7
Date 2-17-05
SB 429
This should Replace SB042901.avl (already adopted)

Amendments to Senate Bill No. 429
1st Reading Copy

Requested by Senator Jim Shockley

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 16, 2005 (3:26pm)

NEW 1. Page 1, line 10 through page 2, line 1.
Strike: section 1 in its entirety
Renumber: subsequent sections

2. Page 2, line 3.
Following: "**installation**"
Strike: "**-- disclosures**"

3. Page 2, line 7.
Following: "state"
Strike: "sufficient"

4. Page 2, line 22 through line 30.
Strike: subsections (6) through (8) in their entirety
Insert: "(6) (a) For purposes of this section, "electronic tracking device" means a device that:

(i) utilizes global positioning systems, ultrahigh frequency (UHF), very high frequency (VHF), cellular, microwave, or other electronic technology;

(ii) transmits or receives by electronic or mechanical means; and

(iii) when attached to a vehicle or other movable object, reveals the location or movement of the vehicle or other movable object.

(b) The term does not include an electronic device used to monitor the location of a criminal offender who is placed on probation, is monitored as a condition of bail, or is released from incarceration while the offender remains under the active supervision of the state."

NEW from P1, l 23-30

5. Page 3, lines 2 through 6.
Strike: section 3 in its entirety
Renumber: subsequent section

6. Page 3, line 8.
Strike: "[Sections 1 through 3] are"
Insert: "[Section 1] is"

7. Page 3, line 9 through line 10.
Following: "apply to" on line 9

(OVER)

SB042903.avl

Strike: "[sections 1 through 3]"
Insert: "[section 1]"

- END -

1 SB BILL NO. 429

2 INTRODUCED BY _____
(Primary Sponsor)

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF ELECTRONIC TRACKING
5 DEVICES IN CRIMINAL INVESTIGATIONS; REQUIRING A COURT ORDER AND ESTABLISHING OTHER
6 REQUIREMENTS FOR THE USE OF ELECTRONIC TRACKING DEVICES."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 ~~NEW SECTION. Section 1. Electronic tracking device -- limitations on use -- penalty. (1) Except~~
11 as provided in subsection (2), a person may not install or use an electronic tracking device without a court order
12 obtained under [section 2].

13 (2) (a) If prior consent is obtained from each person who owns property to which an electronic tracking
14 device is attached, the provisions of subsection (1) do not apply to the installation or use of an electronic tracking
15 device by an electronic tracking service provider for the:

16 (i) operation, maintenance, or testing of the service;

17 (ii) protection of the rights and property of the service provider; or

18 (iii) protection of the user of the service from abuse of the service or unlawful use of the service .

19 (b) This subsection (2) may not be construed to permit a law enforcement officer to operate an
20 electronic tracking device on private property without a court order obtained under [section 2].

21 (3) A person who knowingly violates subsection (1) shall, upon conviction, be fined an amount not to
22 ~~exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both~~.

23 (4) (a) For purposes of [sections 1 through 3], "electronic tracking device" means a device that:

24 (i) utilizes global positioning systems, ultrahigh frequency (UHF), very high frequency (VHF), cellular,
25 microwave, or other electronic technology;

26 (ii) transmits or receives by electronic or mechanical means; and

27 (iii) when attached to a vehicle or other movable object, reveals the location or movement of the vehicle
28 or other movable object.

29 (b) The term does not include an electronic device used to monitor the location of a criminal offender
30 ~~who is placed on probation, is monitored as a condition of bail, or is released from incarceration while the~~

insert into next section p. 2.

Legislative Services Division

INTRODUCED BILL

1 ~~offender remains under the active supervision of the state.~~

2

3 NEW SECTION. Section ~~2~~ 1. Order for electronic tracking device -- installation ~~-- disclosures.~~ (1)
4 A peace officer shall apply to the district court for an order for the installation and use of an electronic tracking
5 device or for the extension of an existing order. The application must be in writing and under oath. The
6 application must name the prosecutor and the law enforcement agency that will use the electronic tracking
7 device. The applicant shall state ~~sufficient~~ probable cause for issuance of the order.
8 (2) If the court is satisfied that the applicant has shown probable cause for the order, the court shall
9 issue the order for the installation and operation of an electronic tracking device. The order shall authorize the
10 use of the device within the jurisdiction of the court. The order must state:
11 (a) the description of the property to which the device is to be attached, the owner of the property, and
12 the geographical location of the property;
13 (b) the name, if known, of each person who is the subject of the criminal investigation; and
14 (c) the offense or offenses to which the information that may be obtained relates.
15 (3) The installation and operation of the electronic tracking device must create the least amount of
16 interference with and damage to the property. An officer acting pursuant to an order issued by the court under
17 this section may access and use a vehicle's electronic power supply to power the electronic tracking device.
18 (4) An officer acting under an order issued under this section may access the vehicle while it is parked
19 on public property.
20 (5) An order may be issued under this section for a period not to exceed 30 days and may be extended
21 by the court for additional 30-day periods. An extension may be granted only upon a showing of probable cause.
22 ~~(6) An electronic tracking service provider and any other person who has knowledge of the order or of~~
23 the electronic tracking device may not disclose the existence of the order or device to any person without the
24 court's permission.
25 ~~(7)~~ An electronic tracking service provider or any other person must be reasonably compensated by a
26 law enforcement agency for expenses that are incurred by the service provider or other person in furnishing
27 facilities or assistance relating to the order.
28 ~~(8)~~ Proceedings conducted under this section are subject to the secrecy and disclosure provisions
29 relating to grand jury proceedings. Any information obtained pursuant to an order issued under this section is
30 ~~confidential criminal justice information subject to the provisions of Title 44, chapter 5.~~

(6) insert definition - lines 23-30 from page 1 here

1

2 ~~NEW SECTION. **Section 3. Immunity from suit.** An electronic tracking service provider and an officer,~~
3 employee, or agent of a service provider or any other person who is not employed ~~by~~ a governmental entity is
4 not liable for any civil damages for acts or omissions ~~in providing~~ or operating an electronic tracking device under
5 the provisions of [sections ~~1 through~~ 3], except for damages caused by the gross negligence or willful or wanton
6 ~~acts or omissions of the person.~~

7

8 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is ~~[Sections 1 through 3] are~~ intended to be
9 codified as an integral part of Title 46, chapter 4, and the provisions of Title 46, chapter 4, apply to [section 1] ~~[sections 1~~
10 ~~through 3].~~

11

- END -