

106TH CONGRESS
1ST SESSION

S. 411

To provide for a process to authorize the use of clone pagers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1999

Mr. DEWINE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for a process to authorize the use of clone pagers, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clone Pager Author-
5 ization Act of 1999”.

6 **SEC. 2. CLONE PAGERS.**

7 (a) IN GENERAL.—Section 2511(2)(h) of title 18,
8 United States Code, is amended by striking clause (i) and
9 inserting the following:

1 “(i) to use a pen register, a trap and
2 trace device, or a clone pager, as those
3 terms are defined in chapter 206 (relating
4 to pen registers, trap and trace devices,
5 and clone pagers) of this title; or”;

6 (b) EXCEPTION.—Section 3121 of title 18, United
7 States Code, is amended—

8 (1) by striking subsection (a) and inserting the
9 following:

10 “(a) IN GENERAL.—Except as provided in this sec-
11 tion, no person may install or use a pen register, trap and
12 trace device, or clone pager without first obtaining a court
13 order under section 3123 or section 3129 of this title, or
14 under the Foreign Intelligence Surveillance Act of 1978
15 (50 U.S.C. 1801 et seq.)”;

16 (2) in subsection (b), by striking “a pen reg-
17 ister or a trap and trace device” and inserting “a
18 pen register, trap and trace device, or clone pager”;
19 and

20 (3) by striking the section heading and insert-
21 ing the following:

1 **“§ 3121. General prohibition on pen register, trap and**
2 **trace device, and clone pager use; excep-**
3 **tion”.**

4 (c) ASSISTANCE.—Section 3124 of title 18, United
5 States Code, is amended—

6 (1) by redesignating subsections (e) through (f)
7 as subsections (d) through (g), respectively;

8 (2) by inserting after subsection (b) the follow-
9 ing:

10 “(c) CLONE PAGER.—Upon the request of an attor-
11 ney for the Government or an officer of a law enforcement
12 agency authorized to use a clone pager under this chapter,
13 a provider of electronic communication service shall fur-
14 nish to such investigative or law enforcement officer all
15 information, facilities, and technical assistance necessary
16 to accomplish the use of the clone pager unobtrusively and
17 with a minimum of interference with the services that the
18 person so ordered by the court provides to the subscriber,
19 if such assistance is directed by a court order, as provided
20 in section 3129(b)(2) of this title.”; and

21 (3) by striking the section heading and insert-
22 ing the following:

1 **“§ 3124. Assistance in installation and use of a pen**
2 **register, trap and trace device, or clone**
3 **pager”.**

4 (d) EMERGENCY INSTALLATIONS.—Section 3125 of
5 title 18, United States Code, is amended—

6 (1) by striking “pen register or a trap and
7 trace device” and “pen register or trap and trace de-
8 vice” each place those terms appear, and inserting
9 “pen register, trap and trace device, or clone pager”;

10 (2) in subsection (a), by striking “an order ap-
11 proving the installation or use is issued in accord-
12 ance with section 3123 of this title” and inserting
13 “an application is made for an order approving the
14 installation or use in accordance with section 3122
15 or section 3128 of this title”;

16 (3) in subsection (b), by adding at the end the
17 following: “In the event that such application for the
18 use of a clone pager is denied, or in any other case
19 in which the use of the clone pager is terminated
20 without an order having been issued, an inventory
21 shall be served as provided for in section 3129(e).”;
22 and

23 (4) by striking the section heading and insert-
24 ing the following:

1 **“§ 3125. Emergency pen register, trap and trace de-**
 2 **vice, and clone pager installation and**
 3 **use”.**

4 (e) REPORTS.—Section 3126 of title 18, United
 5 States Code, is amended—

6 (1) by striking “pen register orders and orders
 7 for trap and trace devices” and inserting “orders for
 8 pen registers, trap and trace devices, and clone
 9 pagers”; and

10 (2) by striking the section heading and insert-
 11 ing the following:

12 **“§ 3126. Reports concerning pen registers, trap and**
 13 **trace devices, and clone pagers”.**

14 (f) DEFINITIONS.—Section 3127 of title 18, United
 15 States Code, is amended—

16 (1) in paragraph (2)—

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

19 (B) by striking subparagraph (B) and in-
 20 serting the following:

21 “(B) with respect to an application for the
 22 use of a pen register or trap and trace device,
 23 a court of general criminal jurisdiction of a
 24 State authorized by the law of that State to
 25 enter orders authorizing the use of a pen reg-
 26 ister or a trap and trace device; or

1 “(C) with respect to an application for the
2 use of a clone pager, a court of general criminal
3 jurisdiction of a State authorized by the law of
4 that State to issue orders authorizing the use of
5 a clone pager;”;

6 (2) in paragraph (5), by striking “and” at the
7 end;

8 (3) in paragraph (6), by striking the period at
9 the end and inserting “; and”; and

10 (4) by adding at the end the following:

11 “(7) the term ‘clone pager’ means a numeric
12 display device that receives communications intended
13 for another numeric display paging device.”.

14 (g) APPLICATIONS.—Chapter 206 of title 18, United
15 States Code, is amended by adding at the end the follow-
16 ing:

17 **“§ 3128. Application for an order for use of a clone**
18 **pager**

19 “(a) APPLICATION.—

20 “(1) FEDERAL REPRESENTATIVES.—Any attor-
21 ney for the Government may apply to a court of
22 competent jurisdiction for an order or an extension
23 of an order under section 3129 of this title authoriz-
24 ing the use of a clone pager.

