

1.1 A bill for an act

1.2 relating to public safety; requiring law enforcement to secure a tracking warrant
 1.3 in order to receive cell phone tracking data; amending Minnesota Statutes 2012,
 1.4 section 626A.28, subdivision 3; proposing coding for new law in Minnesota
 1.5 Statutes, chapter 626A.

1.7 Section 1. Minnesota Statutes 2012, section 626A.28, subdivision 3, is amended to read:

1.8 Subd. 3. **Records concerning electronic communication service or remote**

1.9 **computing service.** (a) Except as provided in paragraph (b) or chapter 325M, a provider
 1.10 of electronic communication service or remote computing service may disclose a record
 1.11 or other information pertaining to a subscriber to or customer of the service, not including
 1.12 the contents of communications covered by subdivision 1 or 2, to any person other than a
 1.13 governmental entity.

1.14 (b) A provider of electronic communication service or remote computing service
 1.15 may disclose a record or other information pertaining to a subscriber to or customer of the
 1.16 service, not including the contents of communications covered by subdivision 1 or 2, to a
 1.17 governmental entity only when the governmental entity:

1.18 (1) uses an administrative subpoena authorized by statute, or a grand jury subpoena;

1.19 (2) obtains a warrant;

1.20 (3) obtains a court order for such disclosure under subdivision 4; or

1.21 (4) has the consent of the subscriber or customer to the disclosure.

1.22 (c) A governmental entity receiving records or information under this subdivision is
 1.23 not required to provide notice to a subscriber or customer.

2.1 (d) Notwithstanding paragraph (b), a provider of electronic communication service
 2.2 or remote computing service may not disclose location information covered by section
 2.3 626A.42 to a government entity except as provided in that section.

2.4 Sec. 2. **[626A.42] ELECTRONIC DEVICE LOCATION INFORMATION.**

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

2.7 (b) An "adverse result" occurs when notification of the existence of a tracking
 2.8 warrant results in:

2.9 (1) danger to the life or physical safety of an individual;

2.10 (2) a flight from prosecution;

2.11 (3) the destruction of or tampering with evidence;

2.12 (4) the intimidation of potential witnesses; or

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 1.13 governmental entity.

1.14 (b) Except as provided in section 626A.42, a provider of electronic communication
 1.15 service or remote computing service may disclose a record or other information pertaining
 1.16 to a subscriber to or customer of the service, not including the contents of communications
 1.17 covered by subdivision 1 or 2, to a governmental entity only when the governmental entity:

1.18 (1) uses an administrative subpoena authorized by statute, or a grand jury subpoena;

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1.21 (4) has the consent of the subscriber or customer to the disclosure.

1.22 (c) A governmental entity receiving records or information under this subdivision is
 1.23 not required to provide notice to a subscriber or customer.

1.24 Sec. 2. **[626A.42] ELECTRONIC DEVICE LOCATION INFORMATION.**

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

2.3 (b) An "adverse result" occurs when notification of the existence of a court order
 2.4 results in:

2.5 (1) danger to the life or physical safety of an individual;

2.6 (2) a flight from prosecution;

2.7 (3) the destruction of or tampering with evidence;

2.8 (4) the intimidation of potential witnesses; or

- 2.13 (5) serious jeopardy to an investigation or undue delay of a trial.
- 2.14 (c) "Electronic communication service" has the meaning given in section 626A.01,
2.15 subdivision 17.
- 2.16 (d) "Electronic device" means a device that enables access to or use of an electronic
2.17 communication service, remote computing service, or location information service.
- 2.18 (e) "Government entity" means a state or local agency, including but not limited to a
2.19 law enforcement entity or any other investigative entity, agency, department, division,
2.20 bureau, board, or commission or an individual acting or purporting to act for or on behalf
2.21 of a state or local agency.
- 2.22 (f) "Location information" means information concerning the location of an
2.23 electronic device that, in whole or in part, is generated or derived from or obtained by the
2.24 operation of an electronic device.
- 2.25 (g) "Location information service" means the provision of a global positioning
2.26 service or other mapping, locational, or directional information service.
- 2.27 (h) "Remote computing service" has the meaning given in section 626A.34.
- 2.28 (i) "Tracking warrant" means an order in writing, in the name of the state, signed
2.29 by a court other than a court exercising probate jurisdiction, directed to a peace officer,
2.30 granting the officer access to location information of an electronic device.
- 2.31 Subd. 2. **Tracking warrant required for location information.** (a) Except as
2.32 provided in paragraph (b), a government entity may not obtain the location information
2.33 of an electronic device without a tracking warrant. A tracking warrant granting access
2.34 to location information must be issued only if the government entity shows that there
3.1 is probable cause the person who possesses an electronic device is committing, has
3.2 committed, or is about to commit a crime.
- 3.3 (b) A government entity may obtain location information without a tracking warrant:
- 3.4 (1) when the electronic device is reported lost or stolen by the owner;
- 3.5 (2) in order to respond to the user's call for emergency services;
- 3.6 (3) with the informed, affirmative, documented consent of the owner or user of the
3.7 electronic device;
- 3.8 (4) with the informed, affirmative consent of the legal guardian or next of kin of
3.9 the owner or user if the owner or user is believed to be deceased or reported missing and
3.10 unable to be contacted; or

