S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

April 19, 2013

Introduced by Sen. GOLDEN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to issuing warrants for mobile tracking devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (b) of subdivision 2 of section 690.05 of the criminal procedure law, as amended by chapter 504 of the laws of 1991, is amended to read as follows:

(b) a search of a designated premises for the purpose of searching for and arresting a person who is the subject of: (i) a warrant of arrest issued pursuant to this chapter, a superior court warrant of arrest issued pursuant to this chapter, or a bench warrant for a felony issued pursuant to this chapter, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant; or

(ii) a warrant of arrest issued by any other state or federal court for an offense which would constitute a felony under the laws of this state, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant; OR

(C) THE INSTALLATION, MAINTENANCE, AND MONITORING OF A MOBILE TRACKING DEVICE IN ACCORDANCE WITH SECTION 690.60.

S 2. The criminal procedure law is amended by adding a new section 690.60 to read as follows:

S 690.60 MOBILE TRACKING DEVICES.

1. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "MOBILE TRACKING DEVICE" MEANS AN ELECTRONIC OR MECHANICAL DEVICE AFFIXED TO A PERSON OR OBJECT, INCLUDING A VEHICLE, WHICH PERMITS THE TRACKING OF THE MOVEMENT OF THAT PERSON OR OBJECT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) "USE OF A MOBILE TRACKING DEVICE" MEANS THE INSTALLATION, MAINTENANCE, AND MONITORING OF A MOBILE TRACKING DEVICE.

2. APPLICATION FOR A MOBILE TRACKING DEVICE WARRANT. AN APPLICATION FOR A WARRANT TO USE A MOBILE TRACKING DEVICE SHALL BE IN WRITING AND BE MADE TO A LOCAL CRIMINAL COURT. THE APPLICATION SHALL CONTAIN:

(A) THE NAME OF THE COURT AND THE NAME AND TITLE OF THE APPLICANT;

(B) THE IDENTITY, IF KNOWN, OF THE PERSON OR PERSONS WHO ARE THE SUBJECT OF THE INVESTIGATION IN WHICH USE OF THE MOBILE TRACKING DEVICE IS SOUGHT;

(C) A FULL AND COMPLETE STATEMENT OF THE FACTS AND CIRCUMSTANCES RELIED UPON BY THE APPLICANT, TO JUSTIFY HIS OR HER BELIEF THAT A WARRANT TO USE A MOBILE TRACKING DEVICE SHOULD BE ISSUED, INCLUDING A STATEMENT OF FACTS ESTABLISHING PROBABLE CAUSE TO BELIEVE THAT A PARTICULAR CRIME HAS BEEN, IS BEING, OR IS ABOUT TO BE COMMITTED, AND PROBABLE CAUSE TO BELIEVE THAT A MOBILE TRACKING DEVICE WILL RESULT IN EVIDENCE TENDING TO PROVE COMMISSION OF THE DESIGNATED CRIME OR THE WHEREABOUTS OF THE PERSON WHO IS THE SUBJECT OF THE INVESTIGATION IN WHICH USE OF THE MOBILE TRACKING DEVICE IS SOUGHT AND AS TO WHOM PROBABLE CAUSE TO BELIEVE SUCH PERSON HAS COMMITTED THE CRIME EXISTS;

(D) A STATEMENT OF THE IDENTITY AND CURRENT LOCATION, IF KNOWN, OF THE PERSON OR OBJECT TO WHICH A MOBILE TRACKING DEVICE WILL BE ATTACHED, PLACED, OR OTHERWISE INSTALLED; AND

(E) A STATEMENT OF THE PERIOD OF TIME FOR WHICH THE USE OF A MOBILE TRACKING DEVICE IS REQUIRED TO BE MAINTAINED.

3. MOBILE TRACKING DEVICE WARRANT; FORM AND CONTENT. UPON AN APPLICATION MADE UNDER SUBDIVISION TWO OF THIS SECTION, THE COURT, UPON A FINDING THAT PROBABLE CAUSE EXISTS TO SUPPORT ISSUING A WARRANT, SHALL ENTER AN EX PARTE ORDER AUTHORIZING THE USE OF A MOBILE TRACKING DEVICE. THE ORDER SHALL SPECIFY:

(A) THE NAME OF THE APPLICANT, DATE OF ISSUANCE, AND THE SUBSCRIPTION AND TITLE OF THE ISSUING JUDGE;

(B) THE IDENTITY, IF KNOWN, OF THE PERSON WHO IS THE SUBJECT OF THE INVESTIGATION;

(C) THE IDENTITY OF THE PERSON OR A DESCRIPTION OF THE OBJECT TO WHICH THE MOBILE TRACKING DEVICE IS TO BE ATTACHED, PLACED, OR OTHERWISE INSTALLED, IF INSTALLATION IS NECESSARY;

(D) THE NUMBER OF MOBILE TRACKING DEVICES TO BE USED AND THE GEOGRAPHICAL LOCATION WHERE THE DEVICES ARE TO BE USED, IF AND TO THE EXTENT SUCH LOCATIONS CAN BE SPECIFIED;

(E) THE PERIOD OF TIME DURING WHICH THE USE OF A MOBILE TRACKING DEVICE IS AUTHORIZED, WHICH SHALL NOT EXCEED THE TIME PERIOD PROVIDED IN SUBDIVISION FOUR OF THIS SECTION;

(F) WHETHER AUTHORIZATION TO ENTER UPON A PRIVATE PLACE OR PREMISE FOR THE PLACEMENT, REMOVAL OR PERMANENT INACTIVATION OF SUCH DEVICE IS SOUGHT;

(G) WHETHER PERMISSION IS GRANTED TO RE-ACCESS THE DEVICE FOR MAINTENANCE DURING THE AUTHORIZATION PERIOD; AND

(H) THE IDENTITY OF THE LAW ENFORCEMENT AGENCY AUTHORIZED TO USE THE MOBILE TRACKING DEVICE.

