H. R. 2168

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Mr. CHAFFETZ (for himself and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES.

This Act may be cited as the “Geolocational Privacy
and Surveillance Act” or the “GPS Act”.

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SEC. 2. PROTECTION OF GEOLOCATION INFORMATION.

(a) In General.—Part 1 of title 18, United States Code, is amended by inserting after chapter 119 the following:

“CHAPTER 120—GEOLOCATION INFORMATION

§ 2601. Definitions

“In this chapter:

“(1) ELECTRONIC COMMUNICATION SERVICE.—The term ‘electronic communication service’ has the meaning given that term in section 2510.

“(2) ELECTRONIC SURVEILLANCE.—The term ‘electronic surveillance’ has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

“(3) GEOLOCATION INFORMATION.—The term ‘geolocation information’ means, with respect to a person, any information that is not the content of a communication, concerning the location of a wireless communication device or tracking device (as that term is defined section 3117) that, in whole or in part, is generated by or derived from the operation
of that device and that could be used to determine
or infer information regarding the location of the
person.

“(4) Geolocation Information Service.—
The term ‘geolocation information service’ means the
provision of a global positioning service or other
mapping, locational, or directional information serv-
ice to the public, or to such class of users as to be
effectively available to the public, by or through the
operation of any wireless communication device, in-
cluding any mobile telephone, global positioning sys-
tem receiving device, mobile computer, or other simi-
lar or successor device.

“(5) Intercept.—The term ‘intercept’ means
the acquisition of geolocation information through
the use of any electronic, mechanical, or other de-
vice.

“(6) Investigative or Law Enforcement
Officer.—The term ‘investigative or law enforce-
ment officer’ means any officer of the United States
or of a State or political subdivision thereof, who is
empowered by law to conduct investigations of, or to
make arrests for, offenses enumerated in this chap-
ter, and any attorney authorized by law to prosecute
or participate in the prosecution of such offenses.
“(7) PERSON.—The term ‘person’ means any employee or agent of the United States, or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

“(8) REMOTE COMPUTING SERVICE.—The term ‘remote computing service’ has the meaning given that term in section 2711.

“(9) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

“(10) WIRELESS COMMUNICATION DEVICE.—The term ‘wireless communication device’ means any device that enables access to, or use of, an electronic communication system or service, remote computing service, or geolocation information service, if that device utilizes a radio or other wireless connection to access such system or service.

“(11) COVERED SERVICE.—The term ‘covered services’ means electronic communication service, remote computing service, or geolocation information service.
§ 2602. Interception and disclosure of geolocation information

(a) In General.—

(1) Prohibition on disclosure or use.—
Except as otherwise specifically provided in this chapter, it shall be unlawful for any person to—

(A) intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, geolocation information pertaining to another person;

(B) intentionally disclose, or endeavor to disclose, to any other person geolocation information pertaining to another person, knowing or having reason to know that the information was obtained through the interception of such information in violation of this paragraph;

(C) intentionally use, or endeavor to use, any geolocation information, knowing or having reason to know that the information was obtained through the interception of such information in violation of this paragraph; or

(D)(i) intentionally disclose, or endeavor to disclose, to any other person the geolocation information pertaining to another person intercepted by means authorized by subsections (b)
through (h), except as provided in such sub-
sections;

“(ii) knowing or having reason to know
that the information was obtained through the
interception of such information in connection
with a criminal investigation;

“(iii) having obtained or received the infor-
mation in connection with a criminal investiga-
tion; and

“(iv) with intent to improperly obstruct,
impede, or interfere with a duly authorized
criminal investigation.

“(2) PENALTY.—Any person who violates para-
graph (1) shall be fined under this title, imprisoned
not more than five years, or both.

“(b) EXCEPTION FOR INFORMATION ACQUIRED IN
THE NORMAL COURSE OF BUSINESS.—It shall not be un-
lawful under this chapter for an officer, employee, or agent
of a provider of covered services, whose facilities are used
in the transmission of geolocation information, to inter-
cept, disclose, or use that information in the normal course
of the officer, employee, or agent’s employment while en-
gaged in any activity which is a necessary incident to the
rendition of service or to the protection of the rights or
property of the provider of that service, except that a pro-
provider of a geolocation information service to the public
shall not utilize service observing or random monitoring
except for mechanical or service quality control checks.

“(c) EXCEPTION FOR CONDUCTING FOREIGN INTELLIGENCE SURVEILLANCE.—Notwithstanding any other
provision of this chapter, it shall not be unlawful for an
officer, employee, or agent of the United States in the normal
course of the official duty of the officer, employee,
or agent to conduct electronic surveillance, as authorized
by the Foreign Intelligence Surveillance Act of 1978 (50
U.S.C. 1801 et seq.).