- 2.9 (5) serious jeopardy to an investigation or undue delay of a trial.
- 2.10 (c) "Electronic communication service" has the meaning given in section 626A.01,
2.11 subdivision 17.
- 2.12 (d) "Electronic device" means a device that enables access to or use of an electronic
2.13 communication service, remote computing service, or location information service.
- 2.14 (e) "Government entity" means a state or local agency, including but not limited to a
2.15 law enforcement entity or any other investigative entity, agency, department, division,
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2.17 of a state or local agency.
- 2.18 (f) "Location information" means information concerning the location of an
2.19 electronic device that, in whole or in part, is generated or derived from or obtained by the
2.20 operation of an electronic device.
- 2.21 (g) "Location information service" means the provision of a global positioning
2.22 service or other mapping, locational, or directional information service.
- 2.23 (h) "Remote computing service" has the meaning given in section 626A.34.
- 2.24 Subd. 2. **Court order required for location information.** (a) Except as provided in
2.25 paragraph (b), a government entity may not obtain the location information of an electronic
2.26 device without a court order. A court order granting access to location information must
2.27 be issued only if the government entity shows that there is probable cause the person who
2.28 possesses an electronic device is committing, has committed, or is about to commit a crime.
- 2.29 (b) A government entity may obtain location information without a court order:
- 2.30 (1) when the electronic device is reported lost or stolen by the owner;
- 2.31 (2) in order to respond to the user's call for emergency services;
- 2.32 (3) with the informed, affirmative, documented consent of the owner or user of the
2.33 electronic device;
- 2.34 (4) with the informed, affirmative consent of the legal guardian or next of kin of
2.35 the owner or user if the owner or user is believed to be deceased or reported missing and
2.36 unable to be contacted; or

3.11 (5) when an emergency involving immediate danger of death or serious physical
 3.12 injury to a person who possesses an electronic communications device pursuant to sections
 3.13 237.82 and 237.83 requires obtaining information relating to the emergency without delay,
 3.14 and the search is narrowly tailored to address the emergency.

3.15 (c) A government entity exercising the warrantless emergency search authority under
 3.16 paragraph (b), clause (5), must document the basis for determining that an emergency
 3.17 involving immediate danger of death or serious physical injury to a person requires
 3.18 obtaining, without delay, location information relating to the emergency and, not later
 3.19 than 48 hours after the date on which the government entity obtains access to location
 3.20 information, the government entity shall file with the appropriate court a signed, sworn
 3.21 statement of a supervisory official setting forth the grounds for the emergency access.

3.22 Subd. 3. **Time period and extensions.** (a) A tracking warrant issued under this
 3.23 section must authorize the collection of location information for a period not to exceed
 3.24 60 days, or the period of time necessary to achieve the objective of the authorization,
 3.25 whichever is less.

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

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

3.32 Subd. 4. **Notice.** (a) Notice must be given to the owner or user of an electronic
 3.33 device whose location information was obtained by a government entity.

3.34 (b) Unless delayed notice is ordered under paragraph (c), the government entity
 3.35 shall provide notice to the owner or user that location information was obtained by the
 3.36 government entity from the owner's or user's electronic device within three days of
 4.1 obtaining the location information. The notice must be made by service or delivered by
 4.2 registered or first-class mail. The notice must contain the following information:

4.3 (1) the nature of the government entity inquiry, with reasonable specificity;

4.4 (2) the location information of the owner or user that was obtained by, supplied to,
 4.5 or requested by the government entity and the date on which it was obtained, provided,
 4.6 or requested;

4.7 (3) if location information was obtained from a provider of electronic communication
 4.8 service or other third party, the identity of the provider of electronic communication
 4.9 service or the third party from whom the information was obtained; and

3.1 (5) in an emergency situation that involves the risk of death or serious physical harm
 3.2 to a person who possesses an electronic communications device pursuant to sections
 3.3 237.82 and 237.83.

3.4 Subd. 3. **Time period and extensions.** (a) A court order issued under this section
 3.5 must authorize the collection of location information for a period not to exceed 60 days, or
 3.6 the period of time necessary to achieve the objective of the authorization, whichever is less.

