

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 325

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by amending the title, as amended by 2005 PA
105, and by adding section 539/.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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An act to revise, consolidate, codify, and add to the statutes
relating to crimes; to define crimes and prescribe the penalties
and remedies; to provide for restitution under certain
circumstances; to provide for the competency of evidence at the
trial of persons accused of crime; to provide immunity from
prosecution for certain witnesses appearing at ~~such~~ **CRIMINAL**
trials; **TO PROVIDE FOR LIABILITY FOR DAMAGES;** and to repeal certain

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1 acts and parts of acts inconsistent with or contravening any of the
2 provisions of this act.

3 SEC. 539/. (1) A PERSON WHO DOES ANY OF THE FOLLOWING IS GUILTY
4 OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1
5 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH:

6 (A) INSTALLS OR PLACES A TRACKING DEVICE, OR CAUSES A TRACKING
7 DEVICE TO BE INSTALLED OR PLACED, IN OR ON A MOTOR VEHICLE WITHOUT
8 THE KNOWLEDGE AND CONSENT OF THE OWNER OF THAT MOTOR VEHICLE OR, IF
9 THE MOTOR VEHICLE IS LEASED, THE LESSEE OF THAT MOTOR VEHICLE.

10 (B) TRACKS THE LOCATION OF A MOTOR VEHICLE WITH A TRACKING
11 DEVICE WITHOUT THE KNOWLEDGE AND CONSENT OF EITHER THE OWNER OR THE
12 AUTHORIZED OPERATOR OF THAT MOTOR VEHICLE OR, IF THE MOTOR VEHICLE
13 IS LEASED, EITHER THE LESSEE OR THE AUTHORIZED OPERATOR OF THAT
14 MOTOR VEHICLE.

15 (C) WHILE BEING THE RESTRAINED PARTY UNDER A PROTECTIVE ORDER,
16 TRACKS THE LOCATION OF A MOTOR VEHICLE OPERATED OR OCCUPIED BY AN
17 INDIVIDUAL PROTECTED UNDER THAT ORDER WITH A TRACKING DEVICE.

18 (D) WHILE ON PROBATION OR PAROLE FOR AN ASSAULTIVE CRIME OR A
19 VIOLATION OF SECTION 81(3) OR (4) OR SECTION 81A(2) OR (3), TRACKS
20 THE LOCATION OF A MOTOR VEHICLE OPERATED OR OCCUPIED BY A VICTIM OF
21 THAT CRIME OR BY A FAMILY MEMBER OF THE VICTIM OF THAT CRIME
22 WITHOUT THE KNOWLEDGE AND CONSENT OF THAT VICTIM OR FAMILY MEMBER.

23 (2) SUBSECTION (1) DOES NOT APPLY TO ANY OF THE FOLLOWING:

24 (A) THE INSTALLATION OR USE OF ANY DEVICE THAT PROVIDES
25 VEHICLE TRACKING FOR PURPOSES OF PROVIDING MECHANICAL, OPERATIONAL,
26 DIRECTIONAL, NAVIGATION, WEATHER, OR TRAFFIC INFORMATION TO THE
27 OPERATOR OF THE VEHICLE.

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1 (B) THE INSTALLATION OR USE OF ANY DEVICE FOR PROVIDING
2 EMERGENCY ASSISTANCE TO THE OPERATOR OR PASSENGERS OF THE VEHICLE
3 UNDER THE TERMS AND CONDITIONS OF A SUBSCRIPTION SERVICE, INCLUDING
4 ANY TRIAL PERIOD OF THAT SUBSCRIPTION SERVICE.

5 (C) THE INSTALLATION OR USE OF ANY DEVICE FOR PROVIDING
6 MISSING VEHICLE ASSISTANCE FOR THE BENEFIT OF THE OWNER OR OPERATOR
7 OF THE VEHICLE.

8 (D) THE INSTALLATION OR USE OF ANY DEVICE TO PROVIDE
9 DIAGNOSTIC SERVICES REGARDING THE MECHANICAL OPERATION OF A VEHICLE
10 UNDER THE TERMS AND CONDITIONS OF A SUBSCRIPTION SERVICE, INCLUDING
11 ANY TRIAL PERIOD OF THE SUBSCRIPTION SERVICE.

12 (E) THE INSTALLATION OR USE OF ANY DEVICE OR SERVICE THAT
13 PROVIDES THE LESSEE OF THE VEHICLE WITH CLEAR NOTICE THAT THE
14 VEHICLE MAY BE TRACKED. FOR A LESSOR WHO INSTALLS A TRACKING DEVICE
15 SUBSEQUENT TO THE ORIGINAL VEHICLE MANUFACTURE, THE NOTICE SHALL BE
16 PROVIDED IN WRITING WITH AN ACKNOWLEDGMENT SIGNED BY THE LESSEE,
17 REGARDLESS OF WHETHER THE TRACKING DEVICE IS ORIGINAL EQUIPMENT, A
18 RETROFIT, OR AN AFTERMARKET PRODUCT. THE REQUIREMENT FOR WRITTEN
19 ACKNOWLEDGMENT PLACED UPON THE LESSOR IS NOT IMPOSED UPON THE
20 MANUFACTURER OF THE TRACKING DEVICE OR THE MANUFACTURER OF THE
21 VEHICLE.

22 (F) THE INSTALLATION OR USE OF ANY TRACKING DEVICE BY [THE] PARENT
23 OR GUARDIAN OF A [MINOR] ON ANY VEHICLE
24 OWNED OR LEASED BY THAT PARENT OR GUARDIAN OR THE [MINOR, AND OPERATED BY
25 THE MINOR.

