

1 HB96
2 173275-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 03-FEB-16

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8 SYNOPSIS: This bill would provide that a circuit or
9 district judge may issue a warrant for the
10 installation, removal, maintenance, use, or
11 monitoring of a tracking device, would provide
12 requirements for the warrant, and would specify
13 procedures for law enforcement officers installing,
14 removing, maintaining, using, or monitoring
15 tracking devices.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

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21 Relating to criminal surveillance; to provide that
22 an authorized judge may issue a warrant for the installation,
23 removal, maintenance, use, and monitoring of a tracking
24 device; to provide requirements for the warrant; and to
25 specify procedures for law enforcement officers regarding
26 tracking devices.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) Any circuit or district court judge
2 in this state is authorized to issue a warrant to install a
3 tracking device. The term tracking device means an electronic
4 or mechanical device which permits the tracking of the
5 movement of a person or object.

6 (b) Upon the written application, under oath, of any
7 law enforcement officer as defined in Alabama Rule of Criminal
8 Procedure 1.4, district attorney, or Attorney General of the
9 state, including assistant and deputy district attorneys and
10 assistant and deputy attorneys general, any authorized judge
11 may issue a warrant for the installation, retrieval,
12 maintenance, repair, 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 in the jurisdiction of the issuing judge.

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

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

22 (c) (1) A warrant for a tracking device shall
23 identify the person, if reasonably determinable, or the object
24 to be tracked, or both, and specify a reasonable length of
25 time that the tracking device may be used, not to exceed 45
26 days from the date that the warrant was issued unless the
27 issuing judge grants one or more extensions for a reasonable

1 time not to exceed 45 days each, based on new, renewed, or
2 ongoing probable cause.

3 (2) The warrant shall include the authorization for
4 access to and into the object that will be tracked and any
5 building, dwelling, structure, or curtilage in which the
6 object is located for the limited purpose of installing the
7 tracking device or for maintenance, repair, or retrieval of
8 the tracking device. The warrant shall state that the tracking
9 device may be installed, repaired, maintained, or retrieved at
10 any time during the day or night. However, access to and into
11 any building, dwelling, structure, or curtilage in which the
12 object is located shall be limited to the daytime unless the
13 affidavit sets out that the purpose of the tracking device is
14 to investigate a crime involving a controlled substance, an
15 explosive device or material used or to be used in creating an
16 explosive device, or chemical, biological, or nuclear
17 materials used or to be used in creating an explosive device
18 or a weapon of mass destruction, or an emergency situation
19 involving danger to a person, at which point access to and
20 into any building, dwelling, structure, or curtilage in which
21 the object is located may be allowed at any time of the day or
22 night. The time of day for access to and into any building,
23 dwelling, structure, or curtilage shall be set out in the
24 warrant. The device may be monitored at any time of the day or
25 night.

26 (3) The warrant shall command the officer to do all
27 of the following:

1 a. Install the tracking device upon the person or
2 object to be tracked while the person or object is within the
3 jurisdiction of the judge issuing the warrant.

4 b. Complete the installation within 10 days from the
5 date the warrant is issued.

6 c. Require that the law enforcement officer make a
7 written return of the warrant within 10 days after the use of
8 the tracking device has ceased, and the device removed if
9 possible, to the judge issuing the warrant or other authorized
10 judge in the jurisdiction where the warrant was issued if the
11 issuing judge is not available setting out the time period or
12 time periods that surveillance occurred. If the device was not
13 able to be removed, require an explanation as to why the
14 device was not removed.

15 (d) The law enforcement officer executing the
16 warrant shall do all of the following:

17 (1) Enter on the warrant the date and time the
18 device was installed and the period during which it was used.

19 (2) Within 10 days after the use of the tracking
20 device has ended, return the warrant with a copy of the
21 inventory that sets out the time period for which the tracking
22 device was active, a statement that the device was removed, or
23 an explanation as to why the device was not removed, to be
24 listed on the inventory, to the issuing judge or other
25 authorized judge in the jurisdiction where the warrant was
26 issued if the issuing judge is not available, and serve a copy
27 of the warrant on the person who was tracked or whose property

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

8 (e) The law enforcement officers involved in the
9 investigation shall retrieve or cause to be retrieved the
10 tracking device as soon as it is practicable prior to the
11 expiration of the warrant. If retrieval is not practicable,
12 monitoring of the mobile tracking device shall cease on
13 expiration of the warrant.

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

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

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

24 b. Flight from prosecution.

25 c. Destruction of or tampering with evidence.

26 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 if the arrest is based wholly or in part
17 upon the results of the tracking device or other information
18 discovered as part of the investigation in which the tracking
19 device was used.

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

24 (h) If an authorized judge issues a warrant for a
25 tracking device in accordance with this act, the device shall
26 be installed in any county within the jurisdiction of the
27 issuing judge.

1 (i) Upon obtaining a warrant for a tracking device
2 or any other electronic device for which location information
3 may be obtained as authorized by Section 15-5-40, Code of
4 Alabama 1975, the device may be monitored from, or information
5 regarding the device obtained while in, any location within
6 this state regardless of the location of the device itself,
7 even if the device is transported throughout or outside of
8 this state, unless otherwise prohibited by federal law.

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.