, street address, telephone number, email address or similar contact information provided by a subscriber to a provider to establish or maintain an account or ability to communicate; an account number or identifier; the length of service; and the types of services used by a user of or subscriber to an electronic communication service or remote computing service.

8. **User.** "User" means a person or entity that uses a ~~portable~~ an electronic device.

§642. Authority to obtain and disclose ~~content~~ electronic device information held by a provider of ~~electronic communication service~~ or electronic communication information

~~1. **Authority to obtain.** A government entity may obtain portable electronic device content information directly from a provider of electronic communication service or a provider of remote computing service only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.~~

1. **Authority to obtain.** A government entity may, only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter:

A. Obtain electronic device information or electronic communication information directly from a provider of electronic communication service or a provider of remote computing service;

B. Compel the production of or access to electronic device information or electronic communication information from any person other than the owner of the electronic device; or

C. Access electronic device information or electronic communication information by means of physical interaction or electronic communication with the electronic device.

2. **Authority to disclose.** A provider of electronic communication service or remote computing service may disclose ~~portable~~ electronic device content information or electronic communication information to a government entity only pursuant to a warrant issued by a duly authorized justice, judge or justice of the peace or as otherwise provided in this subchapter.

3. **Construction.** This section may not be construed to prohibit the intended recipient of electronic communication information or electronic device information from voluntarily disclosing that information to a government entity.

§643. Notice

Notice must be given to the owner or user of a ~~portable~~ an electronic device whose ~~content~~ electronic communication information or electronic device information was obtained by a government entity. The notice requirements of this section do not apply if the government entity is unable to identify the owner or user of a ~~portable~~ an electronic device.

1. Timing and content of notice. Unless the court determines under subsection 2 that no notice is required, the government entity shall provide notice to the owner or user that ~~content information~~ electronic device information or electronic communication information was obtained by the government entity from a provider of electronic communication service or remote computing service within 3 days of obtaining ~~the content information that information~~. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

- A. The nature of the law enforcement inquiry, with reasonable specificity;
- B. The ~~content information~~ electronic device information or electronic communication information of the owner or user that was supplied to or requested by the government entity and the date on which it was provided or requested; and
- C. The identity of the provider of electronic communication service or remote computing service from whom the information was obtained.

2. Notification not required. A government entity acting under section 642 may include in the application for a warrant a request for an order to waive the notification required under this section. The court may issue the order if the court determines that there is reason to believe that notification will have an adverse result.

3. Preclusion of notice to owner or user subject to warrant for ~~content~~ electronic device information or electronic communication information. A government entity acting under section 642 may include in its application for a warrant a request for an order directing a provider of electronic communication service to which a warrant is directed not to notify any other person of the existence of the warrant. The court may issue the order if the court determines that there is reason to believe that notification of the existence of the warrant will have an adverse result.

§644. Exceptions

1. Consent of owner or user. When disclosure of ~~portable~~ electronic device ~~content~~ information or electronic communication information is not prohibited by federal law, a government entity may obtain the information without a warrant with the informed, affirmative consent of the owner or user of the ~~portable~~ electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party authorized to possess the device by the owner or user.

2. Consent of owner or user not required if ~~content~~ electronic device information or electronic communication information public. Notwithstanding subsection 1, a government entity may obtain ~~content~~ electronic device information or electronic communication information without a warrant if ~~the content that~~ information is otherwise disclosed by anyone in a publicly accessible domain, including, but not limited to, on the Internet.

3. Emergency. When a government entity cannot, with due diligence, obtain a warrant in time to address an emergency that involves or is believed to involve imminent danger of death or serious physical injury to any person, a government entity may obtain ~~the content~~ electronic communication information ~~from a portable~~ or electronic device information without a warrant, and a provider of electronic

communication service or remote computing service may disclose such information to the requesting government entity without a warrant.

§645. Use of ~~content~~ electronic device information or electronic communication information obtained in violation of this subchapter not admissible

Except as proof of a violation of this subchapter, evidence obtained in violation of this subchapter is not admissible in a criminal, civil, administrative or other proceeding.

§646. Violations; injunctive relief

A person damaged as a result of a violation of this subchapter has a cause of action in court against a government entity that fails to comply with the provisions of this subchapter, and the court may award injunctive relief.

SUBCHAPTER 11: ELECTRONIC DEVICE LOCATION INFORMATION

§647. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. Seriously jeopardizes an investigation; or
- F. Undue delay of a trial.

