

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 1549**

with committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 23, 2023

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1549 ACS.

This bill, as amended, would make it a crime of the fourth degree, punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both, for a person, in order to initiate or facilitate an unlawful act, to knowingly install or place, or cause to be installed or placed, an electronic tracking device or tracking application to track or determine the location of another person. The bill defines an “electronic tracking device” as “any device designed or intended to be used for the sole purpose of tracking the location or movement of a person that reveals its location or movement by the transmission of electronic signals”; and a “tracking application” as “any computer application software installed or otherwise operational on a computer or mobile device that is used to surreptitiously track and transmit to another person the movement or determine the location of the computer or mobile device.”

There would be a permissive inference (for consideration by a jury) that the use of a tracking device or application to conduct surreptitious surveillance of another person was to initiate or facilitate an unlawful act, such as stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10) or harassment pursuant to N.J.S.2C:33-4.

The bill would exempt actions involving State or local government entities and equipment owned, leased, or operated by those entities, as the bill indicates that the provisions which criminalize tracking or location spotting activities would not be applicable to such entities.

The bill also provides that several enumerated parties, and in some cases specific uses tied to those parties, would be deemed to be lawful tracking or location spotting of a person. These parties and their lawful uses would include:

- a parent or guardian of a minor child for the purpose of tracking or determining the location of the minor child;

- for the purpose of monitoring, tracking, or locating a person who, due to a physical or mental health condition, may be at risk of injury or death;

- a person in order to track or locate personal property during a lawful business transaction in which the person's personal property is in the temporary possession or otherwise under the control of a third party;

- a person collecting consumer location data as part of a lawful business practice, so long as the use is disclosed in a terms of use policy, privacy policy, or similar document or form made available to the consumer;

- an employer for the purpose of tracking an employee or vehicle used by an employee while engaged in the course of employment when not prohibited by State or federal law or regulation. The bill adds that a failure by an employer to comply with the written notice requirement to use a tracking device in a vehicle used by an employee in accordance with the provisions of section 1 of P.L.2021, c.449 (C.34:6B-22) or failure to comply with any other requirements in order to track an employee or vehicle used by an employee pursuant to another State or federal law or regulation would only be considered a violation of that law or regulation, and not punishable as a crime pursuant to this section; and

- any person who has obtained the consent of the person to be tracked or located, which consent would be required to be provided in writing, in the case of an electronic tracking device, or, in the case of a tracking application, by opting-in to or otherwise affirmatively accepting its use.

A person's consent would be presumed to be revoked if:

- the person who gave consent and the person who obtained consent are spouses, civil union partners, or domestic partners, and one person has filed a petition for divorce, dissolution of the civil union, or termination of the domestic partnership; or

- the person who gave consent or the person who obtained consent has filed an application for a temporary or final restraining order pursuant to the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.).

The bill would take effect on the first day of the fourth month next following enactment.

This bill, as amended and reported by the committee, is identical to the Senate Committee Substitute for Senate Bill No. 827, also reported today by the committee.

#### THE COMMITTEE AMENDMENTS TO THE BILL:

- revise the definition of "electronic tracking device" to limit the bill's scope to only devices used solely for tracking, and the definition of "tracking application" to also limit the bill's scope to applications

used to surreptitiously track the location of a computer or mobile device;

- add to the new tracking crime a *mens rea* element of “knowingly” installing, placing, or causing the installation or placing of an electronic tracking device or tracking application;

- revise the described lawful purpose of collecting consumer location data, which would be permissible so long as the data collection is disclosed in a terms of use policy, privacy policy, or similar document or form made available to the consumer; and

- more clearly exempt from the bill employer tracking activities concerning their employees that are not prohibited by State or federal law or regulation, as described in the statement above.