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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

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

Mr. MARKEY introduced the following bill; which was referred to the Committee on _____

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.

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 “Wireless Surveillance
5 Act of 2012”.

1 **SEC. 2. FCC RULES ON INFORMATION RETENTION.**

2 Part I of title III of the Communications Act of 1934
3 (47 U.S.C. 301 et seq.) is amended by adding at the end
4 the following:

5 **“SEC. 343. RULES ON INFORMATION RETENTION BY CER-**
6 **TAIN MOBILE SERVICE PROVIDERS.**

7 “(a) ANALYSIS.—The Commission shall conduct an
8 analysis to determine the period of time after which pro-
9 viders of commercial mobile service and providers of com-
10 mercial mobile data service should be required to perma-
11 nently delete or otherwise destroy information obtained
12 from or about customers or users of such service. In con-
13 ducting the analysis, the Commission shall consider the
14 various types of such information and the period of time
15 appropriate for each type.

16 “(b) RULEMAKING.—Not later than 180 days after
17 the date of the enactment of the Wireless Surveillance Act
18 of 2012, the Commission shall promulgate rules that,
19 based on the analysis required by subsection (a)—

20 “(1) categorize the various types of information
21 obtained by providers of commercial mobile service
22 and providers of commercial mobile data service
23 from or about customers or users of such service;
24 and

25 “(2) require such providers to permanently de-
26 lete or otherwise destroy each such type of informa-

1 tion after the expiration of the period of time the
2 Commission considers appropriate for such type.

3 “(c) DEFINITIONS.—In this section:

4 “(1) COMMERCIAL MOBILE DATA SERVICE.—
5 The term ‘commercial mobile data service’ has the
6 meaning given such term in section 6001 of the Mid-
7 dle Class Tax Relief and Job Creation Act of 2012
8 (47 U.S.C. 1401).

9 “(2) COMMERCIAL MOBILE SERVICE.—The term
10 ‘commercial mobile service’ has the meaning given
11 such term in section 332.”.

12 **SEC. 3. REQUIRED SPECIFICATION OF PERSON WHOSE IN-**
13 **FORMATION IS SOUGHT.**

14 Section 2703(c)(2) of title 18, United States Code,
15 is amended in the matter following subparagraph (F)—

16 (1) by inserting after “or customer” the fol-
17 lowing: “or user”;

18 (2) by inserting after “governmental entity” the
19 following: “uses any means available under para-
20 graph (1)”; and

21 (3) by striking “or any means available under
22 paragraph (1)” and inserting the following: “speci-
23 fying the particular subscriber, customer or user
24 whose information is sought by name, address, tele-
25 phone or instrument number or other subscriber

1 number or identifier, including any temporarily as-
2 signed network address, credit card or bank account
3 number, or any other information that uniquely
4 identifies the particular subscriber, customer or
5 user”.

6 **SEC. 4. REQUIRED DISCLOSURE OF CUSTOMER COMMU-**
7 **NICATIONS OR RECORDS.**

8 Section 2703 of title 18, United States Code, is
9 amended by adding at the end the following:

10 “(h) REPORTS CONCERNING THE DISCLOSURE OF
11 THE CONTENTS OF ELECTRONIC COMMUNICATIONS AND
12 ELECTRONIC INFORMATION.—

13 “(1) By January 31 of each calendar year, any
14 judge issuing or denying an order or warrant under
15 subsections (a) or (c)(1) of this section during the
16 preceding calendar year shall report on each such
17 order or warrant to the Administrative Office of the
18 United States Courts:

19 “(A) the fact that the order or warrant
20 was applied for;

21 “(B) the kind of order or warrant applied
22 for;

23 “(C) the identity of the agency making the
24 application;

1 “(D) the offense specified in the order or
2 warrant or application therefor;

3 “(E) the nature of the facilities from which
4 or the place where the contents of electronic
5 communications were to be disclosed;

6 “(F) the fact that the order or warrant
7 was granted as applied for, was modified, or
8 was denied;

9 “(G) the period of disclosures authorized
10 by the order or warrant, and the number and
11 duration of any extensions of the order or war-
12 rant; and

13 “(H) if the order or warrant was issued
14 under subsection (a) of this section, whether de-
15 layed notice and/or preclusion of notice under
16 section 2705 of this chapter was sought in con-
17 junction with the order or warrant, whether
18 such delay or preclusion of notice was granted,
19 and the number, if any, of extensions to the
20 delay or preclusion of notice sought and grant-
21 ed.

