

Legislative Analysis



MOTOR VEHICLE TRACKING DEVICE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 325 (Substitute H-3)

Sponsor: Sen. Raymond E. Basham

House Committee: Judiciary

Senate Committee: Judiciary

Revised First Analysis (4-14-10)

BRIEF SUMMARY: The bill would make it a crime to install or place a tracking device on a person's vehicle without that person's knowledge and consent, provide exceptions to the prohibition, and prescribe penalties for a violation.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on local units of government, which would depend upon the extent to which persons were convicted of unlawfully installing or using motor vehicle tracking devices. No data is available on the potential number of convictions. Local governments could incur increase costs related to misdemeanor probation and incarceration in local jails. These costs vary across counties. Any additional penal fine revenue generated under the bill would benefit public libraries.

THE APPARENT PROBLEM:

Global positioning systems (GPS) have made it possible for victims of car accidents to receive immediate help, for trucking companies to track hazardous shipments and the movements of drivers, for hikers and skiers to be found if lost or injured in the wilderness, and for law enforcement officials to track the whereabouts of sex offenders. Parents can find their kids at the park, pet owners can locate where in the neighborhood the dog escaped to, and many a lost motorist has been able to get directions to their desired destination.

However, there is a dark side to GPS systems. These devices are making it easier for jealous ex-spouses/boyfriends/girlfriends and criminals to track their intended victims. According to the National Center for Victims of Crime, 10 percent of stalking victims report being monitored with GPS devices. Since many cases of stalking escalate to physical assault against – or murder of – the victim, this is a disturbing trend.

As often happens, advances in technology often outpace criminal laws designed to deter or punish abuses. Such is the case with the use of GPS to track down an intended target. Several cases of stalking have been reported across the nation and within Michigan over the past few years. In one Michigan incident, a man used a GPS device to track his ex-wife, kidnap her, and hold her at gunpoint. Fortunately, their son, when returning from school, saw her tied to a chair with the gun to her head, and ran to a nearby relative's home for help. Yet, only a handful of states have enacted laws that would criminalize the use of GPS devices to stalk another person. Some believe that Michigan should make it a specific criminal offense to use a GPS device to stalk another person.

THE CONTENT OF THE BILL:

House Bill 325 would add a new section to the Michigan Penal Code (MCL 750.539I). Doing any of the following would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000:

- Installing or placing a tracking device, or causing one to be installed or placed, in or on a motor vehicle without the knowledge and consent of the owner (or the lessee if the vehicle were rented).
- Tracking the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator (or either the lessee or authorized operator if the vehicle were a rental).
- While being the subject of a personal protection order, tracking – with a tracking device – the location of a motor vehicle operated or occupied by an individual protected under the PPO.
- While on probation or parole for an assaultive crime, tracking the location of a motor vehicle operated or occupied by a victim of that crime without his or her knowledge and consent.

"Motor vehicle" would mean that term as defined in Section 412. (The term includes "all vehicles impelled on the public highways of this state by mechanical power, except traction engines, road rollers and such vehicles as run only upon rails or tracks.")

"Tracking device" would mean any electronic device designed or intended to be used to track the location of a motor vehicle on a street or highway of the state regardless of whether that information were recorded.

Exceptions. The bill would not apply to any of the following:

** The installation of any tracking device by a police officer while lawfully performing duties as a police officer.

** The installation or use of any device providing vehicle tracking only for purposes of providing mechanical, operational, directional, navigational, weather, or traffic information to the operator of the vehicle.

** The installation or use of any device for providing emergency assistance to the operator or passengers under the terms and conditions of a subscription service, including a trial period of that service.

** The installation or use of any device only for providing missing vehicle assistance for the benefit of the owner of the vehicle.

