

1.1 ..... moves to amend H.F. No. 631 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2018, section 626A.08, subdivision 2, is amended to read:

1.4 Subd. 2. **Application and orders.** (a) Applications made and warrants issued under this  
1.5 chapter shall be ~~sealed by the judge~~ filed under seal in the district court. Custody of the  
1.6 applications and orders shall be wherever the judge directs. Such applications and orders  
1.7 shall be disclosed only upon a showing of good cause before a judge of the district court  
1.8 and shall not be destroyed except on order of the issuing or denying judge, and in any event  
1.9 shall be kept for ten years.

1.10 (b) Notwithstanding paragraph (a), the filing, sealing, and reporting requirements for  
1.11 tracking warrants as defined by section 626A.42, subdivision 1, paragraph (h), are governed  
1.12 by section 626A.42, subdivision 4. However, applications and warrants, or portions of  
1.13 applications and warrants, that do not involve tracking warrants continue to be governed  
1.14 by paragraph (a).

1.15 Sec. 2. Minnesota Statutes 2018, section 626A.10, subdivision 1, is amended to read:

1.16 Subdivision 1. **Notice of order.** Within a reasonable time but not later than 90 days after  
1.17 the termination of the period of a warrant or extensions thereof, the ~~issuing or denying judge~~  
1.18 warrant applicant or agency requesting the warrant shall cause to be served, on the persons  
1.19 named in the warrant and the application, and such other parties to intercepted  
1.20 communications as the judge may determine that is in the interest of justice, an inventory  
1.21 which shall include notice of:

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

2.1 (2) the date of the issuance and the period of authorized, approved or disapproved  
2.2 interception, or the denial of the application; and

2.3 (3) the fact that during the period wire, electronic, or oral communications were or were  
2.4 not intercepted.

2.5 On an ex parte showing to a court of competent jurisdiction that there is a need to continue  
2.6 the investigation and that the investigation would be harmed by service of the inventory at  
2.7 this time, service of the inventory required by this subdivision may be postponed for an  
2.8 additional 90-day period.

2.9 Sec. 3. Minnesota Statutes 2018, section 626A.37, subdivision 4, is amended to read:

2.10 Subd. 4. **Nondisclosure of existence of pen register, trap and trace device, or mobile**  
2.11 **tracking device.** (a) An order authorizing or approving the installation and use of a pen  
2.12 register, trap and trace device, or a mobile tracking device must direct that:

2.13 (1) the order be sealed until otherwise ordered by the court; and

2.14 (2) the person owning or leasing the line to which the pen register or a trap and trace  
2.15 device is attached, or who has been ordered by the court to provide assistance to the applicant,  
2.16 not disclose the existence of the pen register, trap and trace device, mobile tracking device,  
2.17 or the existence of the investigation to the listed subscriber, or to any other person, unless  
2.18 or until otherwise ordered by the court.

2.19 (b) Paragraph (a) does not apply to an order that involves a tracking warrant as defined  
2.20 by section 626A.42, subdivision 1, paragraph (h). Instead, the filing, sealing, and reporting  
2.21 requirements for those orders are governed by section 626A.42, subdivision 4. However,  
2.22 any portion of an order that does not involve a tracking warrant continues to be governed  
2.23 by paragraph (a).

2.24 Sec. 4. Minnesota Statutes 2018, section 626A.381, subdivision 1, is amended to read:

2.25 Subdivision 1. **Notice required.** Except as provided in subdivision 2, within a reasonable  
2.26 time not later than 90 days after the filing of an application under section 626A.36, if the  
2.27 application is denied, or of the termination of an order, as extended under section 626A.37,  
2.28 the issuing or denying judge warrant applicant or agency requesting the warrant shall have  
2.29 served on the persons named in the order or application an inventory that includes notice  
2.30 of:

2.31 (1) the fact of the entry of the order or the application;

3.1 (2) the date of the entry and the period of authorized, approved, or disapproved activity  
3.2 under the order, or the denial of the application; and

3.3 (3) the fact that during the period, activity did or did not take place under the order.

3.4 Sec. 5. Minnesota Statutes 2018, section 626A.39, subdivision 5, is amended to read:

3.5 Subd. 5. **Mobile tracking device.** "Mobile tracking device" means an electronic or  
3.6 mechanical device that permits the tracking of the movement of a person or object. A mobile  
3.7 tracking device does not include a cell site simulator device or any other device used to  
3.8 access the location information of an electronic device, as those terms are defined in 626A.42,  
3.9 subdivision 1.

3.10 Sec. 6. Minnesota Statutes 2018, section 626A.42, is amended to read:

3.11 **626A.42 ELECTRONIC DEVICE LOCATION INFORMATION.**

3.12 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

3.13 (b) "Electronic communication service" has the meaning given in section 626A.01,  
3.14 subdivision 17.

3.15 (c) "Electronic device" means a device that enables access to or use of an electronic  
3.16 communication service, remote computing service, or location information service.

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

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

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

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

3.27 (h) "Tracking warrant" means an order in writing, in the name of the state, signed by a  
3.28 court other than a court exercising probate jurisdiction, directed to a peace officer, granting  
3.29 the officer access to location information of an electronic device using a cell site simulator  
3.30 device or other means.