22 “(2) By January 31 of each calendar year, any
23 authority issuing a subpoena under subsection (b)(2)
24 of this section during the preceding calendar year

1 shall report on each such subpoena to the Adminis-
2 trative Office of the United States Courts:

3 “(A) the fact that the subpoena was ap-
4 plied for;

5 “(B) the kind of subpoena applied for;

6 “(C) the identity of the agency making the
7 application;

8 “(D) the offense specified in the subpoena
9 or application therefor;

10 “(E) the nature of the facilities from which
11 or the place where the contents of electronic
12 communications were to be disclosed; and

13 “(F) the fact that the subpoena was grant-
14 ed as applied for, was modified, or was denied.

15 “(3) In January of each year, any component
16 of the Department of Justice that applied for an
17 order or warrant under subsections (a) or (c)(1), or
18 that obtained a subpoena under subsection (c)(2),
19 shall report to the Attorney General and the Attor-
20 ney General shall report to the Administrative Office
21 of the United States Courts the following informa-
22 tion with respect to each order, warrant, or sub-
23 poena that was issued:

24 “(A) for each application for an order or
25 warrant under subsections (a) or (c)(1) made

1 during the previous calendar year, the informa-
2 tion required by subparagraphs (A) through
3 (H) of paragraph (1) of this subsection;

4 “(B) for each application for a subpoena
5 under subsection (c)(2) made during the pre-
6 vious calendar year, the information required by
7 subparagraphs (A) through (F) of paragraph
8 (2) of this subsection;

9 “(C) whether each such order, warrant, or
10 subpoena was contested, and if so, the results
11 of any motion or hearing contesting the order,
12 warrant, subpoena, or extension;

13 “(D) a general description of the disclo-
14 sures made under each such order, warrant, or
15 subpoena, including:

16 “(i) the approximate number of in-
17 criminating communications or records dis-
18 closed;

19 “(ii) the approximate number of other
20 communications disclosed; and

21 “(iii) the approximate number of per-
22 sons whose communications or records
23 were disclosed;

24 “(E) the number of arrests resulting from
25 disclosures made under such order, warrant, or

1 subpoena, and the offenses for which arrests
2 were made;

3 “(F) the number of trials resulting from
4 such disclosures;

5 “(G) the number of motions to suppress
6 made with respect to such disclosures, and the
7 number granted or denied;

8 “(H) the number of convictions resulting
9 from such interceptions or disclosures made
10 under such warrant and the offenses for which
11 the convictions were obtained;

12 “(4) In June of each year, beginning in 2013,
13 the Director of the Administrative Office of the
14 United States Courts shall transmit to the Congress
15 a full and complete report concerning the number of
16 applications for orders, warrants, or subpoenas au-
17 thorizing or requiring the disclosure of the contents
18 of electronic communications pursuant to this sec-
19 tion and the number of orders, warrants, or sub-
20 poenas granted or denied pursuant to this section
21 during the preceding calendar year. Such report
22 shall include a summary and analysis of the data re-
23 quired to be filed with the Administrative Office by
24 paragraphs (1) through (3) of this subsection. The
25 Director of the Administrative Office of the United

1 States Courts is authorized to issue binding regula-
2 tions dealing with the content and form of the re-
3 ports required to be filed by paragraphs (1) through
4 (3) of this subsection.”.

5 **SEC. 5. PROTECTION OF GEOLOCATION INFORMATION.**

6 (a) IN GENERAL.—Part 1 of title 18, United States
7 Code, is amended by inserting after chapter 119 the fol-
8 lowing:

9 **“CHAPTER 120—GEOLOCATION**
10 **INFORMATION**

“Sec.

“2601. Definitions.

“2602. Interception and disclosure of geolocation information.

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

“2604. Recovery of civil damages authorized.

“2605. Report on emergency disclosures.

