

1 HB47  
2 147358-2  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 14-JAN-14  
6 PFD: 11/18/2013

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8 SYNOPSIS: This bill would provide that any judge  
9 authorized to issue a search warrant pursuant to  
10 the Alabama Rules of Criminal Procedure may issue a  
11 warrant for the installation, removal, maintenance,  
12 use, or monitoring of a tracking device.

13 This bill would also establish the crime of  
14 unlawfully installing a tracking device if any  
15 person installs a tracking device without following  
16 the procedures of the act and would provide certain  
17 exceptions.

18 Amendment 621 of the Constitution of Alabama  
19 of 1901, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of  
21 Alabama of 1901, as amended, prohibits a general  
22 law whose purpose or effect would be to require a  
23 new or increased expenditure of local funds from  
24 becoming effective with regard to a local  
25 governmental entity without enactment by a 2/3 vote  
26 unless: it comes within one of a number of  
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

4 The purpose or effect of this bill would be  
5 to require a new or increased expenditure of local  
6 funds within the meaning of the amendment. However,  
7 the bill does not require approval of a local  
8 governmental entity or enactment by a 2/3 vote to  
9 become effective because it comes within one of the  
10 specified exceptions contained in the amendment.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
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16 Relating to criminal surveillance; to provide that  
17 an authorized judge may issue a warrant for the installation,  
18 removal, maintenance, use, and monitoring of a tracking  
19 device; to provide for the crime of unlawfully installing a  
20 tracking device; and in connection therewith would have as its  
21 purpose or effect the requirement of a new or increased  
22 expenditure of local funds within the meaning of Amendment 621  
23 of the Constitution of Alabama of 1901, now appearing as  
24 Section 111.05 of the Official Recompilation of the  
25 Constitution of Alabama of 1901, as amended.  
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. (a) Any judge authorized to issue a  
2 search warrant pursuant to Rule 3.7 of the Alabama Rules of  
3 Criminal Procedure is authorized to issue a warrant to install  
4 a tracking device. The term tracking device means an  
5 electronic or mechanical device which permits the tracking of  
6 the movement of a person or object.

7           (b) Upon the written application, under oath, of any  
8 law enforcement officer, district attorney, or Attorney  
9 General of the state, including assistant and deputy district  
10 attorneys and assistant and deputy attorneys general, any  
11 authorized judge may issue a warrant for the installation,  
12 removal, maintenance, use, or monitoring of a tracking device.  
13 The warrant application shall do all of the following:

14           (1) State facts sufficient to show probable cause  
15 that a crime is being, has been, or is about to be committed.

16           (2) Clearly identify the person, if reasonably  
17 determinable, or object, or both, that is, was, or will be  
18 involved in the commission of the alleged offense.

19           (3) Describe, with particularity, the item or  
20 person, or both, to be tracked by use of a tracking device.

21           (c) A warrant for a tracking device shall clearly  
22 identify the person, if reasonably determinable, or the object  
23 to be tracked, or both, and specify a reasonable length of  
24 time that the tracking device may be used, not to exceed 45  
25 days from the date that the warrant was issued unless the  
26 issuing judge grants one or more extensions for a reasonable  
27 time not to exceed 45 days each, based on renewed or ongoing

1 probable cause, or both. The warrant shall include the  
2 authorization for access to and into the object that will be  
3 tracked and any building or structure in which the object is  
4 located for the limited purpose of installing the tracking  
5 device or for maintenance or retrieval of the tracking device.  
6 The warrant shall state that the tracking device may be  
7 installed, repaired, removed, and monitored at any time of the  
8 day or night. The warrant shall command the officer to do all  
9 of the following:

10 (1) Install the tracking device upon the person or  
11 object to be tracked while the person or object is within the  
12 jurisdiction of the judge issuing the warrant.

13 (2) Complete the installation within 10 days from  
14 the date the warrant is issued.

15 (3) Require that the law enforcement officer make a  
16 written return of the warrant to the judge issuing the warrant  
17 or other authorized judge in the jurisdiction where the  
18 warrant was issued if the issuing judge is not available.

19 (d) The law enforcement officer executing the  
20 warrant shall:

21 (1) Enter on the warrant the exact date and time the  
22 device was installed and the period during which it was used.