4.1 (i) "Cell site simulator device" means a device that transmits or receives radio waves or  
4.2 other signals for the purposes of conducting one or more of the following operations:

4.3 (1) identifying, locating, or tracking the movements of an electronic device;

4.4 (2) intercepting, obtaining, accessing, or forwarding communications, stored data, or  
4.5 metadata from an electronic device;

4.6 (3) affecting the hardware or software operations or functions of an electronic device;

4.7 (4) forcing transmissions from or connections to an electronic device;

4.8 (5) denying an electronic device access to another electronic device, a communication  
4.9 protocol, electronic communication service, or other service; or

4.10 (6) spoofing or simulating an electronic device, cell tower, cell site, or service, including,  
4.11 but not limited to, an international phone subscriber identity catcher or other invasive cell  
4.12 phone or telephone surveillance or eavesdropping device that mimics a cell phone tower  
4.13 and sends out signals to cause cell phones in the area to transmit their locations, identifying  
4.14 information, and communications content, or a passive interception device or digital analyzer  
4.15 that does not send signals to an electronic device under surveillance.

4.16 A cell site simulator device does not include any device used or installed by an electric  
4.17 utility to the extent such device is only used by the utility to measure electrical usage, to  
4.18 provide service to customers, or to operate the electric grid.

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

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

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

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

- 5.1 (1) when the electronic device is reported lost or stolen by the owner;
- 5.2 (2) in order to respond to the user's call for emergency services;
- 5.3 (3) with the informed, affirmative, documented consent of the owner or user of the  
5.4 electronic device;
- 5.5 (4) with the informed, affirmative consent of the legal guardian or next of kin of the  
5.6 owner or user if the owner or user is believed to be deceased or reported missing and unable  
5.7 to be contacted; or
- 5.8 (5) in an emergency situation that involves the risk of death or serious physical harm to  
5.9 a person who possesses an electronic communications device pursuant to sections 237.82  
5.10 and 237.83.

5.11 Subd. 3. **Time period and extensions.** (a) A tracking warrant issued under this section  
5.12 must authorize the collection of location information for a period not to exceed 60 days, or  
5.13 the period of time necessary to achieve the objective of the authorization, whichever is less.

5.14 (b) Extensions of a tracking warrant may be granted, but only upon an application for  
5.15 an order and upon the judicial finding required by subdivision 2, paragraph (a). The period  
5.16 of extension must be for a period not to exceed 60 days, or the period of time necessary to  
5.17 achieve the objective for which it is granted, whichever is less.

5.18 (c) Paragraphs (a) and (b) apply only to tracking warrants issued for the contemporaneous  
5.19 collection of electronic device location information.

5.20 Subd. 4. **Notice; temporary nondisclosure of tracking warrant.** (a) Within a reasonable  
5.21 time but not later than 90 days after the court unseals the tracking warrant under this  
5.22 subdivision, the ~~issuing or denying judge~~ warrant applicant or agency requesting the warrant  
5.23 shall cause to be served on the persons named in the tracking warrant and the application  
5.24 an inventory which shall include notice of:

- 5.25 (1) the fact of the issuance of the tracking warrant or the application;
- 5.26 (2) the date of the issuance and the period of authorized, approved, or disapproved  
5.27 collection of location information, or the denial of the application; and
- 5.28 (3) the fact that during the period location information was or was not collected.

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

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

6.1 (2) the tracking warrant be filed with the court administrator within ten days of the  
6.2 expiration of the tracking warrant.

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

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

6.14 Subd. 5. **Report concerning collection of location information.** (a) At the same time  
6.15 as notice is provided under subdivision 4, the issuing or denying judge shall report to the  
6.16 state court administrator:

6.17 (1) the fact that a tracking warrant or extension was applied for;

6.18 (2) the fact that the tracking warrant or extension was granted as applied for, was  
6.19 modified, or was denied;

6.20 (3) the period of collection authorized by the tracking warrant, and the number and  
6.21 duration of any extensions of the tracking warrant;

6.22 (4) the offense specified in the tracking warrant or application, or extension of a tracking  
6.23 warrant;

6.24 (5) whether the collection required contemporaneous monitoring of an electronic device's  
6.25 location; and

6.26 (6) the identity of the applying investigative or peace officer and agency making the  
6.27 application and the person authorizing the application.

6.28 (b) On or before November 15 of each even-numbered year, the state court administrator  
6.29 shall transmit to the legislature a report concerning: (1) all tracking warrants authorizing  
6.30 the collection of location information during the two previous calendar years; and (2) all  
6.31 applications that were denied during the two previous calendar years. Each report shall  
6.32 include a summary and analysis of the data required to be filed under this subdivision. The

7.1 report is public and must be available for public inspection at the Legislative Reference  
7.2 Library and the state court administrator's office and website.

7.3 Subd. 6. **Prohibition on use of evidence.** (a) Except as proof of a violation of this  
7.4 section, no evidence obtained in violation of this section shall be admissible in any criminal,  
7.5 civil, administrative, or other proceeding.

7.6 (b) Any location information obtained pursuant to this chapter or evidence derived  
7.7 therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or  
7.8 other proceeding in a federal or state court unless each party, not less than ten days before  
7.9 the trial, hearing, or proceeding, has been furnished with a copy of the tracking warrant,  
7.10 and accompanying application, under which the information was obtained. This ten-day  
7.11 period may be waived by the judge if the judge finds that it was not possible to furnish a  
7.12 party with the required information ten days before the trial, hearing, or proceeding and that  
7.13 a party will not be prejudiced by the delay in receiving the information."

7.14 Amend the title accordingly