11 **“§ 2601. Definitions**

12 “In this chapter:

13 “(1) ELECTRONIC COMMUNICATION SERVICE.—

14 The term ‘electronic communication service’ has the
15 meaning given that term in section 2510.

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

20 “(3) GEOLOCATION INFORMATION.—The term
21 ‘geolocation information’ means, with respect to a
22 person, any information that is not the content of a

1 communication, concerning the location of a wireless
2 communication device or tracking device (as that
3 term is defined section 3117) that, in whole or in
4 part, is generated by or derived from the operation
5 of that device and that could be used to determine
6 or infer information regarding the location of the
7 person.

8 “(4) GEOLOCATION INFORMATION SERVICE.—
9 The term ‘geolocation information service’ means the
10 provision of a global positioning service or other
11 mapping, locational, or directional information serv-
12 ice to the public, or to such class of users as to be
13 effectively available to the public, by or through the
14 operation of any wireless communication device, in-
15 cluding any mobile telephone, global positioning sys-
16 tem receiving device, mobile computer, or other simi-
17 lar or successor device.

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

22 “(6) INVESTIGATIVE OR LAW ENFORCEMENT
23 OFFICER.—The term ‘investigative or law enforce-
24 ment officer’ means any officer of the United States
25 or of a State or political subdivision thereof, who is

1 empowered by law to conduct investigations of, or to
2 make arrests for, offenses enumerated in this chap-
3 ter, and any attorney authorized by law to prosecute
4 or participate in the prosecution of such offenses.

5 “(7) PERSON.—The term ‘person’ means any
6 employee or agent of the United States, or any State
7 or political subdivision thereof, and any individual,
8 partnership, association, joint stock company, trust,
9 or corporation.

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

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

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

24 “(11) COVERED SERVICE.—The term ‘covered
25 services’ means electronic communication service, re-

1 mote computing service, or of geolocation informa-
2 tion service.

3 **“§ 2602. Interception and disclosure of geolocation in-**
4 **formation**

5 “(a) IN GENERAL.—

6 “(1) PROHIBITION ON DISCLOSURE OR USE.—

7 Except as otherwise specifically provided in this
8 chapter, it shall be unlawful for any person to—

9 “(A) intentionally intercept, endeavor to
10 intercept, or procure any other person to inter-
11 cept or endeavor to intercept, geolocation infor-
12 mation pertaining to another person;

13 “(B) intentionally disclose, or endeavor to
14 disclose, to any other person geolocation infor-
15 mation pertaining to another person, knowing
16 or having reason to know that the information
17 was obtained through the interception of such
18 information in violation of this paragraph;

19 “(C) intentionally use, or endeavor to use,
20 any geolocation information, knowing or having
21 reason to know that the information was ob-
22 tained through the interception of such infor-
23 mation in violation of this paragraph; or

24 “(D)(i) intentionally disclose, or endeavor
25 to disclose, to any other person the geolocation

1 information pertaining to another person inter-
2 cepted by means authorized by subsections (b)
3 through (h), except as provided in such sub-
4 sections;

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

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

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

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

18 “(b) EXCEPTION FOR INFORMATION ACQUIRED IN
19 THE NORMAL COURSE OF BUSINESS.—It shall not be un-
20 lawful under this chapter for an officer, employee, or agent
21 of a provider of covered services, whose facilities are used
22 in the transmission of geolocation information, to inter-
23 cept, disclose, or use that information in the normal course
24 of the officer, employee, or agent’s employment while en-
25 gaged in any activity which is a necessary incident to the

1 rendition of service or to the protection of the rights or
2 property of the provider of that service, except that a pro-
3 vider of a geolocation information service to the public
4 shall not utilize service observing or random monitoring
5 except for mechanical or service quality control checks.

6 “(c) EXCEPTION FOR CONDUCTING FOREIGN INTEL-
7 LIGENCE SURVEILLANCE.—Notwithstanding any other
8 provision of this chapter, it shall not be unlawful for an
9 officer, employee, or agent of the United States in the nor-
10 mal course of the official duty of the officer, employee,
11 or agent to conduct electronic surveillance, as authorized
12 by the Foreign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1801 et seq.).

14 “(d) EXCEPTION FOR CONSENT.—

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

23 “(2) CHILDREN.—The exception in paragraph
24 (1) permits a parent or legal guardian of a child to
25 intercept geolocation information pertaining to that

1 child or to give consent for another person to inter-
2 cept such information.