1 “(2) STATE REPRESENTATIVES.—A State in-
2 vestigative or law enforcement officer may, if author-
3 ized by a State statute, apply to a court of com-
4 petent jurisdiction of such State for an order or an
5 extension of an order under section 3129 of this title
6 authorizing the use of a clone pager.

7 “(b) CONTENTS OF APPLICATION.—An application
8 under subsection (a) of this section shall include—

9 “(1) the identity of the attorney for the Govern-
10 ment or the State law enforcement or investigative
11 officer making the application and the identity of the
12 law enforcement agency conducting the investiga-
13 tion;

14 “(2) the identity, if known, of the individual or
15 individuals using the numeric display paging device
16 to be cloned;

17 “(3) a description of the numeric display paging
18 device to be cloned;

19 “(4) a description of the offense to which the
20 information likely to be obtained by the clone pager
21 relates;

22 “(5) the identity, if known, of the person who
23 is subject of the criminal investigation; and

24 “(6) an affidavit or affidavits, sworn to before
25 the court of competent jurisdiction, establishing

1 probable cause to believe that information relevant
2 to an ongoing criminal investigation being conducted
3 by that agency will be obtained through use of the
4 clone pager.

5 **“§ 3129. Issuance of an order for use of a clone pager**

6 “(a) IN GENERAL.—Upon an application made under
7 section 3128 of this title, the court shall enter an ex parte
8 order authorizing the use of a clone pager within the juris-
9 diction of the court if the court finds that the application
10 has established probable cause to believe that information
11 relevant to an ongoing criminal investigation being con-
12 ducted by that agency will be obtained through use of the
13 clone pager.

14 “(b) CONTENTS OF AN ORDER.—An order issued
15 under this section—

16 “(1) shall specify—

17 “(A) the identity, if known, of the individ-
18 ual or individuals using the numeric display
19 paging device to be cloned;

20 “(B) the numeric display paging device to
21 be cloned;

22 “(C) the identity, if known, of the sub-
23 scriber to the pager service; and

1 “(D) the offense to which the information
2 likely to be obtained by the clone pager relates;
3 and

4 “(2) shall direct, upon the request of the appli-
5 cant, the furnishing of information, facilities, and
6 technical assistance necessary to use the clone pager
7 under section 3124 of this title.

8 “(c) TIME PERIOD AND EXTENSIONS.—

9 “(1) IN GENERAL.—An order issued under this
10 section shall authorize the use of a clone pager for
11 a period not to exceed 30 days. Such 30-day period
12 shall begin on the earlier of the day on which the
13 investigative or law enforcement officer first begins
14 use of the clone pager under the order or the tenth
15 day after the order is entered.

16 “(2) EXTENSIONS.—Extensions of an order
17 issued under this section may be granted, but only
18 upon an application for an order under section 3128
19 of this title and upon the judicial finding required by
20 subsection (a). An extension under this paragraph
21 shall be for a period not to exceed 30 days.

22 “(3) REPORT.—Within a reasonable time after
23 the termination of the period of a clone pager order
24 or any extensions thereof under this subsection, the
25 applicant shall report to the issuing court the num-

1 ber of numeric pager messages acquired through the
2 use of the clone pager during such period.

3 “(d) NONDISCLOSURE OF EXISTENCE OF CLONE
4 PAGER.—An order authorizing the use of a clone pager
5 shall direct that—

6 “(1) the order shall be sealed until otherwise
7 ordered by the court; and

8 “(2) the person who has been ordered by the
9 court to provide assistance to the applicant may not
10 disclose the existence of the clone pager or the exist-
11 ence of the investigation to the listed subscriber, or
12 to any other person, until otherwise ordered by the
13 court.

14 “(e) NOTIFICATION.—Within a reasonable time, not
15 later than 90 days after the date of termination of the
16 period of a clone pager order or any extensions thereof,
17 the issuing judge shall cause to be served, on the individ-
18 ual or individuals using the numeric display paging device
19 that was cloned, an inventory including notice of—

20 “(1) the fact of the entry of the order or the
21 application;

22 “(2) the date of the entry and the period of
23 clone pager use authorized, or the denial of the ap-
24 plication; and

1 “(3) whether or not information was obtained
2 through the use of the clone pager. Upon an ex-
3 parte showing of good cause, a court of competent
4 jurisdiction may in its discretion postpone the serv-
5 ing of the notice required by this section.”.

6 (h) CLERICAL AMENDMENTS.—The table of sections
7 for chapter 206 of title 18, United States Code, is
8 amended—

9 (1) by striking the item relating to section 3121
10 and inserting the following:

“3121. General prohibition on pen register, trap and trace device, and clone
 pager use; exception.”;

11 (2) by striking the items relating to sections
12 3124, 3125, and 3126 and inserting the following:

“3124. Assistance in installation and use of a pen register, trap and trace de-
 vice, or clone pager.

“3125. Emergency pen register, trap and trace device, and clone pager installa-
 tion and use.

“3126. Reports concerning pen registers, trap and trace devices, and clone
 pagers.”; and

13 (3) by adding at the end the following:

“3128. Application for an order for use of a clone pager.

“3129. Issuance of an order for use of a clone pager.”.

14 (i) CONFORMING AMENDMENT.—Section 605(a) of
15 title 47, United States Code, is amended by striking
16 “chapter 119” and inserting “chapters 119 and 206”.

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