23 (2) Within 10 days after the use of the tracking  
24 device has ended, return the warrant with a copy of the  
25 inventory collected pursuant to the warrant to the issuing  
26 judge or other authorized judge in the jurisdiction where the  
27 warrant was issued if the issuing judge is not available, and

1 serve a copy of the warrant on the person who was tracked or  
2 whose property was tracked. Service may be accomplished by  
3 delivering a copy of the warrant to the person who was tracked  
4 or whose property was tracked, leaving a copy at that person's  
5 residence or usual place of abode with an individual of  
6 suitable age and discretion who resides at that location, or  
7 mailing a copy to the person's last known address. Upon  
8 request of the state, the judge may delay notice as provided  
9 in subsection (f).

10 (e) The law enforcement officers involved in the  
11 investigation shall remove or cause to be removed the tracking  
12 device as soon as it is practicable after the authorization  
13 period expires. If removal is not practicable, monitoring of  
14 the mobile tracking device shall cease on expiration of the  
15 warrant.

16 (f) With respect to a warrant issued pursuant to  
17 this act, notice to the person who was tracked or whose  
18 property was tracked may be delayed upon the request of the  
19 applicant if the following applies:

20 (1) The court finds reasonable cause to believe that  
21 providing immediate notification of the execution of the  
22 warrant may have an adverse result. An adverse result means:

23 a. Endangerment to the life or physical safety of an  
24 individual.

25 b. Flight from prosecution.

26 c. Destruction of or tampering with evidence.

27 d. Intimidation of potential witnesses.

1 e. Any occurrence that would otherwise seriously  
2 jeopardize an investigation or unduly delay a trial.

3 (2) The warrant provides that notice shall be given  
4 within a reasonable period not to exceed 90 days after the  
5 date the warrant was returned to the issuing judge or  
6 authorized judge in the jurisdiction where the warrant was  
7 issued if the issuing judge is not available. The delay may be  
8 extended by the court if the court determines that there is a  
9 continuous finding of an adverse result, subject to the  
10 condition that an extension shall only be granted upon an  
11 updated showing of the need for further delay. Each additional  
12 delay shall be limited to a period of 90 days or less, unless  
13 the facts of the case justify a longer period, provided,  
14 however, that the delayed notification shall be no later than  
15 the date of arrest of the individual who was tracked or whose  
16 property was tracked, which is based wholly or in part upon  
17 the results of the tracking device.

18 (g) The warrant shall direct that the affidavit,  
19 application, warrant, inventory, and return be sealed until  
20 notice is given to the person who was tracked or whose  
21 property was tracked.

22 (h) If an authorized judge issues a warrant for a  
23 tracking device in accordance with this act, the device shall  
24 be installed in any county within the jurisdiction of the  
25 issuing judge and may be monitored in any location in the  
26 State of Alabama from any location within the State of  
27 Alabama. Unless otherwise prohibited by federal law, the

1 device may be monitored from any location within the State of  
2 Alabama even if the device is transported outside the State of  
3 Alabama.

4 (i) Any person commits the crime of unlawfully  
5 installing a tracking device if he or she intentionally  
6 installs a tracking device without following the procedures  
7 established in this act. The unlawful installation of a  
8 tracking device is a Class A misdemeanor. Nothing in this act  
9 shall be construed as limiting or affecting the ability of a  
10 business entity to install or use a tracking device on a  
11 vehicle, equipment, or device that the business entity owns,  
12 leases, or operates. Nothing in this act shall be construed as  
13 limiting or affecting the ability of an individual to install  
14 or use a tracking device on a vehicle, equipment, or device  
15 that the individual owns, leases, or operates.

16 Section 2. Although this bill would have as its  
17 purpose or effect the requirement of a new or increased  
18 expenditure of local funds, the bill is excluded from further  
19 requirements and application under Amendment 621, now  
20 appearing as Section 111.05 of the Official Recompilation of  
21 the Constitution of Alabama of 1901, as amended, because the  
22 bill defines a new crime or amends the definition of an  
23 existing crime.

24 Section 3. This act shall become effective on the  
25 first day of the third month following its passage and  
26 approval by the Governor, or its otherwise becoming law.