



SENATE BILL 238: Stalking by GPS/Criminal Offense

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee:	House Judiciary II	Date:	June 23, 2015
Introduced by:	Sens. Stein, Hartsell	Prepared by:	Susan Sitze
Analysis of:	PCS to Third Edition S238-CSSA-75		Committee Counsel

SUMMARY: *Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location and would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony. The PCS adds Section 2 to the bill.*

[As introduced, this bill was identical to H187, as introduced by Reps. Glazier, Horn, Faircloth, McGrady, which is currently in House Judiciary II.]

CURRENT LAW: Cyberstalking is punishable as a Class 2 misdemeanor and includes any of the following:

- Use in electronic mail or electronic communication language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or things of value from any person.
- Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
- Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

Any offense under this section may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State. These provisions do not impair any constitutionally protected activity, including speech, protest, or assembly.

Cyberstalking is punishable as a Class 2 misdemeanor.

BILL ANALYSIS:

Section 1 of Senate Bill 238 would also make it cyberstalking to do the following: "Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person."

It would not constitute cyberstalking for any of the following persons to install, place, or use an electronic tracking device:

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- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, who is lawfully performing official duties.
- The owner or lessee of any vehicle on which the owner or lessee installs, places or uses an electronic tracking device.
 - This exception does not apply if the owner or lessee is subject to a 50B domestic violence protective order or any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.
- A legally authorized representative of a disabled adult.
- The owner of fleet vehicles, when tracking such vehicles.
- The creditor of a motor vehicle dealer or seller when tracking those motor vehicles under the specified circumstances.
- Any person installing, placing or using an electronic tracking device as authorized by an order of a State or federal court.
- A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

Section 2 would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2015, and applies to offenses occurring on or after that date. Section 2 of this act becomes effective October 1, 2015. The remainder of this act is effective when it becomes law.

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Brad Krehely and Janice Paul, staff attorneys, substantially contributed to this summary.