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SENATE BILL NO. 685

Offered February 16, 2012

A *BILL* to amend the Code of Virginia by adding a section numbered 19.2-56.2, relating to application for and issuance of search warrant for a tracking device; installation and use.

Patrons—Reeves, Blevins, Carrico, Garrett, Martin, McDougle, Norment, Obenshain, Ruff, Stuart and Wagner

Introduced at the request of Governor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 19.2-56.2 as follows:**

§ 19.2-56.2. *Application for and issuance of search warrant for a tracking device; installation and use.*

A. *As used in this section unless the context requires a different meaning:*

"Law-enforcement officer" shall have the meaning used in § 9.1-101.

"Tracking device" means an electronic or mechanical device that permits the tracking of the movement of a person or object. "Tracking device" includes devices that both store geographic data for subsequent access or analysis and devices that allow for the real-time monitoring of movement.

"Use of a tracking device" includes the installation, maintenance, monitoring, and removal of a tracking device.

B. A law-enforcement officer may apply for a search warrant from a circuit court to permit the use of a tracking device. Each application for a search warrant authorizing the use of a tracking device shall be made in writing, upon oath or affirmation, to a circuit court judge in the circuit in which the tracking device is to be installed, where the person whose property is to be tracked lives, works, or maintains an address or post office box, or where there is probable cause to believe the offense for which the tracking device is sought was committed, is being committed, or will be committed. The law-enforcement officer shall submit an affidavit, which shall include:

1. The identity of the applicant and the identity of the law-enforcement agency conducting the investigation;

2. The identity of the vehicle, container, item, or object to which, in which, or on which the tracking device is to be attached, placed, or otherwise installed; the name of the owner or possessor of the vehicle, container, item, or object described, if known; and the jurisdictional area in which the vehicle, container, item, or object described is expected to be found, if known; and

3. Material facts constituting the probable cause for the issuance of the search warrant and alleging substantially the offense in relation to which such tracking device is to be used and a showing that probable cause exists to believe the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.

C. 1. If the circuit court judge finds, based on the affidavit submitted, that there is probable cause that a crime was committed, is being committed, or will be committed and that there is probable cause to believe the information likely to be obtained from the use of the tracking device is relevant to an ongoing criminal investigation being conducted by the investigating agency, the court shall issue a search warrant authorizing the installation and use of the tracking device. The search warrant shall authorize the monitoring of the tracking device within the Commonwealth for a reasonable period, not to exceed 45 days from the issuance of the search warrant. The search warrant shall authorize the collection and analysis of the data contained in or obtained from the tracking device.

2. The court shall seal the affidavit, the search warrant, the return, and any other related materials or pleadings. Upon motion of the Commonwealth or the defendant, the court may unseal such documents if it appears that the unsealing is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him or to adequately prepare his defense.

3. The court may, for good cause shown, grant one or more extensions, not to exceed 45 days each.

D. 1. The search warrant shall command the officer to complete the installation authorized by the search warrant within 15 days after issuance of the search warrant.

2. The officer executing the search warrant shall enter on it the exact date and time the device was installed and the period during which it was used.

3. Law-enforcement officers shall be permitted to monitor the tracking device during the period

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58 *authorized by the court in the search warrant, unless extended as provided for in this section.*

59 *4. Law-enforcement officers shall remove the tracking device as soon as practical, but not later than*
60 *10 days, after the use of the tracking device has ended. Upon request, and for good cause shown, the*
61 *court may grant one or more extensions for such removal for a period not to exceed 10 days each.*

62 *5. Within 10 days after the use of the tracking device has ended, the officer executing the search*
63 *warrant shall return the warrant to the judge designated in the search warrant.*

64 *E. Within 10 days after the use of the tracking device has ended, the officer executing the search*
65 *warrant shall serve a copy of the search warrant on the person who was tracked or whose property was*
66 *tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was*
67 *tracked or by leaving a copy at the person's residence or usual place of abode with an individual of*
68 *suitable age and discretion who resides at that location and by mailing a copy to the person's last*
69 *known address. Upon request, and for good cause shown, the court may grant one or more extensions*
70 *for such service for a period not to exceed 30 days each.*

71 *F. The unauthorized disclosure or publication of the existence of a search warrant issued pursuant to*
72 *this section, application for such search warrant, any affidavit filed in support of such warrant, or any*
73 *return or data obtained as a result of such search warrant is punishable as a Class 1 misdemeanor.*