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AB-904 Search warrants: tracking devices. (2019-2020)

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Assembly Bill No. 904

CHAPTER 63

An act to amend Section 1534 of the Penal Code, relating to search warrants.

[Approved by Governor September 11, 2020. Filed with Secretary of State September 11, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 904, Chau. Search warrants: tracking devices.

Existing law authorizes a search warrant to be issued upon specified grounds, including that the information to be received from the use of a tracking device constitutes evidence that tends to show that a felony or specified misdemeanors has been committed or is being committed, tends to show that a particular person has committed a felony or those specified misdemeanors, or will assist in locating an individual who has committed or is committing a felony or those specified misdemeanors. Existing law requires a warrant issued pursuant to these provisions to meet specified requirements. Existing law defines tracking device for these purposes as any electronic or mechanical device that permits the tracking of the movement of a person or object.

This bill would specify that a tracking device includes any software that permits the tracking of the movement of a person or object.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1534 of the Penal Code is amended to read:

1534. (a) A search warrant shall be executed and returned within 10 days after date of issuance. A warrant executed within the 10-day period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant, unless executed, is void. The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.

(b) (1) A tracking device search warrant issued pursuant to paragraph (12) of subdivision (a) of Section 1524 shall identify the person or property to be tracked and shall specify a reasonable length of time, not to exceed 30 days from the date the warrant is issued, that the device may be used. The court may, for good cause, grant one or more extensions for the time that the device may be used, with each extension lasting for a reasonable length of time, not to exceed 30 days. The search warrant shall command the officer to execute the warrant by installing a tracking device or serving a warrant on a third-party possessor of the tracking data. The officer shall perform any installation authorized by the warrant during the daytime unless the magistrate, for good cause, expressly authorizes installation at another time. Execution of the warrant shall be completed no later than 10 days immediately after the date of issuance. A warrant executed within this 10-day period shall be deemed to have been timely

executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant shall be void, unless it has been executed.

(2) An officer executing a tracking device search warrant shall not be required to knock and announce their presence before executing the warrant.

(3) No later than 10 calendar days after the use of the tracking device has ended, the officer executing the warrant shall file a return to the warrant.

(4) (A) No later than 10 calendar days after the use of the tracking device has ended, the officer who executed the tracking device warrant shall notify the person who was tracked or whose property was tracked pursuant to subdivision (a) of Section 1546.2.

(B) Notice under this paragraph may be delayed pursuant to subdivision (b) of Section 1546.2.

(5) An officer installing a device authorized by a tracking device search warrant may install and use the device only within California.

(6) (A) As used in this section, "tracking device" means any electronic or mechanical device, or software, that permits the tracking of the movement of a person or object.

(B) Nothing in this section shall be construed to authorize the use of any device or software for the purpose of tracking the movement of a person or object.

(7) As used in this section, "daytime" means the hours between 6 a.m. and 10 p.m. according to local time.

(c) If a duplicate original search warrant has been executed, the peace officer who executed the warrant shall enter the exact time of its execution on its face.

(d) A search warrant may be made returnable before the issuing magistrate or their court.