3 “(3) LIMITATION ON EXCEPTION.—The excep-
4 tion in paragraph (1) does not apply to interception
5 by an investigative or law enforcement officer for
6 law enforcement purposes.

7 “(e) EXCEPTION FOR PUBLIC INFORMATION.—It
8 shall not be unlawful under this chapter for any person
9 to intercept or access geolocation information relating to
10 another person through any system that is configured so
11 that such information is readily accessible to the general
12 public.

13 “(f) EXCEPTION FOR EMERGENCY INFORMATION.—

14 “(1) IN GENERAL.—It shall not be unlawful
15 under this chapter for any investigative or law en-
16 forcement officer or other emergency responder to
17 intercept or access geolocation information relating
18 to a person if such information does not pertain to
19 a criminal investigation and such information is
20 used—

21 “(A) to respond to a request made by such
22 person for assistance; or

23 “(B) in circumstances in which it is rea-
24 sonable to believe that the life or safety of the

1 person is imminently threatened, to assist the
2 person.

3 “(2) CERTIFICATION REQUIRED.—

4 “(A) IN GENERAL.—Not later than 48
5 hours after the date on which the investigative
6 or law enforcement officer or other emergency
7 responder intercepts or accesses geolocation in-
8 formation under paragraph (1), that investiga-
9 tive or law enforcement officer or other emer-
10 gency responder shall file with the appropriate
11 court a signed, sworn statement by a superior
12 officer of that investigative or law enforcement
13 officer or other emergency responder that docu-
14 ments the factual basis for that officer’s deter-
15 mination that a request for assistance was
16 made under paragraph (1)(A) or that officer’s
17 reasonable belief that circumstances described
18 in paragraph (1)(B) existed.

19 “(B) TERMINATION OF ACQUISITION.—In
20 the absence of a certification under subpara-
21 graph (A), an interception of geolocation infor-
22 mation carried out under paragraph (1) shall
23 immediately terminate when the information
24 sought is obtained or 48 hours after the date on
25 which the investigative or law enforcement offi-

1 cer or other emergency responder intercepts or
2 accesses geolocation information under para-
3 graph (1), whichever is earlier.

4 “(C) PROHIBITION ON USE AS EVI-
5 DENCE.—In the event such certification is not
6 timely filed, the geolocation information shall be
7 treated as having been obtained in violation of
8 this chapter and an inventory shall be served on
9 the person whose geolocation information was
10 intercepted or accessed.

11 “(g) EXCEPTION FOR THEFT OR FRAUD.—It shall
12 not be unlawful under this chapter for a person acting
13 under color of law to intercept geolocation information
14 pertaining to the location of another person who has un-
15 lawfully taken the device sending the geolocation informa-
16 tion if—

17 “(1) the owner or operator of such device au-
18 thorizes the interception of the person’s geolocation
19 information;

20 “(2) the person acting under color of law is
21 lawfully engaged in an investigation; and

22 “(3) the person acting under color of law has
23 reasonable grounds to believe that the geolocation
24 information of the other person will be relevant to
25 the investigation.

1 “(h) EXCEPTION FOR WARRANT.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) COURT OF COMPETENT JURISDIC-
4 TION.—The term ‘court of competent jurisdic-
5 tion’ includes—

6 “(i) any district court of the United
7 States (including a magistrate judge of
8 such a court) or any United States court
9 of appeals that—

10 “(I) has jurisdiction over the of-
11 fense being investigated;

12 “(II) is in or for a district in
13 which the provider of a geolocation in-
14 formation service is located or in
15 which the geolocation information is
16 stored; or

17 “(III) is acting on a request for
18 foreign assistance pursuant to section
19 3512 of this title; or

20 “(ii) a court of general criminal juris-
21 diction of a State authorized by the law of
22 that State to issue search warrants.

23 “(B) GOVERNMENTAL ENTITY.—The term
24 ‘governmental entity’ means a department or

1 agency of the United States or any State or po-
2 litical subdivision thereof.

