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S.B. 100
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Sens. Manning and Antonio

Local Impact Statement Procedure Required: No

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Highlights

- The bill will likely affect a relatively small number of cases where the alleged conduct includes the illegal use of a tracking device or tracking application. The associated processing and sanctioning costs for any given county or municipal criminal justice system should be minimal annually, as would any gain in revenue from fines and court costs and fees.
- As a result of the bill's felony penalty enhancement that will apply to a subset of new cases, there may be a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration/supervision costs to the extent that offenders are convicted to a prison term.

Detailed Analysis

The bill (1) prohibits a person from knowingly installing, without consent, a tracking device or tracking application on another person's property or to cause such a device or application to track the position or movement of another person or their property, (2) specifies circumstances in which previously granted consent is presumed to be revoked, and (3) provides exemptions to the prohibition. A violation of the prohibition is the offense of "illegal use of a tracking device or application," generally, a first degree misdemeanor. The penalty increases to a fourth degree felony under certain circumstances (e.g., if the offender has had a prior conviction of this offense of menacing by stalking, was the subject of a protection order at the time of the offense, or has a history of violence toward the victim). The table below shows the bill's felony and misdemeanor sentences and fines for the new offense.

Penalties for Illegal Use of a Tracking Device or Application		
Offense Level	Fine	Term of Incarceration
Felony, 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Misdemeanor, 1 st degree	Up to \$1,000	Jail, not more than 180 days

Current trends

Unwanted tracking with a device or application has been increasingly reported since the advent of certain technological advances that allow individuals to use and place electronic tracking devices on persons and property more easily and inexpensively. The technology allows users to easily track lost or stolen property such as keys, wallets, luggage, and vehicles, as well as individuals like children. In addition to these intended uses, tracking devices and/or software applications have also been reported in incidents involving theft, and more commonly, stalking.

According to the National Conference of State Legislatures (NCSL), as of September 2022, “At least 26 states and the District of Columbia have addressed privacy concerns raised when individuals track the movements of others without their knowledge.” Of that number, 11 have included prohibitions to using such technology without consent to their stalking laws: Alaska, Arizona, Connecticut, Illinois, Maryland, New York, North Carolina, North Dakota, Oklahoma, Washington, and Wyoming, plus the District of Columbia.¹ Additionally, NCSL reports that the market is growing as parents use them to safeguard their children, and caregivers use them to monitor individuals with dementia or other health conditions or special needs.

Fiscal effect

The bill can be seen, at least in part, as addressing conduct that, given rapidly changing technology, may not explicitly or unambiguously violate an existing prohibition. The bill provides additional avenues to prosecute such conduct, but is unlikely to change the seriousness of sanctions that an offender could face. Currently, the conduct could be charged under the offense of “menacing by stalking,” a violation of which is generally a first degree misdemeanor.² However, “menacing by stalking” requires a pattern of conduct, which may be difficult to establish with a device or application. Anecdotal evidence suggests that it is problematic for some local prosecutors and law enforcement officials to determine an appropriate charge for unwanted tracking in the manner prohibited by the bill because such conduct is not explicitly prohibited. Prosecutors and officers may feel more comfortable charging the conduct under the new offense. Additionally, the charges maybe be more successfully prosecuted. The bill also provides for a

¹ National Conference of State Legislatures (NCSL), “Private Use of Location Tracking Devices: State Statutes,” September 2022. Available at [NCSL.org](https://www.ncsl.org).

² Menacing by stalking is generally a first degree misdemeanor, and increases to a felony of the fourth or fifth degree depending on the circumstances present.

number of exceptions including certain uses by law enforcement, parents and legal guardians, caregivers, and certain business-related activities.

The number of new criminal cases stemming from the bill is difficult to estimate for several reasons, perhaps most notably because of the issue of detection. Based on current charging trends however, the bill will likely affect a relatively small number of cases under the jurisdiction of any given county and municipal criminal justice system. The costs associated with adjudication, prosecution, indigent defense (if applicable), and sanctioning, including a residential sanction such as jail, will likely be minimal at most annually. Counties and municipalities may gain minimal annual revenue collected from violators pursuant to the order of the sentencing court.

In addition, a court generally imposes state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state costs total \$60 for a felony and \$29 for a misdemeanor. The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020. The \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020.

The annual revenue gain to the state because of violations of the bill's prohibition will be minimal at most annually.

Of note is that the court rarely imposes the maximum permissible fine, and collecting the fine and court costs and fees can be problematic. This is because offenders can be financially unable or unwilling to pay.

Department of Rehabilitation and Correction (DRC)

As a result of the bill's felony enhancement, there could potentially be a small number of additional offenders sentenced to prison. However, in the case of fourth degree felonies, there is presumption generally in favor of a community control rather than the imposition of a prison term for fourth degree felonies. The fiscal effect of a relatively small increase in an existing prison population of approximately 43,500 will not generate a significant increase in DRC's annual incarceration expenditures. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year. This suggests that any increase in DRC's GRF-funded incarceration costs is likely to be no more than minimal annually.