

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 452**

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**Introduced by Assembly Member Ma**

February 15, 2011

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An act to amend Section 637.7 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 452, as amended, Ma. Electronic tracking devices: invasion of privacy.

Existing law prohibits a person or entity from using an electronic tracking device to determine the location or movement of a person. This prohibition does not apply when the owner of a vehicle has consented to the use of the electronic tracking device with respect to the vehicle, or to a law enforcement agency.

This bill would recast this provision to prohibit a person or entity from using, ~~attempting to use,~~ or knowingly employing or engaging a 3rd party to use ~~or attempt to use,~~ an electronic tracking device to determine the location or movement of a person without the consent of that person. ~~This bill would provide that a person who voluntarily uses a device knowing that it is being used to determine his or her location or movement is deemed to have consented to the use of the device.~~

This bill would additionally provide that this prohibition does not apply to the parent or legal guardian of a minor child or conservator of an incompetent person for purposes of tracking that minor or incompetent person, except as specified. The bill would also provide that this prohibition does not apply to ~~the provision of commercial services use of an electronic tracking device by a commercial service provider,~~ as provided, *only if the provider has given a specified notice*

*regarding the use of the device. The bill would prohibit the provider from selling, distributing, transferring, or releasing any information gathered or collected to any 3rd party or the person utilizing the service, except as specified.*

Existing law defines an electronic tracking device as any device attached to a vehicle or other moveable thing that reveals its location or movement by the transmission of electronic signals.

~~This bill would instead define an electronic tracking device as any device that permits another person or entity to remotely determine or track the position or movement of a person or object attached to, placed on, or inserted into, a vehicle, wireless telephone, or other movable thing that reveals its location or movement by the transmission of electronic or radio signals, including, but not limited to, a global positioning system.~~

*The bill would also prohibit a person from requiring, coercing, or compelling any other individual to consent to undergo the subcutaneous implanting of an electronic tracking device, as specified.*

Existing law provides that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$1,000, or both that fine and imprisonment.

This bill would provide that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$2,500, or by both that fine and imprisonment. This bill would provide that a violation of these provisions by a person who is prohibited by a court order from *contacting, directly or indirectly*, harassing, following, surveilling, or stalking a person protected by that order is punishable by imprisonment in a county jail for not more than one year, by a fine not to exceed \$5,000, or by both that fine and imprisonment.

By increasing the punishment for a crime, and by creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that the right  
2 to privacy is fundamental to a free and civilized society and that  
3 the increasing use of electronic surveillance devices is eroding  
4 personal liberty. The Legislature declares that the electronic  
5 tracking of a person's location without that person's knowledge  
6 and consent violates that person's reasonable expectation of  
7 privacy.

8 SEC. 2. Section 637.7 of the Penal Code is amended to read:

9 637.7. (a) No person or entity in this state shall use, ~~attempt~~  
10 ~~to use~~, or knowingly employ or engage a third party to use ~~or~~  
11 ~~attempt to use~~, an electronic tracking device to determine the  
12 location or movement of a person without the consent of that  
13 person.

14 ~~(b) A person is deemed to have consented to the use of an~~  
15 ~~electronic tracking device when he or she voluntarily uses a device~~  
16 ~~that he or she knows is being used to determine his or her location~~  
17 ~~or movement.~~

18 (e)

19 (b) Subdivision (a) shall not apply to any of the following:

20 ~~(1) The registered~~

21 (1) *The legal* owner, lessor, or lessee of a vehicle who has  
22 consented to the use of the electronic tracking device with respect  
23 to that vehicle.

24 ~~(2) The lawful use of an electronic tracking device by a federal,~~  
25 ~~state, or local law enforcement agency.~~

26 (2) *The use of an electronic tracking device by a federal, state,*  
27 *or local law enforcement agency or individual law enforcement*  
28 *officer, acting in good faith, for a law enforcement purpose.*

29 (3) The use of an electronic tracking device by a parent or legal  
30 guardian or person having legal custody of a minor for purposes  
31 of tracking that minor, unless there is a court order in place  
32 prohibiting the parent, legal guardian, or other person having legal  
33 custody of the minor from *contacting, directly or indirectly,*  
34 *harassing, following, surveilling, or stalking* the minor.

