

WRITTEN TESTIMONY OF MATT EHLING
MINNESOTA COALITION ON GOVERNMENT INFORMATION
In Support of House File 3012
House Civil Law Committee February 18, 2020

The Minnesota Coalition on Government Information (MNCOGI) offers its support for making a statutory clarification that the disclosure requirements for tracking warrants issued under 626A.42 are distinct from other electronic monitoring orders issued under separate portions of 626A, and that tracking warrants should be treated under their own discreet standard, as is already provided for by law. The reason for this change is to ensure enhanced transparency around the use of cell phone location tracking technology, as was first intended by the legislature in 2014.

When the tracking warrant framework was first put in place, it established an important probable cause standard for the use of cell phone tracking technology, but it also included specific disclosure and reporting requirements. Those requirements included the transmission of a report to the legislature about the use of tracking warrants, as well as notification to parties who had been surveilled after the termination of the warrant period. The original 2014 law also required that tracking warrants should generally be unsealed after the objective of the warrant had been accomplished. While the legislature placed a requirement to unseal tracking warrants in state law in 2014, these warrants have not been unsealed in practice, necessitating the clarification that HF 3012 seeks to bring to Minnesota Statutes 626A.

From MNCOGI's perspective, the reporting and disclosure requirements established by the 2014 law are just as important as that law's overall probable cause standard. Without disclosure, it is difficult to verify the uses to which tracking warrants are being put, as well as to determine the overall scope of the technology's use.

We would note that since the late 1960s, statutory transparency requirements regarding electronic surveillance have been a critical part of preventing abuses of such technologies. For instance, in 1968 - at the inception of the modern era of electronic surveillance regulation - Congress put reporting requirements in place for the use of wiretaps in criminal cases. They recognized that such a potentially invasive tool must be coupled with disclosure, in order to provide substantive oversight of governmental power.

In a more recent example, Congress passed the USA Freedom Act in 2015, which required more public disclosure about the function of the Foreign Intelligence Surveillance Court (FISA Court), which issues surveillance warrants and orders in national security cases. Calls for this additional disclosure came after the public learned that the FISA court had been issuing extremely broad surveillance orders that authorized the government to collect telephone calling records about virtually all international and all domestic calls in the United States. The scope of this data collection was much broader than the statutory language that was being relied on to authorize it, and the public - and most lawmakers - only became aware of it once a FISA court order became publicly available to review.

The importance of seeing the details of what a warrant actually authorizes is a critical part of oversight, since it demonstrates how the legal authority that underpins the warrant is being used in actuality. The purpose of HF 3012 is to ensure that tracking warrants are eventually unsealed and made publicly available - as originally contemplated by the legislature - and thus we support this bill.

We thank Representative Lesch for bringing HF 3012 forward, and for supporting this important and necessary change to Minnesota law.