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

13 “(i) EXCEPTION FOR LAW ENFORCEMENT EMER-
14 GENCIES.—

15 “(1) EMERGENCY SITUATION EXCEPTION.—
16 Notwithstanding any other provision of this chapter,
17 any investigative or law enforcement officer, spe-
18 cially designated by the Attorney General, the Dep-
19 uty Attorney General, the Associate Attorney Gen-
20 eral, or by the principal prosecuting attorney of any
21 State or subdivision thereof acting pursuant to a
22 statute of that State, may intercept geolocation in-
23 formation if—

24 “(A) such officer reasonably determines
25 that an emergency situation exists that—

1 “(i) involves—

2 “(I) immediate danger of death
3 or serious physical injury to any per-
4 son;

5 “(II) conspiratorial activities
6 threatening the national security in-
7 terest; or

8 “(III) conspiratorial activities
9 characteristic of organized crime; and

10 “(ii) requires geolocation information
11 be intercepted before an order authorizing
12 such interception can, with due diligence,
13 be obtained;

14 “(B) there are grounds upon which an
15 order could be entered to authorize such inter-
16 ception; and

17 “(C) an application for an order approving
18 such interception is made within 48 hours after
19 the interception has occurred or begins to
20 occur; and

21 “(D) that officer documents the factual
22 basis for that officer’s determination under sub-
23 paragraph (A) in the application under sub-
24 paragraph (C) and the application under sub-
25 paragraph (C) is accompanied by a signed cer-

1 tification by the person who designated that of-
2 ficer.

3 “(2) FAILURE TO OBTAIN COURT ORDER.—

4 “(A) TERMINATION OF ACQUISITION.—In
5 the absence of an order, an interception of
6 geolocation information carried out under para-
7 graph (1) shall immediately terminate when the
8 information sought is obtained or when the ap-
9 plication for the order is denied, whichever is
10 earlier.

11 “(B) PROHIBITION ON USE AS EVI-
12 DENCE.—In the event such application for ap-
13 proval is denied, the geolocation information
14 shall be treated as having been obtained in vio-
15 lation of this chapter and an inventory shall be
16 served on the person named in the application.

17 “(j) PROHIBITION ON DIVULGING GEOLOCATION IN-
18 FORMATION.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), a person providing covered services shall
21 not intentionally divulge geolocation information per-
22 taining to another person.

23 “(2) EXCEPTIONS.—A person providing covered
24 services may divulge geolocation information—

1 “(A) as otherwise authorized in subsections
2 (b) through (i);

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

5 “(C) to another person employed or au-
6 thorized, or whose facilities are used, to forward
7 such geolocation information to its destination;
8 or

9 “(D) which was inadvertently obtained by
10 the service provider and which appears to per-
11 tain to the commission of a crime, if such divul-
12 gence is made to a law enforcement agency.

13 **“§ 2603. Prohibition of use as evidence of acquired**
14 **geolocation information**

15 “Whenever any geolocation information has been ac-
16 quired, no part of such information and no evidence de-
17 rived therefrom may be received in evidence in any trial,
18 hearing, or other proceeding in or before any court, grand
19 jury, department, officer, agency, regulatory body, legisla-
20 tive committee, or other authority of the United States,
21 a State, or a political subdivision thereof if the disclosure
22 of that information would be in violation of this chapter.

23 **“§ 2604. Recovery of civil damages authorized**

24 “(a) IN GENERAL.—Any person whose geolocation
25 information is intercepted, disclosed, or intentionally used

1 in violation of this chapter may in a civil action recover
2 from the person, other than the United States, which en-
3 gaged in that violation such relief as may be appropriate.

4 “(b) RELIEF.—In an action under this section, ap-
5 propriate relief includes—

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

8 “(2) damages under subsection (c) and punitive
9 damages in appropriate cases; and

10 “(3) a reasonable attorney’s fee and other liti-
11 gation costs reasonably incurred.

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

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

18 “(2) statutory damages of whichever is the
19 greater of \$100 a day for each day of violation or
20 \$10,000.

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

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

4 “(2) a request of an investigative or law en-
5 forcement officer under section 2602(i); or

6 “(3) a good-faith determination that an excep-
7 tion under any other provision of section 2602 per-
8 mitted the conduct complained of.