35 (4) The use of an electronic tracking device by a conservator  
36 or guardian of an incompetent person for the purposes of tracking  
37 that incompetent person, unless there is a court order in place  
38 prohibiting the conservator or guardian of the incompetent person

1 from *contacting, directly or indirectly*, harassing, following,  
2 surveilling, or stalking the incompetent person.

3 ~~(5) A commercial service, such as mobile telephone service or~~  
4 ~~vehicle safety or security service, which allows the service provider~~  
5 ~~to determine the location or movement of a device which is~~  
6 ~~provided to the customer of the commercial service and for the~~  
7 ~~purpose of providing the commercial service.~~

8 *(5) The use of an electronic tracking device by a commercial*  
9 *service provider, such as a wireless telephone service provider,*  
10 *when the electronic tracking device is used in support of the*  
11 *primary purpose of the commercial service being provided. This*  
12 *paragraph shall apply only after the commercial service provider*  
13 *has given notice of the use of the electronic tracking device to the*  
14 *person utilizing the service. The notice shall describe the process*  
15 *by which the commercial service provider may electronically track*  
16 *the person and disclose for what purposes the provider is using*  
17 *electronic tracking. The commercial service provider shall not*  
18 *sell, distribute, transfer, or release any information gathered or*  
19 *collected regarding a person from the electronic tracking device*  
20 *to any third party or the person utilizing the service without a*  
21 *court order or the written consent of the actual person being*  
22 *tracked.*

23 ~~(d)~~

24 *(c) As used in this section, “electronic tracking device” means*  
25 *any device that permits another person or entity to remotely*  
26 *determine or track the position or movement of a person or object,*  
27 *including, but not limited to, a Global Positioning System or other*  
28 *electronic tracking system. attached to, placed on, or inserted into*  
29 *a vehicle, wireless telephone, or other movable thing that reveals*  
30 *its location or movement by the transmission of electronic or radio*  
31 *signals, including, but not limited to, a global positioning system.*

32 ~~(e)~~

33 *(d) A violation of this section is a misdemeanor punishable by*  
34 *imprisonment in a county jail not to exceed six months, or by a*  
35 *fine not to exceed two thousand five hundred dollars (\$2,500), or*  
36 *by both that fine and imprisonment.*

37 ~~(f)~~

38 *(e) Notwithstanding subdivision (e), a violation of this section*  
39 *by a person who is prohibited from *contacting, directly or**  
40 **indirectly*, harassing, following, surveilling, or stalking another*

1 person or persons by a court order who tracks the person or persons  
2 protected by that order is guilty of a misdemeanor, punishable by  
3 imprisonment in a county jail not to exceed one year, or by a fine  
4 not to exceed five thousand dollars (\$5,000), or by both that fine  
5 and imprisonment.

6 ~~(g)~~

7 (f) A violation of this section by a person, business, firm,  
8 company, association, partnership, or corporation licensed under  
9 Division 3 (commencing with Section 5000) of the Business and  
10 Professions Code shall constitute grounds for revocation of the  
11 license issued to that person, business, firm, company, association,  
12 partnership, or corporation, pursuant to the provisions that provide  
13 for the revocation of the license as set forth in Division 3  
14 (commencing with Section 5000) of the Business and Professions  
15 Code.

16 (g) *Notwithstanding subdivision (a), a person shall not require,*  
17 *coerce, or compel any other individual to consent to undergo the*  
18 *subcutaneous implanting of an electronic tracking device as those*  
19 *terms are defined in subdivision (h) of Section 52.7 of the Civil*  
20 *Code.*

21 (h) *It is not a defense to this section that the electronic tracking*  
22 *device used by the person or entity failed to function properly.*

23 SEC. 3. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.