2022 South Dakota Legislature

House Bill 1036

Introduced by: The Committee on Judiciary at the request of the Attorney General

An Act to revise certain provisions regarding search warrants for tracking devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-35-4.3 be AMENDED:

23A-35-4.3. ~~(a) Tracking Device Defined.~~As used in this section, the term, tracking device, means an electronic or mechanical device ~~which~~ that permits the tracking of the movement of a person or object, including GPS, ~~"pole camera",~~ cellular device, electronic video surveillance, or any other covert tracking or surveillance device.

~~(b) Contents.~~ A search warrant for a tracking device may be issued by any magistrate authorized in § 23A-35-2, for the installation, use, and maintenance of a tracking device. There must be probable cause to search and seize property as set forth in this chapter and that such installation and use of this device will lead to the discovery of evidence under § 23A-35-3. The tracking-device warrant must identify the person or property to be tracked, designate the magistrate to whom it must be returned, and specify a reasonable length of time that the device may be used. The time may not exceed ~~45~~ sixty days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed ~~45~~ sixty days each. The warrant must command the officer to complete any installation authorized by the warrant within a specified time no longer than ~~10~~ ten days.

~~(c) Scope.~~ Any tracking-device warrant issued under this section may authorize the use of the tracking device within the jurisdiction of the magistrate, and outside that jurisdiction, if the tracking device is installed within the magistrate's jurisdiction. The warrant may be executed in any part of the state where the person or object is found if, after the issuance of a warrant pursuant to this section, the person or object moves or is taken out of the jurisdiction of the magistrate issuing the warrant. The executing officer must perform any installation authorized by the warrant during the daytime, unless the magistrate, for good cause, expressly authorizes installation at another time.

~~(d) Return.~~ The tracking-device warrant must command the executing officer to return the warrant to the magistrate designated in the warrant. The officer executing a tracking-device warrant must enter ~~on it~~ on the inventory the ~~exact~~ approximate time and date the device was installed and the period during which it was used.

~~(e) Service.~~ Within ~~10~~ ten days after the use of the tracking-device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; ~~or~~ by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location ~~and~~; or by mailing a copy to the person's last known address. Upon request of the state, the judge may delay notice ~~for reasons~~ to prevent the occurrences set forth in ~~subsection (f)~~ subdivisions 1 to 5, inclusive.

~~(f) Sealing of Contents of Warrant.~~ With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered by the court for purpose of preventing:

(1) Endangerment of life or physical safety of an individual;

(2) Flight from prosecution;

(3) Destruction of or tampering with evidence;

(4) Intimidation of a potential ~~witnesses~~ witness; or

(5) If failure to seal would otherwise seriously jeopardize an investigation or unduly delay a trial.