

# SENATE BILL REPORT

## ESSB 6136

---

---

As Passed Senate, February 17, 2004

**Title:** An act relating to authorization of electronic tracking devices for law enforcement purposes.

**Brief Description:** Authorizing use of electronic tracking devices for law enforcement purposes.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators McCaslin and Roach).

**Brief History:**

**Committee Activity:** Judiciary: 1/16/04, 1/21/04 [DPS].

Passed Senate: 2/17/04, 47-0.

---

### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6136 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline and Roach.

**Staff:** Aldo Melchiori (786-7439)

**Background:** The Supreme Court of Washington has concluded that the citizens of Washington have a right to be free from the type of governmental intrusion that occurs when a global positioning system (GPS) device is attached to a citizen's vehicle, regardless of reduced privacy expectations due to advances in technology. In *State v. Jackson*, 150 Wn.2d 251, 76 P.3d 217 (2003), the court held that absent a recognized exception to the warrant requirement, attachment of a GPS device to a vehicle without a warrant violates the privacy interests of Washington citizens. If police were not required to obtain a warrant, there would be no limitation on the state's use of GPS devices on any person's vehicle, whether criminal activity was suspected or not. In *Jackson*, the detective had obtained a proper warrant and, by tracking Jackson's movements without his knowledge, the police were able to locate the body of his daughter. Jackson was subsequently convicted of first degree murder.

**Summary of Bill:** "Tracking equipment" includes all electronic or mechanical devices used to determine the location, status, movement, or direction of travel of an object without direct visual observation. Tracking equipment may be installed, maintained, and monitored for up to 48 hours without a warrant if exigent circumstances exist at the time the equipment is installed.

To obtain a warrant for the installation of tracking equipment, a law enforcement officer or prosecuting attorney applies to a court. The application must include a description of the object onto which the equipment will be installed and must establish probable cause that the installation will lead to evidence or instruments of a completed or about to be committed

crime, fruits of a crime, things criminally possessed, weapons, or the location of a person who is unlawfully restrained, believed to be a victim in a criminal investigation, or for whose arrest there is probable cause.

The warrant must be supported by a sworn affidavit establishing the grounds for issuing it. The sworn testimony may be an electronically recorded telephonic statement or a combination of written material and an electronically recorded telephonic statement. The recording or a duplication of the recording is part of the court record. The evidence in support of the finding of probable cause is preserved and shall be subject to constitutional limitations for such determinations and may be hearsay.

If granted, the warrant must state the time period or number of days authorized for use of the tracking equipment. The tracking equipment must be installed within ten days after the warrant is issued and may last for a period of up to 30 days. The warrant authorizes any peace officer of the county to install the tracking device; maintain, service, and monitor the device; remove the device upon conclusion of the warrant authority, and report the results to the magistrate who issued the warrant or another court with jurisdiction.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill is intended to codify the requirements identified by the Supreme Court of Washington and provide procedures not provided by the court. Law enforcement officers will be given needed guidance regarding proper warrant procedures for electronic tracking devices. Providing the procedure in statute is preferable to litigating the details.

**Testimony Against:** The court has given adequate guidance. Sixty days is too long a time period for the warrant. Law enforcement should not have the ability to track citizens without a reasonable belief that the person is a wrongdoer. Litigation will not be avoided, because the statute will be tested.

**Testified:** PRO: Tom McBride, WAPA; Larry Erickson, WASPC CONCERNS: Jerry Sheehan, ACLU; Robert Mahler, WACDL.