“(d) EXCEPTION FOR CONSENT.—

“(1) IN GENERAL.—It shall not be unlawful
under this chapter for a person to intercept
geolocation information pertaining to another person
if such other person has given prior consent to such
interception unless such information is intercepted
for the purpose of committing any criminal or
tortious act in violation of the Constitution or laws
of the United States or of any State.

“(2) CHILDREN.—The exception in paragraph
(1) permits a parent or legal guardian of a child to
intercept geolocation information pertaining to that
child or to give consent for another person to inter-
cept such information.
“(e) Exception for Public Information.—It shall not be unlawful under this chapter for any person to intercept or access geolocation information relating to another person through any system that is configured so that such information is readily accessible to the general public.

“(f) Exception for Emergency Information.—It shall not be unlawful under this chapter for any investigative or law enforcement officer or other emergency responder to intercept or access geolocation information relating to a person if such information is used—

“(1) to respond to a request made by such person for assistance; or

“(2) in circumstances in which it is reasonable to believe that the life or safety of the person is threatened, to assist the person.

“(g) Exception for Theft or Fraud.—It shall not be unlawful under this chapter for a person acting under color of law to intercept geolocation information pertaining to the location of another person who has unlawfully taken the device sending the geolocation information if—

“(1) the owner or operator of such device authorizes the interception of the person’s geolocation information;
“(2) the person acting under color of law is lawfully engaged in an investigation; and
“(3) the person acting under color of law has reasonable grounds to believe that the geolocation information of the other person will be relevant to the investigation.

“(h) EXCEPTION FOR WARRANT.—
“(1) DEFINITIONS.—In this subsection:
“(A) COURT OF COMPETENT JURISDICTION.—The term ‘court of competent jurisdiction’ includes—
“(i) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—
“(I) has jurisdiction over the offense being investigated;
“(II) is in or for a district in which the provider of a geolocation information service is located or in which the geolocation information is stored; or
“(III) is acting on a request for foreign assistance pursuant to section 3512 of this title; or
“(ii) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants.

“(B) GOVERNMENTAL ENTITY.—The term ‘governmental entity’ means a department or agency of the United States or any State or political subdivision thereof.

“(2) WARRANT.—A governmental entity may intercept geolocation information or require the disclosure by a provider of covered services of geolocation information only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction, or as otherwise provided in this chapter or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

“(i) PROHIBITION ON DIVULGING GEOLOCATION INFORMATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person providing covered services shall not intentionally divulge geolocation information pertaining to another person.

“(2) EXCEPTIONS.—A person providing covered services may divulge geolocation information—
“(A) as otherwise authorized in subsections (b) through (h);

“(B) with the lawful consent of such other person;

“(C) to another person employed or authorized, or whose facilities are used, to forward such geolocation information to its destination; or

“(D) which was inadvertently obtained by the service provider and which appears to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

§2603. Prohibition of use as evidence of acquired geolocation information

“Whenever any geolocation information has been acquired, no part of such information and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

§2604. Emergency situation exception

“(a) Emergency Situation Exception.—Notwithstanding any other provision of this chapter, any in-
vestigative or law enforcement officer, specially designated
by the Attorney General, the Deputy Attorney General,
the Associate Attorney General, or by the principal pros-
cecuting attorney of any State or subdivision thereof acting
pursuant to a statute of that State, may intercept
geolocation information if—

“(1) such officer reasonably determines that an
emergency situation exists that—

“(A) involves—

“(i) immediate danger of death or se-
rious physical injury to any person;

“(ii) conspiratorial activities threat-
ening the national security interest; or

“(iii) conspiratorial activities char-
acteristic of organized crime; and

“(B) requires geolocation information be
intercepted before an order authorizing such
interception can, with due diligence, be ob-
tained;

“(2) there are grounds upon which an order
could be entered to authorize such interception; and

“(3) an application for an order approving such
interception is made within 48 hours after the inter-
ception has occurred or begins to occur.

“(b) FAILURE TO OBTAIN COURT ORDER.—
“(1) Termination of acquisition.—In the absence of an order, an interception of geolocation information carried out under subsection (a) shall immediately terminate when the information sought is obtained or when the application for the order is denied, whichever is earlier.

“(2) Prohibition on use as evidence.—In the event such application for approval is denied, the geolocation information shall be treated as having been obtained in violation of this chapter and an inventory shall be served on the person named in the application.

§ 2605. Recovery of civil damages authorized

“(a) In general.—Any person whose geolocation information is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person, other than the United States, which engaged in that violation such relief as may be appropriate.

“(b) Relief.—In an action under this section, appropriate relief includes—

“(1) such preliminary and other equitable or declaratory relief as may be appropriate;

“(2) damages under subsection (e) and punitive damages in appropriate cases; and
“(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

“(c) COMPUTATION OF DAMAGES.—The court may assess as damages under this section whichever is the greater of—

“(1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

“(2) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

“(d) DEFENSE.—It is a complete defense against any civil or criminal action brought against an individual for conduct in violation of this chapter if such individual acted in a good faith reliance on—

“(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

“(2) a request of an investigative or law enforcement officer under section 2604; or

“(3) a good-faith determination that an exception under section 2602 permitted the conduct complained of.