2. Electronic communication service. "Electronic communication service" means a service that provides to users the ability to send or receive wire or electronic communications.

3. Electronic device. "Electronic device" means a device that is electric and that enables access to, or use of, an electronic communication service, remote computing service or location information service.

4. Government entity. "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

5. Location information. "Location information" means information concerning the location of an electronic device, including both the current location and any prior location of the device, that, in whole or in part, is generated, derived from or obtained by the operation of an electronic device.

6. Location information service. "Location information service" means a global positioning service or other mapping, locational or directional information service.

7. Owner. "Owner" means the person or entity having the legal title, claim or right to an electronic device.

8. Remote computing service. "Remote computing service" means computer storage or processing services provided by means of an electronic communication service.

8-A. Serious physical injury. "Serious physical injury" means:

A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence necessary for recovery of physical health; or

B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303.

9. User. "User" means a person or entity that uses an electronic device.

§648. Search warrant needed for acquisition of location information

Except as provided in this subchapter, a government entity may not obtain location information without a valid warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56.

A justice, judge or justice of the peace may issue a search warrant for the location information of an electronic device pursuant to this section for a period of time necessary to achieve the objective of the authorization, but in any case the warrant is not valid for more than 14 days after the issuance. A justice, judge or justice of the peace may grant an extension of a warrant upon a finding of continuing probable cause and a finding that the extension is necessary to achieve the objective of the authorization. An extension may not exceed 30 days.

This subchapter does not apply to tracking devices, as defined in section 638, placed by law enforcement officers.

§649. Notice

Notice must be given to the owner or user of an electronic device whose location information was obtained by a government entity. The government entity's notification obligation applies only if the government entity is able to identify the owner or user.

1. Timing and content of notice. Unless the court determines under subsection 2 that no notice is required, the government entity shall provide notice to the owner or user that location information was obtained by the government entity from that owner's or user's electronic device within 3 days of obtaining the location information. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

A. The nature of the law enforcement inquiry, with reasonable specificity;

B. The location information of the owner or user that was supplied to or requested by the government entity and the date on which it was provided or requested; and

C. If location information was obtained from a provider of electronic communication service, location information service or remote computing service or other 3rd party, the identity of the provider of electronic communication service, location information service or remote computing service or the 3rd party from whom the information was obtained.

2. Notification not required. A government entity acting under section 648 may include in the application for a warrant a request for an order to waive the notification required under this section. The court may issue the order if the court determines that there is reason to believe that notification will have an adverse result.

3. Preclusion of notice to owner or user subject to warrant for location information. A government entity acting under section 648 may include in its application for a warrant a request for an order directing a provider of electronic communication service, remote computing service or location information service to which a warrant is directed not to notify any other person of the existence of the warrant. The court may issue the order if the court determines that there is reason to believe that notification of the existence of the warrant will have an adverse result.

§650. Exceptions to warrant requirement

When disclosure of location information is not prohibited by federal law, a government entity may obtain the location information without a warrant:

- 1. Emergency services.** To respond to the user's call for emergency services;
- 2. Consent of owner or user.** With the informed, affirmative consent of the owner or user of the electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party authorized to possess the device by the owner or user;
- 3. Consent of family member.** With the informed, affirmative consent of the legal guardian or next of kin of the owner or user, if the owner or user is believed to be deceased or reported missing and unable to be contacted; or
- 4. Danger of death or serious injury.** If the government entity reasonably believes that an emergency involving imminent danger of death or serious physical injury to a person requires the disclosure, without delay, of location information concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger, and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

Within a reasonable period of time after seeking disclosure pursuant to this subsection, the government entity seeking the location information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose location information was sought is believed to be important in addressing the emergency.

§650-A. Conditions of use of location information

1. Conditions of use of location information in proceeding. Location information obtained pursuant to this subchapter or evidence derived from that information may be received in evidence or otherwise disclosed in a trial, hearing or other proceeding only if each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the statement of emergency filed under section 650, subsection 4 or the warrant and accompanying application under which the information was obtained.

2. Ten-day requirement; exception. The 10-day requirement under subsection 1 may be waived if a judge makes a finding that it was not possible to provide a party with the warrant and accompanying application 10 days prior to a trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

§650-B. Action against a corporation

This subchapter may not be construed to create a cause of action against a corporation or its officers, employees or agents for providing location information