4. MOBILE TRACKING DEVICE WARRANTS; TIME PERIOD AND EXTENSIONS.

(A) A WARRANT ISSUED UNDER THIS SECTION SHALL AUTHORIZE THE USE OF A MOBILE TRACKING DEVICE FOR A PERIOD NOT TO EXCEED FORTY-FIVE DAYS, OR THE PERIOD NECESSARY TO ACHIEVE THE OBJECTIVE OF THE WARRANT, WHICHEVER IS LESS.

(B) EXTENSIONS OF THE WARRANT MAY BE GRANTED ONLY UPON REAPPLICATION ESTABLISHING PROBABLE CAUSE TO JUSTIFY THE CONTINUED USE OF A MOBILE

TRACKING DEVICE. THIS PERIOD OF THE EXTENSION SHALL NOT EXCEED THIRTY DAYS.

5. EXECUTION OF MOBILE TRACKING DEVICE WARRANT; TO WHOM ADDRESSED.

(A) A WARRANT TO USE A MOBILE TRACKING DEVICE ISSUED BY A DISTRICT COURT, THE NEW YORK CITY CRIMINAL COURT, OR A SUPERIOR COURT JUDGE SITTING AS A LOCAL CRIMINAL COURT MAY BE EXECUTED PURSUANT TO ITS TERMS ANYWHERE IN THE STATE, AND IF ISSUED BY A TOWN, VILLAGE OR CITY COURT IT MAY BE EXECUTED PURSUANT TO ITS TERMS ONLY IN THE COUNTY OF ISSUANCE OR AN ADJOINING COUNTY; PROVIDED, HOWEVER, THAT AFTER A MOBILE TRACKING DEVICE IS ATTACHED IN ACCORDANCE WITH THE TERMS OF THIS SUBDIVISION, IT MAY BE MONITORED ANYWHERE IN THE STATE.

(B) A WARRANT TO USE A MOBILE TRACKING DEVICE MUST BE ADDRESSED TO A POLICE OFFICER WHOSE GEOGRAPHICAL AREA OF EMPLOYMENT EMBRACES OR IS EMBRACED OR PARTIALLY EMBRACED BY THE COUNTY OF ISSUANCE OR THE COUNTY WHERE THE TRACKING DEVICE IS TO BE INSTALLED. THE WARRANT NEED NOT BE ADDRESSED TO A SPECIFIC POLICE OFFICER BUT MAY BE ADDRESSED TO ANY POLICE OFFICER OF A DESIGNATED CLASSIFICATION, OR TO ANY POLICE OFFICER OF ANY CLASSIFICATION EMPLOYED OR HAVING GENERAL JURISDICTION TO ACT AS A POLICE OFFICER IN THE COUNTY.

(C) A WARRANT TO USE A MOBILE TRACKING DEVICE SHALL BE EXECUTED NOT MORE THAN TEN DAYS AFTER THE DATE OF ISSUANCE.

6. MOBILE TRACKING DEVICE WARRANTS; NOTICE. WITHIN NINETY DAYS AFTER THE USE OF THE MOBILE TRACKING DEVICE HAS ENDED, THE OFFICER EXECUTING A WARRANT FOR USE OF A MOBILE TRACKING DEVICE SHALL SERVE A COPY OF THE WARRANT ON THE PERSON WHO IS THE SUBJECT OF THE INVESTIGATION AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION OR, IF UNKNOWN, THE OWNER OF THE PROPERTY THAT WAS TRACKED. ON A SHOWING OF GOOD CAUSE TO THE ISSUING JUDGE OR JUSTICE, THE SERVICE OF THE NOTICE MAY BE POSTPONED BY ORDER OF SUCH JUDGE OR JUSTICE FOR A REASONABLE PERIOD OF TIME. RENEWALS OF AN ORDER OF POSTPONEMENT MAY BE OBTAINED ON A NEW SHOWING OF GOOD CAUSE.

7. MOBILE TRACKING DEVICE WARRANTS; REMOVAL. UPON TERMINATION OF AUTHORIZATION IN THE WARRANT, THE MONITORING OF THE MOBILE TRACKING DEVICE MUST CEASE AND AS SOON AS PRACTICABLE THEREAFTER ANY MOBILE TRACKING DEVICE INSTALLED FOR SUCH PURPOSE EITHER MUST BE REMOVED OR MUST BE PERMANENTLY INACTIVATED BY ANY MEANS APPROVED BY THE ISSUING JUDGE OR JUSTICE.

8. MOBILE TRACKING DEVICE WARRANTS; EXIGENT CIRCUMSTANCES. UPON A SHOWING IN THE APPLICATION THAT EXIGENT CIRCUMSTANCES EXISTED AT THE TIME OF ACTUAL INSTALLATION THAT PRECLUDED OBTAINING A WARRANT THROUGH APPLICATION PRIOR TO INSTALLATION, THE COURT MAY AUTHORIZE THE CONTINUED USE OF THE MOBILE TRACKING DEVICE, EFFECTIVE FROM THE DATE OF ACTUAL INSTALLATION, FOR A PERIOD NOT TO EXCEED THIRTY DAYS. AN APPLICATION PURSUANT TO THIS SUBDIVISION SHALL BE MADE WITHIN FORTY-EIGHT HOURS AFTER ACTUAL INSTALLATION.

S 3. This act shall take effect immediately.