**** The installation or use of any device only to provide diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including during a trial period of the service.**

**** The installation or use of any device or service providing the occupants with clear notice that the vehicle may be tracked.**

**** The installation or use of a tracking device by a parent or guardian of a child less than 18 years of age on any vehicle owned by the child or adults. However, this exemption would not apply to individuals who were the subject of a PPO or on probation or parole for an assaultive crime as described above.**

**** The installation or use of a tracking device by a court officer appointed under provisions of the Revised Judicature Act and while lawfully performing his or her duties.**

HOUSE COMMITTEE ACTION:

The committee adopted a substitute bill that made the following changes:

**** Expanded the types of acts that would trigger a violation under the bill to include ones in which the subject of a PPO used a device to locate the person the PPO was intended to protect and ones in which a person paroled or on probation for an assaultive crime used a device to locate his or her victim. "Assaultive crime" is defined in Section 9A of Chapter X of the Code of Criminal Procedure (MCL 770.9A)**

**** For those exempted under the bill, extend the exemption to installation of a tracking device.**

**** Eliminated the exemption for licensed private investigators and bail agents (who currently are not regulated by the state).**

**** Added exemptions for parents tracking their minor children unless certain conditions apply and for court officers in the performance of their duties.**

BACKGROUND INFORMATION:

The bill is similar to Senate Bill 1572 of the 2007-2008 legislative session. The bill passed the Senate and was reported by the House Judiciary Committee, but failed to see House floor action.

ARGUMENTS:

For:

GPS and other electronic devices have been used by stalkers to locate their victims. If a crime such as kidnapping, assault, or murder follows, the person can be prosecuted. However, it is not against the law to install – without a person's knowledge or consent –

an electronic device capable of tracking the whereabouts of another person. Thus, if the device is discovered before the target is harmed, there is no violation of law. The bill would address this concern by creating a misdemeanor offense for the unlawful installation or use of tracking devices. The H-3 substitute also eliminates the exemption for bounty hunters. As this profession is not regulated by the state, they should not be included in the exemptions. In addition, a handful of states have already amended their laws to address the issue of using electronic devices to stalk another person, and several more are considering proposed legislation. The bill includes some important exemptions, and provides increased protection to people at risk for being stalked.

Against:

The H-3 version is problematic for the following reasons:

** Allows the "installation of" but does not authorize the "use of" tracking devices by police officers.

** The exemption for parents to track a minor child could still be abused by a parent to track the whereabouts of the other parent. Not all batterers are the subject of a PPO or been convicted of an assaultive crime.

** The committee substitute eliminates the exemption for licensed private investigators. The standard of practice for the industry along with the requirements of their licensing act would mitigate the likelihood of abuses by these professionals. Private investigators are currently allowed to use tracking devices in the course of their investigations. To date, there are no reported instances of abuses on the part of licensed investigators. However, the lack of the exemption would take away a tool necessary for private investigators to do their job effectively and efficiently. Private investigators conduct investigations into insurance fraud, parental abductions, and missing persons; locate assets; assist with criminal defense investigations; provide civil enforcement; and assist law enforcement agencies (e.g., prosecutors' offices). The use of GPS devices to track moving subjects eliminates the need for private investigators to stay in visual contact when tracking a vehicle in traffic. Lack of an exemption puts the public and investigators at greater risk of accidents if, instead of using electronic tracking devices (including older "bird dog units" which beep when in close proximity to the target), private investigators must maintain visual contact at all times when moving through traffic.

** The definition of "tracking device" is imprecise and so could be open to interpretation by prosecutors and courts as to which types of devices the bill would apply. For example, would a device that is not marketed as a tracking device, but that can be used to track a vehicle's location, such as a cell phone, be covered under the definition? In addition, though the bill would apply to a device "intended" to be used to track the location of a vehicle, would that mean the person using the device (say, a cell phone) must "intend" to track a vehicle with it or would it mean that the manufacturer "intended" the device to be used to track a vehicle? These are important distinctions because there has been at least one incident in the U.S. in which a man used a cell phone taped to an ex-girlfriend's car to locate her.

POSITIONS:

The Department of State Police support the bill. (4-13-10)

The Michigan Council Against Domestic and Sexual Violence indicated support for the bill. (3-17-10)

The ACLU of Michigan indicated support for the bill. (3-17-10)

A representative of the Michigan Court Officer, Deputy Sheriff & Process Servers Association offered support of the bill if amended to include an exemption for court officers. (3-17-10)

A representative of the Michigan Council of Professional Investigators testified in support of the bill as passed by the Senate but the Council opposes the H-3 version. (4-13-10)

A representative of the Michigan Bail Coalition testified in support of the bill as reported by the Senate. (3-17-10)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.