

AMENDED IN ASSEMBLY JUNE 28, 2012

AMENDED IN SENATE MAY 24, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1434**

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**Introduced by Senator Leno**

February 24, 2012

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An act to add Chapter 3.6 (commencing with Section 1546) to Title 12 of Part 2 of the Penal Code, relating to location information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1434, as amended, Leno. Location information: warrants.

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Existing law also provides for a warrant procedure for the acquisition of stored communications in the possession of a provider of electronic communication service or a remote computing service.

This bill would prohibit a government entity, as defined, from obtaining the location information of an electronic device without a valid search warrant issued by a duly authorized magistrate unless certain exceptions apply, including in an emergency or when requested by the owner of the device. The bill would prohibit the use of information obtained in violation of these provisions in a civil or administrative hearing.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 3.6 (commencing with Section 1546) is  
2 added to Title 12 of Part 2 of the Penal Code, to read:

3  
4 CHAPTER 3.6. LOCATION PRIVACY  
5

6 1546. For purposes of this chapter, the following definitions  
7 shall apply:

8 (a) “Electronic communication service” means a service that  
9 provides to users thereof the ability to send or receive wire or  
10 electronic communications.

11 (b) “Electronic device” means a device that enables access to,  
12 or use of, an electronic communication service, remote computing  
13 service, or location information service.

14 (c) “Government entity” means a state or local agency,  
15 including, but not limited to, a law enforcement entity or any other  
16 investigative entity, agency, department, division, bureau, board,  
17 or commission, or an individual acting or purporting to act for or  
18 on behalf of a state or local agency.

19 (d) “Location information” means information, concerning the  
20 location of an electronic device, including both the current location  
21 and any prior location of the device, that, in whole or in part, is  
22 generated, derived from, or obtained by the operation of an  
23 electronic device.

24 (e) “Location information service” means the provision of a  
25 global positioning service or other mapping, locational, or  
26 directional information service.

27 (f) “Owner” means the person or entity recognized by the law  
28 as having the legal title, claim, or right to, an electronic device.

29 (g) “Remote computing service” means the provision of  
30 computer storage or processing services by means of an electronic  
31 communications system.

32 (h) “User” means a person or entity that uses an electronic  
33 device.

34 1546.1. (a) No government entity shall obtain the location  
35 information of an electronic device without a valid search warrant  
36 issued by a duly authorized magistrate using procedures established  
37 pursuant to Chapter 3 (commencing with Section 1523).

1 (b) No search warrant shall issue for the location of an electronic  
2 device pursuant to this section for a period of time longer than is  
3 necessary to achieve the objective of the authorization, nor in any  
4 event longer than 30 days, commencing on the day of the initial  
5 obtaining of location information, or 10 days after the issuance of  
6 the warrant, whichever comes first. Extensions of a warrant may  
7 be granted, but only upon a judge or magistrate finding continuing  
8 probable cause and that the extension is necessary to achieve the  
9 objective of the authorization. Each extension granted for a warrant  
10 pursuant to this subdivision shall be for no longer than the  
11 authorizing judge or magistrate deems necessary to achieve the  
12 purposes for which the warrant was originally granted, but in any  
13 event, shall be for no longer than 30 days.

14 (c) Notwithstanding subdivision (a), a government entity may  
15 obtain location information without a search warrant, as provided  
16 in this section, *where disclosure of the location information is not*  
17 *prohibited by federal law*, in any of the following circumstances:

18 (1) In order to respond to the user's call for emergency services.

19 (2) With the informed, affirmative consent of the owner or user  
20 of the electronic device concerned, provided that the owner or user  
21 may not consent to the disclosure of location information if the  
22 device is known or believed to be in the possession of, or attached  
23 to a possession of, a third party known to the owner or user.

24 (3) *With the informed, affirmative consent of the legal guardian*  
25 *or next of kin of the electronic device's user, if the user is deceased*  
26 *or reported missing and unable to be contacted.*

27 ~~(3) Pursuant to a request by a~~

28 ~~(4) If the government entity that asserts that the government~~  
29 ~~entity reasonably believes that an emergency involving immediate~~  
30 ~~danger of death or serious physical injury to any person requires~~  
31 ~~the disclosure, without delay, of location information relating to~~  
32 ~~the emergency and there is insufficient time to obtain a warrant.~~  
33 ~~The concerning a specific person or persons and that a warrant~~  
34 ~~cannot be obtained in time to prevent the identified danger and~~  
35 ~~the possessor of the location information, in good faith, believes~~  
36 ~~that an emergency involving danger of death or serious physical~~  
37 ~~injury to a person requires the disclosure without delay.~~

38 (d) The government entity seeking the location information  
39 pursuant to ~~this~~ paragraph (4) of subdivision (c) shall file with the  
40 appropriate court a written statement setting forth the facts giving

1 rise to the emergency and the facts why the person *or persons*  
2 whose location information was sought was believed to be  
3 important in addressing the emergency, no later than 48 hours after  
4 seeking disclosure.

5 1546.3. Except as proof of a violation of this ~~section~~ *chapter*,  
6 no evidence obtained in violation of this ~~section~~ *chapter* shall be  
7 admissible in a civil or administrative proceeding.