

As Passed by the Senate

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Sub. S. B. No. 100

Senators Manning, Antonio

Cosponsors: Senators Kunze, Blessing, Brenner, Cirino, Craig, DeMora, Dolan, Gavarone, Hackett, Hicks-Hudson, Huffman, S., Ingram, Johnson, Landis, Reineke, Reynolds, Roegner, Romanchuk, Rulli, Schaffer, Smith, Sykes, Wilkin, Wilson

A BILL

To enact section 2903.216 of the Revised Code to 1
generally prohibit a person from knowingly 2
installing a tracking device or application on 3
another person's property without the other 4
person's consent or failing to remove or ensure 5
removal of such a device or application from 6
another person's property if the other person 7
gave consent and subsequently revokes it. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2903.216 of the Revised Code be 9
enacted to read as follows: 10

Sec. 2903.216. (A) As used in this section: 11

(1) "Business entity" means any form of corporation, 12
partnership, association, cooperative, joint venture, business 13
trust, or sole proprietorship that conducts business in this 14
state. 15

(2) "Business of private investigation" and "private investigator" have the same meanings as in section 4749.01 of the Revised Code. 16
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(3) "Disabled adult" and "elderly person" have the same meanings as in section 2913.01 of the Revised Code. 19
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(4) "Law enforcement agency" means any organization or unit comprised of law enforcement officers, and also includes any federal or military law enforcement agency. 21
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(5) "Person" means an individual, but does not include a business entity. 24
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(6) "Ohio protection order" means a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, a protection order issued pursuant to section 2151.34, 2903.213, or 2903.214 of the Revised Code, or a no contact order issued as any of the following: 26
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(a) As part of a person's sentence under a community control sanction imposed under section 2929.16, 2929.17, 2929.26, or 2929.27 of the Revised Code; 32
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(b) As a term or condition of a person's release under section 2929.20 of the Revised Code; 35
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(c) As a post-release control sanction imposed as a condition of a person's post-release control under section 2967.28 of the Revised Code; 37
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(d) As a term of supervision for a person transferred to transitional control under section 2967.26 of the Revised Code; 40
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(e) As a term or condition of the intervention plan of a person granted intervention in lieu of conviction under section 42
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2951.041 of the Revised Code. 44

(7) "Protection order issued by a court of another state" 45
has the same meaning as in section 2919.27 of the Revised Code. 46

(8) "Tracking application" means any software program that 47
permits a person to remotely determine or track the position or 48
movement of another person or another person's property. 49

(9) "Tracking device" means an electronic or mechanical 50
device that permits a person to remotely determine or track the 51
position or movement of another person or another person's 52
property. 53

(B) Except as otherwise provided in division (D) of this 54
section, no person shall knowingly do either of the following: 55

(1) Install a tracking device or tracking application on 56
another person's property without the other person's consent or 57
cause a tracking device or tracking application to track the 58
position or movement of another person or another person's 59
property without the other person's consent; 60

(2) If the person installed a tracking device or tracking 61
application on another's property with the other person's 62
consent and the other person subsequently revokes that consent, 63
fail to remove or ensure the removal of the device or 64
application after the other person revokes the consent. 65

(C) (1) For purposes of this section, if a person has given 66
consent for another to install a tracking device or tracking 67
application on the consenting person's property, it is presumed 68
that the consenting person has revoked that consent if any of 69
the following applies: 70

(a) The consenting person and the person to whom consent 71

was given are lawfully married and one of them files a petition 72
for divorce or dissolution of marriage from the other; 73

(b) The consenting person or the person to whom consent 74
was given files a petition or motion under section 2151.34, 75
2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code 76
requesting the issuance against the other person of an Ohio 77
protection order under the section; 78

(c) An Ohio protection order is issued against the other 79
person, and the person to be protected under the order is the 80
consenting person. 81

(2) Revocation of consent under this division is effective 82
upon the service of the petition or motion or an Ohio protection 83
order. 84

(D) This section does not apply to any of the following: 85

(1) A law enforcement officer, or any law enforcement 86
agency, that installs a tracking device or tracking application 87
on another person's property or causes a tracking device or 88
tracking application to track the position or movement of 89
another person or another person's property as part of a 90
criminal investigation, or a probation officer, parole officer, 91
or employee of the department of rehabilitation and correction, 92
when engaged in the lawful performance of the officer's or 93
employee's official duties; 94

(2) A parent or legal guardian of a minor child who 95
installs or uses a tracking device or tracking application to 96
track the minor child if any of the following applies: 97

