

MINNESOTA JUDICIAL BRANCH
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

Jeffrey Shorba
Deputy State Court Administrator
State Court Administrator's Office

(651) 297-7801
Fax: (651) 297-5636
E-mail: jeff.shorba@courts.state.mn.us

DATE: October 22, 2020

TO: Secretary of the Senate
Chief Clerk, House of Representatives
Legislative Reference Library

RE: Minn. Stat. §§ 626A.17, subd. 3, 626A.42, subd. 5(b).
Report to Legislature by the State Court Administrator

Minn. Stat. ch. 626A governs the application for and issuance of warrants that authorize the interception of communications; the installation and use of a pen register; trap and trace; mobile tracking device; electronic communication information; and/or authorize the collection of location information of an electronic device.

Minn. Stat. § 626A.17, subd. 1, requires that within 30 days after the expiration of an order granting or denying an application under chapter 626A or each extension thereof, or the denial of an order approving an interception or the use of a pen register, trap and trace device, or mobile tracking device, the issuing or denying judge shall report to the state court administrator:

- (1) the fact that an order or extension was applied for;
- (2) the kind of order or extension applied for;
- (3) the fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) the period of interceptions or use of a pen register, trap and trace device, or mobile tracking device authorized by the order, and the number and duration of any extensions of the order;
- (5) the offense specified in the order or application, or extension of an order;
- (6) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and
- (7) the nature of the facilities from which or the place where communications were to be intercepted or activity under the order was to be carried out.

Similarly, Minn. Stat. § 626A.42, subd. 5(a), requires that for applications for electronic device location information tracking warrants under section 626A.42, the issuing or denying judge shall report to the state court administrator:

- (1) the fact that a tracking warrant or extension was applied for;

- (2) the fact that the warrant or extension was granted as applied for, was modified, or was denied;
- (3) the period of collection authorized by the warrant, and the number and duration of any extensions of the warrant;
- (4) the offense specified in the warrant or application, or extension of a warrant;
- (5) whether the collection required contemporaneous monitoring of an electronic device's location; and
- (6) the identity of the applying investigative or peace officer and agency making the application and the person authorizing the application.

Minn. Stat. §§ 626A.17, subd. 3, and 626A.42, subd. 5(b), require the State Court Administrator (SCAO) on or before November 15 of each even-numbered year to file with the legislature a report concerning (1) all warrants and orders authorizing the interception of communications and the use of a pen register, trap and trace device, mobile tracking device, or other electronic or mechanical device, and all tracking warrants authorizing the collection of location information during the two previous calendar years and (2) all applications that were denied during the two previous calendar years. Each report shall include a summary and analysis of the data required to be filed by Section 626A.42, which requires reporting on electronic device location information warrants. The reports required under sections 626A.17 and 626A.42 were combined for purposes of this year's report. The required data is presented in Tables 1 – 7 on pages 4 – 6 of this report.

During the reporting period, the majority of warrants/orders reported to SCAO authorized the installation of pen register or mobile tracking devices, followed by some combination of these two kinds of warrants/orders with trap and trace devices, and/or the tracking of electronic device location information. Those warrants/orders are identified in Table 2, "Kind of Warrant/Order," as "Pen Register, Trap and Trace, Electronic Device Location Information." Table 5 in this report provides more categories than in previous reports because of a new reporting method that was fully instituted during this entire reporting period which improved the completeness of the data. Warrants authorizing the use of multiple technologies under chapter 626A are considered to be governed by all applicable statutes simultaneously. All of the warrants authorizing the installation of pen register and trap and trace devices, and/or the tracking of incoming and outgoing calls and/or texts, as well as the tracking of electronic device location information are presumptively sealed under Minn. Stat. § 626A.37, subd. 4. Additionally, as required by section 626A.08, subdivision 2, applications made and warrants issued under chapter 626A are required to be sealed by the judge and may only be disclosed upon a showing of good cause before a judge of the district court.

In order to comply with the reporting requirement in section 626A.42, warrants issued that authorized only the tracking of electronic device location information are identified separately in Table 2, "Kind of Warrant/Order," as "Electronic Device Location Information." Although the warrants are identified separately as "Electronic Device Location Information" warrants, SCAO did not receive any reports of warrants for contemporaneous monitoring of electronic device location information that did not invoke other applicable provisions of chapter 626A, most commonly Minn. Stat. § 626A.37, subd. 4, or of federal law. SCAO has not identified any warrant under seal during this reporting time period that is governed solely by 626A.42 and that was required by statute to be unsealed after a certain period of

time.¹ As stated above, warrants citing other governing law are considered to be governed by all applicable statutes simultaneously, and as required by sections 626A.37, subd. 4, and 626A.08, subd. 2, applications made and warrants issued under chapter 626A are sealed.