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27 (G) THE INSTALLATION OR USE OF A TRACKING DEVICE BY A POLICE

1 OFFICER WHILE LAWFULLY PERFORMING HIS OR HER DUTIES AS A POLICE
2 OFFICER.

3 (H) THE INSTALLATION OR USE OF A TRACKING DEVICE BY A COURT
4 OFFICER APPOINTED UNDER SECTION 8321 OF THE REVISED JUDICATURE ACT
5 OF 1961, 1961 PA 236, MCL 600.8321, WHILE LAWFULLY PERFORMING HIS
6 OR HER DUTIES AS A COURT OFFICER.

7 (I) THE INSTALLATION OR USE OF A TRACKING DEVICE BY A PERSON
8 LAWFULLY PERFORMING HIS OR HER DUTIES AS A BAIL AGENT AS AUTHORIZED
9 UNDER SECTION 167B OR AS AN EMPLOYEE OR CONTRACTOR OF THAT BAIL
10 AGENT LAWFULLY PERFORMING HIS OR HER DUTIES AS AN EMPLOYEE OR
11 CONTRACTOR OF A BAIL AGENT.

12 (J) EXCEPT AS PROVIDED IN SUBSECTION (3), THE INSTALLATION OR
13 USE OF A TRACKING DEVICE BY A PROFESSIONAL INVESTIGATOR OR AN
14 EMPLOYEE OF A PROFESSIONAL INVESTIGATOR LAWFULLY PERFORMING HIS OR
15 HER DUTIES AS A PROFESSIONAL INVESTIGATOR OR EMPLOYEE OF A
16 PROFESSIONAL INVESTIGATOR FOR THE PURPOSE OF OBTAINING INFORMATION
17 WITH REFERENCE TO ANY OF THE FOLLOWING:

18 (i) SECURING EVIDENCE TO BE USED BEFORE A COURT, BOARD,
19 OFFICER, OR INVESTIGATING COMMITTEE.

20 (ii) CRIMES OR WRONGS DONE, THREATENED, OR SUSPECTED AGAINST
21 THE UNITED STATES OR A STATE OR TERRITORY OF THE UNITED STATES OR
22 ANY OTHER PERSON OR LEGAL ENTITY.

23 (iii) LOCATING AN INDIVIDUAL KNOWN TO BE A FUGITIVE FROM
24 JUSTICE.

25 (iv) LOCATING LOST OR STOLEN PROPERTY OR OTHER ASSETS THAT HAVE
26 BEEN AWARDED BY THE COURT.

27 (3) THE EXEMPTION UNDER SUBSECTION (2) (J) DOES NOT APPLY IF

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1 EITHER OF THE FOLLOWING APPLIES:

2 (A) THE PROFESSIONAL INVESTIGATOR OR THE EMPLOYEE OF THE
3 PROFESSIONAL INVESTIGATOR IS WORKING ON BEHALF OF A CLIENT WHO IS
4 THE RESTRAINED PARTY UNDER A PROTECTIVE ORDER.

5 (B) THE PROFESSIONAL INVESTIGATOR OR THE EMPLOYEE OF THE
6 PROFESSIONAL INVESTIGATOR KNOWS OR HAS REASON TO KNOW THAT THE
7 PERSON SEEKING HIS OR HER INVESTIGATIVE SERVICES, INCLUDING THE
8 INSTALLATION OR USE OF A TRACKING DEVICE, IS DOING SO TO AID IN THE
9 COMMISSION OF A CRIME OR WRONG.

10 (4) A PERSON WHO ILLEGALLY INSTALLS OR USES A TRACKING DEVICE
11 OR A PERSON DESCRIBED IN SUBSECTION (2) (I) OR (J) WHO INSTALLS OR
12 USES A TRACKING DEVICE IS LIABLE FOR ALL DAMAGES INCURRED BY THE
13 OWNER OR LESSEE OF THE MOTOR VEHICLE CAUSED BY THE INSTALLATION OR
14 USE OF THE TRACKING DEVICE.

15 (5) AS USED IN THIS SECTION:

16 (A) "ASSAULTIVE CRIME" MEANS THAT TERM AS DEFINED IN SECTION
17 9A OF CHAPTER X OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
18 770.9A.

19 [(B) "MINOR" MEANS AN INDIVIDUAL LESS THAN 18 YEARS OF AGE.

20 [(C)] "MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 412.

21 [(D)] "PROFESSIONAL INVESTIGATOR" MEANS A PERSON LICENSED UNDER
22 THE PROFESSIONAL INVESTIGATOR LICENSURE ACT, 1965 PA 285, MCL
338.821 TO 338.851.

23 [(E)] "PROTECTIVE ORDER" MEANS BOTH OF THE FOLLOWING:

24 (i) AN ORDER ENTERED UNDER SECTION 2950, 2950A, OR 2950H OF THE
25 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950,
26 600.2950A, AND 600.2950H, OR UNDER SECTION 6B OF CHAPTER V OR
27 SECTION 3(2) (O) OF CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE,

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1 1927 PA 175, MCL 765.6B AND 771.3, OR UNDER SECTION 13A OF CHAPTER
2 XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.13A, OR
3 UNDER SECTION 36(16) OF THE CORRECTIONS CODE OF 1953, 1953 PA 232,
4 MCL 791.236.

5 (ii) A FOREIGN PROTECTION ORDER AS DEFINED IN SECTION 2950H OF
6 THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950H.

7 [(F)] "TRACKING DEVICE" MEANS ANY ELECTRONIC DEVICE THAT IS
8 DESIGNED OR INTENDED TO BE USED TO TRACK THE LOCATION OF A MOTOR
9 VEHICLE REGARDLESS OF WHETHER THAT INFORMATION IS RECORDED.

10 Enacting section 1. This amendatory act takes effect August 1,
11 2010.