3.7 (b) Extensions of a court order may be granted, but only upon an application for an
 3.8 order and upon the judicial finding required by subdivision 2. The period of extension
 3.9 must be for a period not to exceed 60 days, or the period of time necessary to achieve the
 3.10 objective for which it is granted, whichever is less.

3.11 (c) Paragraphs (a) and (b) apply only to court orders issued for the contemporaneous
 3.12 collection of electronic device location information.

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

3.17 (1) the fact of the issuance of the order 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 intercepted.

4.10 (4) whether the notification was delayed pursuant to paragraph (c) and, if so, the
 4.11 court that granted the delay and the reasons for granting the delay.

4.12 (c) A government entity may include in the application for a tracking warrant a
 4.13 request for an order to delay the notification required under this subdivision for a period
 4.14 not to exceed 90 days. The court shall issue the order if the court determines that there
 4.15 is reason to believe that notification may have an adverse result. Upon expiration of the
 4.16 period of delay granted under this subdivision and any extension granted under paragraph
 4.17 (e), the government entity shall provide the owner or user a copy of the warrant together
 4.18 with a notice pursuant to paragraph (b).

4.19 (d) A government entity may include in its application for a tracking warrant a request
 4.20 for an order directing a provider of electronic communication service to which a warrant is
 4.21 directed not to notify any other person of the existence of the warrant for a period of not
 4.22 more than 90 days. The court shall issue the order if the court determines that there is reason
 4.23 to believe that notification of the existence of the warrant may have an adverse result.

4.24 (e) The court, upon application, may grant one or more extensions of orders granted
 4.25 under paragraph (c) or (d) for up to an additional 90 days.

4.26 Subd. 5. **Reporting.** (a) By January 31 of each calendar year, any judge issuing
 4.27 or denying a tracking warrant or receiving a report of emergency access to location
 4.28 information under subdivision 2 during the preceding calendar year shall report on each
 4.29 warrant or notice of emergency access to the state court administrator:

4.30 (1) the date the warrant was applied for or the notice was received;

4.31 (2) the agency making the application or notice;

4.32 (3) the offense, if any, specified in the warrant application, warrant, or notice;

4.33 (4) the nature of the facilities from which, the place where, or the technique by
 4.34 which location information was to be obtained;

3.21 (b) An order authorizing collection of location information must direct that:

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

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

3.26 (c) The prosecutor may request that the order, supporting affidavits, and any order
 3.27 granting the request not be filed. An order must be issued granting the request in whole or
 3.28 in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable
 3.29 grounds exist to believe that filing the order 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
 3.31 hamper an ongoing investigation.

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

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

4.4 (1) the fact that an order or extension was applied for;

4.12 (6) the identity of the applying investigative or law enforcement officer and agency
 4.13 making the application and the person authorizing the application.

4.9 (4) the offense specified in the order or application, or extension of an order;

4.35 (5) the expected number of devices about which location information was obtained;

4.36 (6) whether the warrant was granted as applied for, was modified, or was denied; and

5.1 (7) the period of disclosures authorized by the warrant, and the number and duration
5.2 of any extensions of the warrant.

5.3 (b) In June of each year, beginning in 2014, the state court administrator shall
5.4 transmit to the legislature a full and complete record concerning the number of applications
5.5 for tracking warrants authorizing or requiring the disclosure of location information, the
5.6 number of times access to location information was obtained pursuant to subdivision 2,
5.7 paragraph (b), clause (5), and the number of notices of emergency access received under
5.8 subdivision 2, paragraph (b), during the preceding calendar year. The report shall include
5.9 a summary and analysis of the data required to be filed with the state court administrator
5.10 by paragraph (a). The state court administrator is authorized to issue binding regulations
5.11 dealing with the content and form of the reports required to be filed by paragraph (a).

5.12 (c) In June of each year, beginning in 2014, a nonclassified summary of the report
5.13 shall be made publicly available on the Web site for the state court administrator.

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

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

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

4.5 (2) the fact that the order or extension was granted as applied for, was modified,
4.6 or was denied;

4.7 (3) the period of collection authorized by the order, and the number and duration
4.8 of any extensions of the order;

4.14 (b) On or before November 15 of each even-numbered year, the state court
4.15 administrator shall transmit to the legislature a report concerning: (1) all orders authorizing
4.16 the collection of location information during the two previous calendar years; and (2) all
4.17 applications that were denied during the two previous calendar years. Each report shall
4.18 include a summary and analysis of the data required to be filed under this subdivision. The
4.19 report is public and must be available for public inspection at the Legislative Reference
4.20 Library and the state court administrator's office and Web site.