(a) The parents or legal guardians of the child are 98
lawfully married to each other and are not separated or 99
otherwise living apart, and either of those parents or legal 100

guardians consents to the installation of the tracking device or tracking application; 101
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(b) The parent or legal guardian of the child is the sole surviving parent or legal guardian of the child; 103
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(c) The parent or legal guardian of the child has sole custody of the child; 105
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(d) The parents or legal guardians of the child are divorced, separated, or otherwise living apart and neither parent has sole custody of the child, and both consent to the installation of the tracking device or tracking application. 107
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(e) The parents or legal guardians of the child are divorced, separated, or otherwise living apart, neither parent has sole custody of the child, and either only one parent consents to the installation of the tracking device or tracking application or one parent revokes consent, if the consenting parent only uses the tracking device or tracking application during that parent's parenting or custodial time and disables or removes the tracking device or application during the nonconsenting parent's parenting or custodial time. 111
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(3) A caregiver of an elderly person or disabled adult, if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult; 120
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(4) A person acting in good faith on behalf of a business entity for a legitimate business purpose, provided that this division does not apply to a private investigator engaged in the business of private investigation on behalf of another person; 126
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(5) (a) A private investigator or other person licensed 130
under section 4749.03 of the Revised Code, who is acting in the 131
normal course of the investigator's business of private 132
investigation on behalf of another person and who has the 133
consent of the owner of the property upon which the tracking 134
device or tracking application is installed, for the purpose of 135
obtaining information with reference to any of the following: 136

(i) Criminal offenses committed, threatened, or suspected 137
against the United States, a territory of the United States, a 138
state, or any person or legal entity; 139

(ii) Locating an individual known to be a fugitive from 140
justice; 141

(iii) Locating lost or stolen property or other assets 142
that have been awarded by the court; 143

(iv) Investigating claims related to workers' 144
compensation. 145

(b) This division does not apply if the person on whose 146
behalf the private investigator is working is the subject of an 147
Ohio protection order or a protection order issued by a court of 148
another state or if the private investigator knows or reasonably 149
should know that the person on whose behalf the private 150
investigator is working seeks the investigator's services to aid 151
in the commission of a crime. 152

(6) An owner or lessee of a motor vehicle who installs, or 153
directs the installation of, a tracking device or tracking 154
application on the vehicle during the period of ownership or 155
lease, if any of the following applies: 156

(a) The tracking device or tracking application is removed 157
before the vehicle's title is transferred or the vehicle's lease 158

expires; 159

(b) The new owner of the vehicle, in the case of a sale, 160
or the lessor of the vehicle, in the case of an expired lease, 161
consents in writing to the non-removal of the tracking device or 162
tracking application; 163

(c) The owner of the vehicle at the time of the 164
installation of the tracking device or tracking application was 165
the original manufacturer of the vehicle. 166

(7) A person who installs a tracking device or application 167
on property in which the person has an ownership or contractual 168
interest, unless the person is the subject of a protective order 169
and the property is likely to be used by the person who obtained 170
the protective order; 171

(8) A person or business entity that installs a tracking 172
device or tracking application on any fixed wing aircraft or 173
rotorcraft operated or managed by the person or business entity 174
pursuant to 14 C.F.R. part 91 or part 135 to track the position 175
or movement of the fixed wing aircraft or rotorcraft; 176

(9) A surety bail bond agent, or any employee or 177
contractor of a surety bail bond agent, that installs a tracking 178
device or tracking application on another person's property or 179
causes a tracking device or tracking application to track the 180
position or movement of another person or another person's 181
property as part of the surety bail bond agent's, employee's, or 182
contractor's official responsibilities or duties. 183

(E) Whoever violates this section is guilty of "illegal 184
use of a tracking device or application." 185

(1) Except as otherwise provided in division (E)(2) of 186
this section, illegal use of a tracking device or application is 187

<u>a misdemeanor of the first degree.</u>	188
<u>(2) Illegal use of a tracking device or application is a</u>	189
<u>felony of the fourth degree if any of the following applies:</u>	190
<u>(a) The offender previously has been convicted of or</u>	191
<u>pleaded guilty to a violation of this section or section</u>	192
<u>2903.211 of the Revised Code.</u>	193
<u>(b) At the time of the commission of the offense, the</u>	194
<u>offender was the subject of a protection order issued under</u>	195
<u>section 2903.213 or 2903.214 of the Revised Code, regardless of</u>	196
<u>whether the person to be protected under the order is the victim</u>	197
<u>of the offense or another person.</u>	198
<u>(c) Prior to committing the offense, the offender had been</u>	199
<u>determined to represent a substantial risk of physical harm to</u>	200
<u>others as manifested by evidence of then-recent homicidal or</u>	201
<u>other violent behavior, evidence of then-recent threats that</u>	202
<u>placed another in reasonable fear of violent behavior and</u>	203
<u>serious physical harm, or other evidence of then-present</u>	204
<u>dangerousness.</u>	205
<u>(d) The offender has a history of violence toward the</u>	206
<u>victim or a history of other violent acts towards the victim.</u>	207