

CHAPTER 262  
HB 468-FN – FINAL VERSION

18Feb2015... 0349h  
06/04/2015 1727s  
06/04/2015 2030s  
24June2015... 2311CofC  
24June2015... 2345EBA

2015 SESSION

15-0399  
04/05

HOUSE BILL            ***468-FN***

AN ACT                requiring a warrant to obtain electronic device location information.

SPONSORS:            Rep. Kurk, Hills 2; Sen. Daniels, Dist 11; Sen. Cataldo, Dist 6

COMMITTEE:          Executive Departments and Administration

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AMENDED ANALYSIS

This bill regulates the use of electronic device location information.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears [~~in brackets and struck through~~].  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT                    requiring a warrant to obtain electronic device location information.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            262:1 New Chapter; Electronic Device Location Information. Amend RSA by inserting after  
2 chapter 644 the following new chapter:

CHAPTER 644-A

ELECTRONIC DEVICE LOCATION INFORMATION

5            644-A:1 Definitions. In this chapter:

6            I. “Electronic communication service” means a service that provides users the ability to send  
7 or receive wire or electronic communications.

8            II. “Electronic device” means a device that enables access to or use of an electronic  
9 communication service, remote computing service, or location information service, including without  
10 limitation a cellular telephone.

11           III. “Government entity” means a federal, state, or local agency, including but not limited to  
12 a law enforcement agency or any other investigative entity, department, division, bureau, board, or  
13 commission, or an individual acting or purporting to act for or on behalf of a federal, state, or local  
14 agency. “Government entity” shall not apply to a federal government agency to the extent that  
15 federal statute preempts such application.

16           IV. “Individual” means a natural person.

17           V. “Location information” means information concerning the location of an electronic device,  
18 including both the current location and any prior location of the device that, in whole or in part, is  
19 generated, derived from, or obtained by the operation of an electronic device.

20           VI. “Location information service” means a global positioning service or other mapping or  
21 directional information service.

22           VII. “Owner” means the individual or person having the legal title, claim, or right to an  
23 electronic device.

24           VIII. “Person” means a corporation, trust, estate, partnership, limited liability company,  
25 association, firm, or any other legal entity.

26           IX. “Remote computing service” means computer storage or processing services provided by

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1 means of an electronic communication service.

2 X. “User” means an individual, person, or government entity that uses an electronic device.

3 644-A:2 Warrant Required for Acquisition of Location Information.

4 I. Except as provided in this chapter, a government entity shall not obtain location  
5 information from an electronic device without a warrant issued by a judge based on probable cause  
6 and on a case-by-case basis.

7 II. No government entity shall place, locate, or install an electronic device on the person or  
8 property of another, or obtain location information from such an electronic device, without a warrant  
9 issued by a judge based on probable cause and on a case-by-case basis.

10 644-A:3 Exceptions to Warrant Requirement. A government entity may obtain the location  
11 information without a warrant:

12 I. To respond to a call for emergency services, including a request from an E-911 supervisor  
13 to an electronic communication service to determine the location of a cellular telephone when the  
14 supervisor informs the services that the information is required pursuant to an emergency involving  
15 actual or potential death, serious physical injury or major damage to property and the information is  
16 needed without delay. Such a request shall not create a cause of action against the E-911 system or  
17 employee or the electronic communication service or its employees;

18 II. With the informed consent of the owner or user of the electronic device concerned, except  
19 when the device is known or believed by the owner or user to be in the lawful possession of a third  
20 party known to the owner or user;

21 III. With the informed consent of the parent or foster parent of a minor who is the owner or  
22 user, or the legal guardian or next of kin of the owner or user, if the owner or user is believed to be  
23 deceased or reported missing and unable to be contacted;

24 IV. If the government entity reasonably believes that an emergency involving immediate  
25 danger of death or serious physical injury to a person requires the disclosure, without delay, of  
26 location information concerning a specific person and that a warrant cannot be obtained in time to  
27 prevent the identified danger, and the possessor of the location information, in good faith, believes  
28 that an emergency involving danger of death or serious physical injury to a person requires the  
29 disclosure without delay;

30 V. Pursuant to a legally-recognized exception to the warrant requirement;

31 VI. If the government entity is the owner of the electronic device and has issued it to an  
32 employee or it is attached to property owned by the government entity; or

33 VII. If an alcohol ignition interlock device has been installed in a motor vehicle in  
34 compliance with an order issued by a court or the commissioner of the department of safety.

35 644-A:4 Conditions of Use of Location Information. No individual or person shall, without  
36 consent, place, locate, or install an electronic device on the person or property of another and obtain

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1 location information from such electronic device. No such consent shall be required by the parent,  
2 foster parent, or legal guardian of a minor, or by the legal guardian for the subject of his or her  
3 guardianship, or for persons under house arrest or probation or parole supervision who are issued  
4 ankle bracelets.

5 644-A:5 Action Against a Person. This chapter shall not be construed to create a cause of action  
6 against a person or its officers, employees, or agents for providing location information to a  
7 government entity in accordance with the provisions of this chapter.

8 644-A:6 Penalties

9 I. Any individual acting or purporting to act for or on behalf of a federal, state, or local  
10 agency who purposely violates this chapter shall be guilty of a class B misdemeanor.

11 II. An individual or person who is injured as a result of a violation of this chapter may file a  
12 civil action against a government entity, individual, or person that fails to comply with the  
13 provisions of this chapter.

14 262:2 Effective Date. This act shall take effect July 1, 2015.

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16 Approved: July 20, 2015

17 Effective Date: July 1, 2015