



SENATE BILL 238: Stalking by GPS/Criminal Offense

2015-2016 General Assembly

Committee:	Senate Judiciary II	Date:	April 13, 2015
Introduced by:	Sens. Stein, Hartsell	Prepared by:	Janice Paul
Analysis of:	PCS to First Edition S238-CSTJ-14		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. The Proposed Committee Substitute (PCS) modifies the definition of fleet vehicle, the exception for private investigators, and the provision relating to parents or legal guardians of a minor, and makes technical changes.*

[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: A person guilty of cyberstalking:

- Uses in electronic mail or electronic communication any words or 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. G.S. 14-196.3(b)(1).
- Electronically mails or electronically communicates to another person repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person. G.S. 14-196.3(b)(2).
- Electronically mails or electronically communicates to another person and knowingly makes 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. G.S. 14-196.3(b)(3).
- Knowingly permits an electronic communication device under the person's control to be used for any purpose prohibited by this section. G.S. 14-196.3(b)(4).

These provisions do not:

- Apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others
- Impair any constitutionally protected activity, including speech, protest, or assembly.

An offense under this section is considered to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by a person in this State.

Cyberstalking is punishable as a Class 2 misdemeanor.



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BILL ANALYSIS:

The PCS for 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:

- 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 parent or legal guardian of a minor on any vehicle owned or leased by that parent or legal guardian and operated by the minor.
 - This exception does not apply if the parent or legal guardian is subject to a domestic violence protective order *unless* the parent or legal guardian subject to the order has custody of the minor.
- 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.

The PCS would also define "electronic tracking device" and "fleet vehicle."

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses occurring on or after that date.

Brad Krehely, counsel to House Judiciary II, substantially contributed to this summary.