



TO: House Judiciary Committee
FROM: Gary Daniels, Associate Director, ACLU of Ohio
DATE: February 26, 2014
RE: Am. Sub. Senate Bill 5

To Chairman Butler, Vice Chair Pelanda, Ranking Minority Member Stinziano, and members of the House Judiciary Committee, my name is Gary Daniels, associate director for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present proponent testimony on Amended Substitute Senate Bill 5.

SB 5 is an undeniably important bill that sets necessary parameters for law enforcement throughout the state when they wish to access peoples' cell phone location information. In its current form, this bill strikes the proper balance to obtain this data – no warrants required in true emergency situations, warrants required for all other situations. This is in stark contrast to Ohio's current state of affairs – no warrants required whatsoever for this data.

Understandably, most people do not yet realize what cell phone location information reveals about us and our personal lives. Because many of us have cell phones perpetually on our person or at least nearby, our cell phones essentially follow us around. In other words, if one can track our cell phone, they can track us.

Among the voluminous information available to others via our cell phone location is what political meetings, rallies and protests we attend, where we worship, if we are currently seeking medical, mental health or addiction treatment and where, if we own firearms, our sexual orientation, and much more.

This wealth of personal information is also attractive to law enforcement. Without a requirement to obtain a warrant before getting this data, police and prosecutors can request and receive all this information and more while never having to explain their interest or justify their efforts.

This concern is not mere speculation. In the last few years, the ACLU, in conjunction with its state affiliates, sent out public records requests to approximately 400 law enforcement agencies around the country and roughly 250 responded. Unfortunately, but not unexpectedly, the overwhelming majority of departments and agencies do access this information and do it without warrants.

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The silver lining is there are still others who do get warrants in non-emergency situations, demonstrating police can still accomplish their goals while complying with the Fourth Amendment.

While I testify today in favor of SB 5, I should also note the bill can be improved further. The addition of provisions to require: 1) retroactive notice to those who had information accessed without a warrant, 2) courts to report specific information to the Ohio Supreme Court regarding each warrant issued, 3) the Ohio Supreme Court to issue a yearly report on the information it collected and received and 4) a prohibition against using evidence in criminal, civil, administrative and other proceedings when data is obtained in violation of this bill would transform this good bill into a much stronger one.

Finally, I also ask that you keep in mind allowing government to obtain our cell phone location information is but one spoke in a larger wheel of government surveillance. As you consider this bill today, please realize our federal government collects, catalogues, stores, and analyzes our phone calls, mail, e-mail, web searches, text messages, online social networks, financial transactions, retail and online purchases, and a wealth of other information.

This is possible because multiple administrations and sessions of Congress have failed us by refusing to do anything to limit these activities. Instead, they have collectively built and presided over an out-of-control surveillance state with no end in sight and with no piece of personal information too mundane or inconsequential to collect.

Fortunately, state lawmakers have taken notice they hold the power to limit these activities within their own states. Legislatures in Wisconsin, Indiana, Illinois and Utah (among others) are deliberating their own versions of SB 5. Maine passed such a law in 2013. State supreme courts in Massachusetts and New Jersey, both within the past couple weeks, ruled police need warrants in non-emergency situations.

The ACLU of Ohio hopes this committee joins the growing number of lawmakers, judges, and Americans who rightly recognize having zero warrant protections for this sensitive information is unacceptable. We urge you to favorably consider SB 5 and make it even stronger with the suggestions mentioned earlier. As always, we are willing to assist in any ways that would prove helpful.