“(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date
upon which the claimant first has a reasonable opport-
unity to discover the violation.

“(f) ADMINISTRATIVE DISCIPLINE.—If a court or ap-
propriate department or agency determines that the
United States or any of its departments or agencies has
violated any provision of this chapter, and the court or
appropriate department or agency finds that the cir-
cumstances surrounding the violation raise serious ques-
tions about whether or not an officer or employee of the
United States acted willfully or intentionally with respect
to the violation, the department or agency shall, upon re-
ceipt of a true and correct copy of the decision and find-
ings of the court or appropriate department or agency
promptly initiate a proceeding to determine whether dis-
ciplinary action against the officer or employee is war-
ranted. If the head of the department or agency involved
determines that disciplinary action is not warranted, such
head shall notify the Inspector General with jurisdiction
over the department or agency concerned and shall provide
the Inspector General with the reasons for such deter-
mination.

“(g) IMPROPER DISCLOSURE IS VIOLATION.—Any
willful disclosure or use by an investigative or law enforce-
ment officer or governmental entity of information beyond
the extent permitted by this chapter is a violation of this
chapter for purposes of this section.”.

(b) Clerical Amendment.—The table of chapters
for part 1 of title 18, United States Code, is amended by
inserting after the item relating to chapter 119 the fol-
lowing:

“120. Geolocation information ........................................ 2601”.

(c) Conforming Amendments.—Section 3512(a) of
title 18, United States Code, is amended—

(1) in paragraph (2)—

(A) by redesignating subparagraphs (B),
(C), and (D) as subparagraphs (C), (D), and
(E), respectively; and

(B) by inserting after subparagraph (A)
the following:

“(B) a warrant or order for geolocation in-
formation or records related thereto, as pro-
vided under section 2602 of this title;”.

SEC. 3. Requirement for Search Warrants to Ac-
quire Geolocation Information.

Rule 41(a) of the Federal Rules of Criminal Proce-
dure is amended—

(1) in paragraph (2)(A), by striking the period
at the end and inserting a comma and “including
geolocation information.”; and

(2) by adding at the end the following:
“(F) ‘Geolocation information’ has the meaning given that term in section 2601 of title 18, United States Code.”.

SEC. 4. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH OBTAINING GEOLOCATION INFORMATION.

(a) CRIMINAL VIOLATION.—Section 1039(h) of title 18, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting a semicolon and “and”; and

(C) by adding at the end the following new subparagraph:

“(C) includes any geolocation information service.”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) GEOLOCATION INFORMATION SERVICE.—The term ‘geolocation information service’ has the meaning given that term in section 2601.”.
(b) Conforming Amendments.—

(1) Definition Amendments.—Section 1039(h)(1) of title 18, United States Code, is amended—

(A) in the paragraph heading, by inserting “OR GPS” after “PHONE”; and

(B) in the matter preceding subparagraph (A), by inserting “or GPS” after “phone”.

(2) Conforming Amendments.—Section 1039 of title 18, United States Code, is amended—

(A) in the section heading by inserting “or GPS” after “phone”;

(B) in subsection (a)—

(i) in the matter preceding paragraph (1), by inserting “or GPS” after “phone”; and

(ii) in paragraph (4), by inserting “or GPS” after “phone”; and

(C) in subsection (b)—

(i) in the subsection heading, by inserting “OR GPS” after “PHONE”; and

(ii) in paragraph (1), by inserting “or GPS” after “phone” both places that term appears; and
(iii) in paragraph (2), by inserting “or GPS” after “phone”; and

(D) in subsection (c)—

(i) in the subsection heading, by inserting “OR GPS” after “PHONE”;

(ii) in paragraph (1), by inserting “or GPS” after “phone” both places that term appears; and

(iii) in paragraph (2), by inserting “or GPS” after “phone”.

(3) CHAPTER ANALYSIS.—The table of sections for chapter 47 of title 18, United States Code, is amended by striking the item relating to section 1039 and inserting the following:

“1039. Fraud and related activity in connection with obtaining confidential phone or GPS records information of a covered entity.”.

(e) SENTENCING GUIDELINES.—

(1) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section
1039 of title 18, United States Code, as amended by this section.

(2) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

SEC. 5. STATEMENT OF EXCLUSIVE MEANS OF ACQUIRING GEOLOCATION INFORMATION.

(a) IN GENERAL.—No person may acquire the geolocation information of a person for protective activities or law enforcement or intelligence purposes except pursuant to a warrant issued pursuant to rule 41 of the Federal Rules of Criminal Procedure, as amended by section 3, or the amendments made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(b) GEOLOCATION INFORMATION DEFINED.—In this section, the term “geolocation information” has the meaning given that term in section 2601 of title 18, United States Code, as amended by section 2.