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

13 “(f) ADMINISTRATIVE DISCIPLINE.—If a court or ap-
14 propriate department or agency determines that the
15 United States or any of its departments or agencies has
16 violated any provision of this chapter, and the court or
17 appropriate department or agency finds that the cir-
18 cumstances surrounding the violation raise serious ques-
19 tions about whether or not an officer or employee of the
20 United States acted willfully or intentionally with respect
21 to the violation, the department or agency shall, upon re-
22 ceipt of a true and correct copy of the decision and find-
23 ings of the court or appropriate department or agency
24 promptly initiate a proceeding to determine whether dis-
25 ciplinary action against the officer or employee is war-

1 ranted. If the head of the department or agency involved
2 determines that disciplinary action is not warranted, such
3 head shall notify the Inspector General with jurisdiction
4 over the department or agency concerned and shall provide
5 the Inspector General with the reasons for such deter-
6 mination.

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

12 **“§ 2605. Report on emergency disclosures**

13 “Not later than January 31, 2013, and annually
14 thereafter, the Attorney General shall submit to Congress
15 a full and complete report that contains the following:

16 “(1) The number of certifications made in the
17 preceding calendar year under section 2602(f).

18 “(2) The number of applications made for or-
19 ders in the preceding calendar year under section
20 2602(i).

21 “(3) The number of applications described in
22 paragraph (2) that were granted.

23 “(4) The number of applications described in
24 paragraph (2) that were not granted, and a sum-
25 mary of the basis for denial.”.

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

“120. Geolocation information 2601”.

5 (c) CONFORMING AMENDMENTS.—Section 3512(a) of
6 title 18, United States Code, is amended—

7 (1) in paragraph (2)—

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

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

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

16 **SEC. 6. REQUIREMENT FOR SEARCH WARRANTS TO AC-**
17 **QUIRE GEOLOCATION INFORMATION.**

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

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

23 (2) by adding at the end the following:

1 “(F) ‘Geolocation information’ has the
2 meaning given that term in section 2601 of title
3 18, United States Code.”.

4 **SEC. 7. FRAUD AND RELATED ACTIVITY IN CONNECTION**
5 **WITH OBTAINING GEOLOCATION INFORMA-**
6 **TION.**

7 (a) **CRIMINAL VIOLATION.**—Section 1039(h) of title
8 18, United States Code, is amended—

9 (1) in paragraph (2)—

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

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

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

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

19 (2) by redesignating paragraph (4) as para-
20 graph (5); and

21 (3) by inserting after paragraph (3) the fol-
22 lowing:

23 “(4) **GEOLOCATION INFORMATION SERVICE.**—
24 The term ‘geolocation information service’ has the
25 meaning given that term in section 2601.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) DEFINITION AMENDMENTS.—Section
3 1039(h)(1) of title 18, United States Code, is
4 amended—

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

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

9 (2) CONFORMING AMENDMENTS.—Section 1039
10 of title 18, United States Code, is amended—

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

13 (B) in subsection (a)—

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

16 and

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

19 (C) in subsection (b)—

20 (i) in the subsection heading, by in-
21 serting “OR GPS” after “PHONE”;

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

1 (iii) in paragraph (2), by inserting “or
2 GPS” after “phone”; and

3 (D) in subsection (c)—

4 (i) in the subsection heading, by in-
5 serting “OR GPS” after “PHONE”;

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

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

11 (3) CHAPTER ANALYSIS.—The table of sections
12 for chapter 47 of title 18, United States Code, is
13 amended by striking the item relating to section
14 1039 and inserting the following:

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

15 (c) SENTENCING GUIDELINES.—

16 (1) REVIEW AND AMENDMENT.—Not later than
17 180 days after the date of enactment of this Act, the
18 United States Sentencing Commission, pursuant to
19 its authority under section 994 of title 28, United
20 States Code, and in accordance with this section,
21 shall review and, if appropriate, amend the Federal
22 sentencing guidelines and policy statements applica-
23 ble to persons convicted of any offense under section

1 1039 of title 18, United States Code, as amended by
2 this section.

3 (2) AUTHORIZATION.—The United States Sen-
4 tencing Commission may amend the Federal sen-
5 tencing guidelines in accordance with the procedures
6 set forth in section 21(a) of the Sentencing Act of
7 1987 (28 U.S.C. 994 note) as though the authority
8 under that section had not expired.

9 **SEC. 8. STATEMENT OF EXCLUSIVE MEANS OF ACQUIRING**
10 **GEOLOCATION INFORMATION.**

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

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