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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2165

03/06/2017 Authored by Lesch, Scott and Lucero
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

- 1.1 A bill for an act
- 1.2 relating to public safety; requiring the disclosure of tracking warrants to subjects;
- 1.3 amending Minnesota Statutes 2016, sections 626A.08, subdivision 2; 626A.39,
- 1.4 subdivision 5; 626A.42, subdivisions 1, 2, 4.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 626A.08, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Application and orders.** Applications made and warrants issued under this
- 1.8 chapter shall be sealed by the judge, except as provided in section 626A.42, subdivision 4.
- 1.9 Custody of the applications and orders shall be wherever the judge directs. Such applications
- 1.10 and orders shall be disclosed only upon a showing of good cause before a judge of the
- 1.11 district court and shall not be destroyed except on order of the issuing or denying judge,
- 1.12 and in any event shall be kept for ten years.
- 1.13 Sec. 2. Minnesota Statutes 2016, section 626A.39, subdivision 5, is amended to read:
- 1.14 Subd. 5. **Mobile tracking device.** "Mobile tracking device" means an electronic or
- 1.15 mechanical device that is under the custody or control of law enforcement and that permits
- 1.16 the tracking of the movement of a person or object.
- 1.17 Sec. 3. Minnesota Statutes 2016, section 626A.42, subdivision 1, is amended to read:
- 1.18 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.
- 1.19 (b) "Electronic communication service" has the meaning given in section 626A.01,
- 1.20 subdivision 17.

2.1 (c) "Electronic device" means a device that enables access to or use of an electronic
2.2 communication service, remote computing service, or location information service and that
2.3 is not under the custody or control of law enforcement or another public entity or official.

2.4 (d) "Government entity" means a state or local agency, including but not limited to a
2.5 law enforcement entity or any other investigative entity, agency, department, division,
2.6 bureau, board, or commission or an individual acting or purporting to act for or on behalf
2.7 of a state or local agency.

2.8 (e) "Location information" means information concerning the location of an electronic
2.9 device that, in whole or in part, is generated or derived from or obtained by the operation
2.10 of an electronic device.

2.11 (f) "Location information service" means the provision of a global positioning service
2.12 or other mapping, locational, or directional information service.

2.13 (g) "Remote computing service" has the meaning given in section 626A.34.

2.14 (h) "Tracking warrant" means an order in writing, in the name of the state, signed by a
2.15 court other than a court exercising probate jurisdiction, directed to a peace officer, granting
2.16 the officer access to location information of an electronic device.

2.17 Sec. 4. Minnesota Statutes 2016, section 626A.42, subdivision 2, is amended to read:

2.18 Subd. 2. **Tracking warrant required for location information.** (a) Except as provided
2.19 in paragraph (b), a government entity may not obtain the location information of an electronic
2.20 device without a tracking warrant. A warrant granting access to location information must
2.21 be issued only if the government entity shows that there is probable cause the person who
2.22 possesses an electronic device is committing, has committed, or is about to commit a crime.
2.23 An application for a warrant must be made in writing and include:

2.24 (1) the identity of the government entity's peace officer making the application, and the
2.25 officer authorizing the application; and

2.26 (2) a full and complete statement of the facts and circumstances relied on by the applicant
2.27 to justify the applicant's belief that a warrant should be issued, including (i) details as to the
2.28 particular offense that has been, is being, or is about to be committed, and (ii) the identity
2.29 of the person, if known, committing the offense whose location information is to be obtained.

2.30 (b) A government entity may obtain location information without a tracking warrant:

2.31 (1) when the electronic device is reported lost or stolen by the owner;

2.32 (2) in order to respond to the user's call for emergency services;

3.1 (3) with the informed, affirmative, documented consent of the owner or user of the
3.2 electronic device;

3.3 (4) with the informed, affirmative consent of the legal guardian or next of kin of the
3.4 owner or user if the owner or user is believed to be deceased or reported missing and unable
3.5 to be contacted; or

3.6 (5) in an emergency situation that involves the risk of death or serious physical harm to
3.7 a person who possesses an electronic communications device pursuant to sections 237.82
3.8 and 237.83.

3.9 (c) An application for a tracking warrant may not be combined with a request for a
3.10 warrant under any other section of this chapter.

3.11 Sec. 5. Minnesota Statutes 2016, section 626A.42, subdivision 4, is amended to read:

3.12 Subd. 4. **Notice; temporary nondisclosure of tracking warrant.** (a) Within a reasonable
3.13 time but not later than 90 days after the court unseals the tracking warrant under this
3.14 subdivision, the ~~issuing or denying judge~~ government entity that applied for the tracking
3.15 warrant shall cause to be served on the persons named in the warrant and the application
3.16 an inventory which shall include notice of:

3.17 (1) the fact of the issuance of the warrant or the application;

3.18 (2) the date of the issuance and the period of authorized, approved, or disapproved
3.19 collection of location information, or the denial of the application; and

3.20 (3) the fact that during the period location information was or was not collected.

3.21 (b) A tracking warrant authorizing collection of location information must direct that:

3.22 (1) the warrant be sealed for a period of 90 days or until the objective of the warrant has
3.23 been accomplished, whichever is shorter; and

3.24 (2) the warrant be filed with the court administrator within ten days of the expiration of
3.25 the warrant.

3.26 ~~(c) The prosecutor may request that the tracking warrant, supporting affidavits, and any~~
3.27 ~~order granting the request not be filed. An order must be issued granting the request in whole~~
3.28 ~~or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable~~
3.29 ~~grounds exist to believe that filing the warrant may cause the search or a related search to~~
3.30 ~~be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper~~
3.31 ~~an ongoing investigation.~~

4.1 ~~(d)~~ (c) The tracking warrant must direct that following the commencement of any criminal
4.2 proceeding utilizing evidence obtained in or as a result of the search, the supporting
4.3 application or affidavit must be filed either immediately or at any other time as the court
4.4 directs. Until such filing, the documents and materials ordered withheld from filing must
4.5 be retained by the judge or the judge's designee.