¹ Warrants that seek electronic device location information records from a provider for a period of time in the past, as opposed to contemporaneous monitoring for a period of time in the future, are typically filed in the court's public criminal search warrant file after execution and are never filed under seal. Although it is not clear, warrants that seek provider records regarding electronic device location information may arguably be governed by section 626A.42; however, because these warrants are not captioned as section 626A warrants, and are filed as public criminal search warrants after execution, they are not identified as reportable under section 626A.42 and are not reflected in this report.

Table 1. Warrants issued under Minn. Stat. Chapter 626A, by Judicial District, 2018-2019.

District	Total Count
1	141
2	612
3	144
4	2800
5	20
6	94
7	205
8	38
9	109
10	188
Grand Total	4351

Table 2. Warrants issued under Minn. Stat. Chapter 626A, by kind of warrant/order, 2018-2019.

Kind of Warrant/Order	Total Count that lists a particular kind or combination of kinds
Pen Register only	73
Trap and Trace only	16
Mobile Tracking Device only	925
Electronic Device Location Information only	171
Pen Register, Trap and Trace	1648
Pen Register, Electronic Device Location Information	6
Trap and Trace, Electronic Device Location Information	604
Mobile Tracking Device, Electronic Device Location Information	84
Pen Register, Trap and Trace, Mobile Tracking Device	26
Pen Register, Trap and Trace, Electronic Device Location Information	461
Pen Register, Trap and Trace, Mobile Tracking Device, Electronic Device Location Information	7
All Other Combinations ²	7
Unspecified to SCAO ³	323
Grand Total	4351

² “Other” combinations with less than four count of each: Pen Register, Mobile Tracking Device (2); Trap and Trace, Mobile Tracking Device (2); Pen Register, Mobile Tracking Device, Wiretap (1), Wiretap (1), Trap and Trace, Mobile Tracking Device, Electronic Device Location Information (1).

³ Data included in this report was provided to the State Court Administrator’s Office (SCAO) by individual judicial districts. A small number of warrants reported to SCAO did not specify one or more of the required pieces of data.

Table 3. Warrants issued under Minn. Stat. Chapter 626A, by communication mode, 2018-2019.

Communication Mode Tracked	Total Count that lists a particular mode (warrants may list more than one mode)
Phone/Cell Phone	2071
Social Media	1107
Motor Vehicle	1024
Other Communication Mode ⁴	20
Unspecified to SCAO	245

Table 4. Warrants issued under Minn. Stat. Chapter 626A, by offense specified in the order or application, 2018-2019.

Offense	Total Count that lists a particular offense (warrants may list more than one offense)
Narcotics	2377
Homicide	199
Sex Crime	170
Kidnapping	37
Assault	320
Property	491
Weapon	445
Fugitive	219
Other Offense ⁵	595
Unspecified to SCAO	330

⁴ Examples of “Other” communication modes include: tote bag, IP address, email, packages of simulated narcotics.

⁵ Examples of “Other” offenses include: Terroristic threats; probation violation; malicious punishment of a child.

Table 5. Warrants issued under Minn. Stat. Chapter 626A, by duration specified in the order, 2018-2019.

Order Duration	Total Count
Greater than 90 Days	18
61-90 Days	250
31-60 Days	3766
0-30 Days	241
Other Duration ⁶	29
Unspecified to SCAO	47
Grand Total	4351

Table 6. Warrants issued under Minn. Stat. Chapter 626A, by type of investigative or law enforcement agency making the application, 2018-2019.

Agency	Total Count
County Sheriff	799
Federal	307
Police	2268
State Agency	497
Task Force	419
Unspecified to SCAO	61
Grand Total	4351

Table 7. Warrants Granted, Denied, or Modified under Minn. Stat. Chapter 626A, 2018-2019.

Granted/Denied/Modified	Total Count
Granted	4349
Denied	14
Modified - Extension of Time Granted	2
Grand Total	4365

⁶ “Other” durations: 6/1/18 through date of compliance; until further order of the court; December 6, 2018 through date of subpoena compliance and for the next 30 Day for any and all approximate and/or precise location information or until apprehension whichever is sooner; Indeterminate; 60 days prior and after.