

1 HB87
2 148711-3
3 By Representative England
4 RFD: Judiciary
5 First Read: 05-FEB-13
6 PFD: 02/01/2013

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 Relating to criminal surveillance; to provide that
9 an authorized judge may issue a warrant for the installation,
10 removal, maintenance, use, and monitoring of a tracking
11 device; to provide for the crime of unlawfully installing a
12 tracking device; and in connection therewith would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds within the meaning of Amendment 621
15 of the Constitution of Alabama of 1901, now appearing as
16 Section 111.05 of the Official Recompilation of the
17 Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. (a) Any judge authorized to issue a
20 search warrant pursuant to Rule 3.7 of the Alabama Rules of
21 Criminal Procedure is authorized to issue a warrant to install
22 a tracking device. The term tracking device means an
23 electronic or mechanical device which permits the tracking of
24 the movement of a person or object.

25 (b) Upon the written application, under oath, of any
26 law enforcement officer, district attorney, or Attorney
27 General of the state, including assistant and deputy district

1 attorneys and assistant and deputy attorneys general, any
2 authorized judge may issue a warrant for the installation,
3 removal, maintenance, use, or monitoring of a tracking device.
4 The warrant application shall do all of the following:

5 (1) State facts sufficient to show probable cause
6 that a crime is being, has been, or is about to be committed.

7 (2) Clearly identify the person, if reasonably
8 determinable, or object, or both, that is, was, or will be
9 involved in the commission of the alleged offense.

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

12 (c) A warrant for a tracking device shall clearly
13 identify the person, if reasonably determinable, or the object
14 to be tracked, or both, and specify a reasonable length of
15 time that the tracking device may be used, not to exceed 45
16 days from the date that the warrant was issued unless the
17 issuing judge grants one or more extensions for a reasonable
18 time not to exceed 45 days each, based on renewed or ongoing
19 probable cause, or both. The warrant shall include the
20 authorization for access to and into the object that will be
21 tracked and any building or structure in which the object is
22 located for the limited purpose of installing the tracking
23 device or for maintenance or retrieval of the tracking device.
24 The warrant shall state that the tracking device may be
25 installed, repaired, removed, and monitored at any time of the
26 day or night. The warrant shall command the officer to do all
27 of the following:

1 (1) 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 (2) Complete the installation within 10 days from
5 the date the warrant is issued.

6 (3) Require that the law enforcement officer make a
7 written return of the warrant to the judge issuing the warrant
8 or other authorized judge in the jurisdiction where the
9 warrant was issued if the issuing judge is not available.

10 (d) The law enforcement officer executing the
11 warrant shall:

12 (1) Enter on the warrant the exact date and time the
13 device was installed and the period during which it was used.

14 (2) Within 10 days after the use of the tracking
15 device has ended, return the warrant with a copy of the
16 inventory collected pursuant to the warrant to the issuing
17 judge or other authorized judge in the jurisdiction where the
18 warrant was issued if the issuing judge is not available, and
19 serve a copy of the warrant on the person who was tracked or
20 whose property was tracked. Service may be accomplished by
21 delivering a copy of the warrant to the person who was tracked
22 or whose property was tracked, leaving a copy at that person's
23 residence or usual place of abode with an individual of
24 suitable age and discretion who resides at that location, or
25 mailing a copy to the person's last known address. Upon
26 request of the state, the judge may delay notice as provided
27 in subsection (f).

1 (e) The law enforcement officers involved in the
2 investigation shall remove or cause to be removed the tracking
3 device as soon as it is practicable after the authorization
4 period expires. If removal is not practicable, monitoring of
5 the mobile tracking device shall cease on expiration of the
6 warrant.

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

11 (1) The court finds reasonable cause to believe that
12 providing immediate notification of the execution of the
13 warrant may have an adverse result. An adverse result means:

14 a. Endangerment to the life or physical safety of an
15 individual.

16 b. Flight from prosecution.

17 c. Destruction of or tampering with evidence.

18 d. Intimidation of potential witnesses.

19 e. Any occurrence that would otherwise seriously
20 jeopardize an investigation or unduly delay a trial.

21 (2) The warrant provides that notice shall be given
22 within a reasonable period not to exceed 90 days after the
23 date the warrant was returned to the issuing judge or
24 authorized judge in the jurisdiction where the warrant was
25 issued if the issuing judge is not available. The delay may be
26 extended by the court if the court determines that there is a
27 continuous finding of an adverse result, subject to the

1 condition that an extension shall only be granted upon an
2 updated showing of the need for further delay. Each additional
3 delay shall be limited to a period of 90 days or less, unless
4 the facts of the case justify a longer period, provided,
5 however, that the delayed notification shall be no later than
6 the date of arrest of the individual who was tracked or whose
7 property was tracked, which is based wholly or in part upon
8 the results of the tracking device.

9 (g) The warrant shall direct that the affidavit,
10 application, warrant, inventory, and return be sealed until
11 notice is given to the person who was tracked or whose
12 property was tracked.

13 (h) If an authorized judge issues a warrant for a
14 tracking device in accordance with this act, the device shall
15 be installed in any county within the jurisdiction of the
16 issuing judge and may be monitored in any location in the
17 State of Alabama from any location within the State of
18 Alabama. Unless otherwise prohibited by federal law, the
19 device may be monitored from any location within the State of
20 Alabama even if the device is transported outside the State of
21 Alabama.

22 (i) Any person commits the crime of unlawfully
23 installing a tracking device if he or she intentionally
24 installs a tracking device without following the procedures
25 established in this act. The unlawful installation of a
26 tracking device is a Class A misdemeanor. Nothing in this act
27 shall be construed as limiting or affecting the ability of a

1 business entity to install or use a tracking device on a
2 vehicle, equipment, or device that the business entity owns,
3 leases, or operates. Nothing in this act shall be construed as
4 limiting or affecting the ability of an individual to install
5 or use a tracking device on a vehicle, equipment, or device
6 that the individual owns, leases, or operates.

7 Section 2. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 3. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Judiciary 05-FEB-13

Read for the second time and placed on the calendar with 1 substitute and..... 28-FEB-13

Read for the third time and passed as amended..... 24-APR-13

Yeas 98, Nays 1, Abstains 0

Jeff Woodard
Clerk