
ENGROSSED SUBSTITUTE SENATE BILL 6136

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators McCaslin and Roach)

READ FIRST TIME 01/23/04.

1 AN ACT Relating to authorization of electronic tracking devices for
2 law enforcement purposes; amending RCW 10.79.015 and 10.79.020;
3 creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The courts having concluded that citizens
6 have a reasonable expectation under Article I, section 7 of the
7 Washington state Constitution that their vehicles will not be remotely
8 tracked without authority of law, the legislature adopts this law to
9 specifically authorize law enforcement's use of tracking equipment in
10 or on vehicles or other objects. The legislature intends this law to
11 be governed by and interpreted in light of all general principles and
12 doctrines of search law, including exceptions to the warrant
13 requirement, as now or hereafter applicable in this state.

14 **Sec. 2.** RCW 10.79.015 and 2003 c 53 s 94 are each amended to read
15 as follows:

16 Any such magistrate, when satisfied that there is ((reasonable))
17 probable cause, may also, upon like ((complaint)) application made on
18 oath, issue search warrant in the following cases, to wit:

1 (1) To search for and seize any counterfeit or spurious coin, or
2 forged instruments, or tools, machines or materials, prepared or
3 provided for making either of them.

4 (2) To search for and seize any gaming apparatus used or kept, and
5 to be used in any unlawful gaming house, or in any building, apartment
6 or place, resorted to for the purpose of unlawful gaming.

7 (3) To search for and seize any evidence material to the
8 investigation or prosecution of any homicide or any felony: PROVIDED,
9 That if the evidence is sought to be secured from any radio or
10 television station or from any regularly published newspaper, magazine
11 or wire service, or from any employee of such station, wire service or
12 publication, the evidence shall be secured only through a subpoena
13 duces tecum unless: (a) There is probable cause to believe that the
14 person or persons in possession of the evidence may be involved in the
15 crime under investigation; or (b) there is probable cause to believe
16 that the evidence sought to be seized will be destroyed or hidden if
17 subpoena duces tecum procedures are followed. As used in this
18 subsection, "person or persons" includes both natural and judicial
19 persons.

20 (4) To search for and seize any instrument, apparatus, or device
21 used to obtain telephone or telegraph service in violation of RCW
22 9.26A.110 or 9.26A.115.

23 (5)(a) To install tracking equipment in or on any object within ten
24 days; to maintain, use, and monitor that tracking equipment for periods
25 not longer than thirty days; and to remove that equipment after
26 authority to monitor ends, PROVIDED, That the application describes the
27 object into or onto which the equipment is to be installed, and that
28 probable cause exists to believe that use of the equipment will lead to
29 evidence of a crime, contraband, fruits of crime, things criminally
30 possessed, weapons, other things by means of which a crime has been
31 committed, is being committed, or reasonably appears about to be
32 committed, or will lead to learning the location of a person who is
33 unlawfully restrained or reasonably believed to be a victim in a
34 criminal investigation, or for whose arrest there is probable cause.
35 Warrant authority under this section shall state the time period or
36 number of days the use of the equipment is authorized.

37 (b) Tracking equipment may be installed, maintained, and monitored

1 for up to forty-eight hours without a warrant if exigent circumstances
2 exist at the time the equipment is installed.

3 (c) A magistrate of a municipal or district court may issue a
4 warrant to install tracking equipment only within the magistrate's
5 jurisdiction. The tracking equipment may be maintained, used, and
6 monitored anywhere within this state.

7 (d) For the purposes of this subsection:

8 (i) "Tracking equipment" includes all electronic or mechanical
9 devices, whether using radio frequency, global positioning, or other
10 technology, used to determine the location, status, movement, and/or
11 direction of travel of the object into or onto which the equipment is
12 placed without direct visual observation of the object.

13 (ii) "Maintain" includes all activity necessary to monitor, repair,
14 or assure continued operability of tracking equipment.

15 (iii) "Monitor" includes all forms of detecting, obtaining, and
16 recording information from the operation of tracking equipment and all
17 information regarding the status and condition of the tracking
18 equipment, except those that involve direct observation of the tracking
19 equipment or the object into or onto which the tracking equipment is
20 installed.

21 (6) A warrant issued under this section must be supported by an
22 affidavit, a document as provided in RCW 9A.72.085, or sworn testimony
23 establishing the grounds for issuing the warrant. The sworn testimony
24 may be an electronically recorded telephonic statement or a combination
25 of written material and an electronically recorded telephonic
26 statement. The recording or a duplication of the recording shall be a
27 part of the court record and shall be transcribed if requested by a
28 party if there is a challenge to the validity of the warrant or if
29 ordered by the court. The evidence in support of the finding of
30 probable cause shall be preserved and shall be subject to
31 constitutional limitations for such determinations and may be hearsay
32 in whole or in part. If the court finds that probable cause for the
33 issuance of a warrant under this section exists, it shall issue a
34 warrant or direct an individual whom it authorizes for such purpose to
35 affix the court's signature to a warrant authorizing any peace officer
36 to conduct the authorized search.

1 **Sec. 3.** RCW 10.79.020 and Code 1881 s 969 are each amended to read
2 as follows:

3 A search warrant authorized by this chapter may be issued by the
4 court upon request of a peace officer or a prosecuting attorney. All
5 such warrants shall be directed to the sheriff of the county, or his
6 deputy, or to any ((constable)) peace officer of the county, commanding
7 such officer:

8 (1) In the case of warrants to seize property or persons, to search
9 the house or place where the stolen property or other things for which
10 he is required to search are believed to be concealed, which place and
11 property, or things to be searched for shall be designated and
12 described in the warrant, and to bring such stolen property or other
13 things, when found, and the person in whose possession the same shall
14 be found, before the magistrate who shall issue the warrant, or before
15 some other magistrate or court having cognizance of the case; or

16 (2) In the case of warrants for tracking equipment, to install the
17 equipment into or onto the object to be tracked; to maintain, service,
18 and monitor the equipment; and upon conclusion of warrant authority to
19 remove the equipment and report the results of use of the equipment to
20 the magistrate who issued the warrant, or to some other magistrate or
21 court having cognizance of the case. This report supersedes and
22 replaces any reporting requirement under CrR 2.3(d) and CrRLJ 2.3(d) as
23 currently written or hereafter amended.

24 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2004.

--- END ---