

As Introduced

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Representative Burke

**Cosponsors: Representatives Adams, J., Blair, Boose, Grossman, Huffman,
Ruhl, Sears, Stebelton**

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A B I L L

To enact sections 2917.51 and 2933.81 of the Revised 1
Code to prohibit the use of a tracking device to 2
determine the location or movement of a person 3
without the person's consent subject to specified 4
exceptions, to provide for the issuance of a 5
search warrant to a law enforcement officer or 6
prosecutor authorizing the installation, use, and 7
removal of a tracking device subject to specified 8
conditions, and to provide for the installation 9
and use of a tracking device by an investigative 10
officer or law enforcement officer without a 11
search warrant in specified emergency situations 12
and subject to specified conditions. 13

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

Section 1. That sections 2917.51 and 2933.81 of the Revised 14
Code be enacted to read as follows: 15

Sec. 2917.51. (A) As used in this section: 16

(1) "Tracking device" means any device that reveals its 17
location or movement by the transmission of electronic signals. 18

(2) "Class A license," "class B license," and "private investigator" have the same meanings as in section 4749.01 of the Revised Code. 19
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(B) Except as otherwise provided in this section, no person shall use a tracking device to determine the location or movement of another person without the other person's consent. 22
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(C) Division (B) of this section does not apply to the use of a tracking device pursuant to section 2933.81 of the Revised Code by any law enforcement agency, law enforcement officer, prosecutor, or investigative officer if the use is in accordance with that section. 25
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(D) Division (B) of this section does not apply to any of the following: 30
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(1) The use of a tracking device to determine the location or movement of another person if the owner or lien holder of a vehicle has consented to the use of a tracking device with respect to the vehicle and the device is used with respect to that vehicle; 32
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(2) The use of a tracking device to determine the location or movement of another person if the lessor or lessee of a vehicle and the person operating the vehicle have consented to the use of a tracking device with respect to the vehicle and the device is used with respect to that vehicle; 37
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(3) To an action of a law enforcement agency acting in a law enforcement capacity or to an action of a law enforcement official, court official, or other authorized person that relates to an offender's or delinquent child's use of a global positioning system device, global positioning device, or electronic monitoring device required pursuant to a sanction imposed or order issued under any provision of the Revised Code; 42
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(4) To an action of United States military law enforcement 49

personnel in the performance of the personnel's official duties; 50

(5) To an action of a parent, guardian, custodian, or person 51
in loco parentis of a child or another person, with respect to 52
determining the location or movement of the child or other person 53
with whom the parent, guardian, custodian, or person in loco 54
parentis has the specified legal relationship; 55

(6) To an action of a person who is a family member or 56
caregiver of another person who has been diagnosed by a licensed 57
physician to be suffering from Alzheimer's disease, vascular 58
dementia, Pick's disease, Creutzfeldt-Jakob disease, Parkinson's 59
disease, or Lewy body dementia, with respect to determining the 60
location or movement of the other person who has been so 61
diagnosed; 62

(7) To an action of a facility licensed, certified, or 63
accredited pursuant to Chapter 3712., 3721., 3722., or 3727. of 64
the Revised Code, with respect to determining the location or 65
movement of a patient through the use of a tracking device when 66
the device is considered medically necessary by the patient's 67
physician; 68

(8) To the provision of a commercial service, including, but 69
not limited to, a mobile telephone service or vehicle safety or 70
security service, that allows the provider of the service to 71
determine the location or movement of a device provided to a 72
customer of the commercial service for the purpose of providing 73
the commercial service; 74

(9) To an action of a private investigator who has been 75
issued a class A or class B license under Chapter 4749. of the 76
Revised Code that is valid at the time of the action, while in the 77
performance of any duty that is authorized for the private 78
investigator in connection with pending, active civil litigation 79
if all of the following are satisfied: 80

(a) Before engaging in the action, the private investigator obtains an order authorizing the use of a tracking device from the court of common pleas of the county in which the person who is the subject of the tracking device resides. 81
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(b) Any information or data obtained as a result of the use of a tracking device by the private investigator is kept confidential and is not to be disclosed to any person other than the judge and the parties involved in the litigation and their attorneys except upon order of the court in which the civil litigation is pending, the information or data so obtained is subject to discovery by any party to the civil litigation, and, upon the termination of the civil litigation, the information or data is immediately destroyed. 85
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(E) Notwithstanding division (D) of this section, no person shall be required to be implanted with a tracking device pursuant to this section. 94
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(F) Whoever violates this section is guilty of "unauthorized use of a tracking device," a misdemeanor of the first degree. 97
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Sec. 2933.81. (A) As used in this section: 99

(1)(a) Except as provided in division (A)(1)(b) of this section, "tracking device" means an electronic or mechanical device that, when placed or installed upon a person or object, permits one or more other persons to remotely determine or track the position and movement of the person upon whom, or the object upon which, the device is placed or installed. 100
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(b) As used in this section, "tracking device" does not include any of the following: 106
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(i) Any device, including, but not limited to, a cellular telephone or another personal electronic device, that includes as an incidental feature the capability of determining the location 108
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of the device by utilizing a global positioning satellite system; 111

(ii) Any device that is installed or utilized with the 112
knowledge and consent of the owner or user of the device or, in 113
the case of a minor, with the knowledge and consent of the minor's 114
parent or guardian. 115

(2) "Investigative officer" has the same meaning as in 116
section 2933.51 of the Revised Code. 117

(3) "Law enforcement officer" means any sheriff, deputy 118
sheriff, constable, municipal police officer, marshal, deputy 119
marshal, or state highway patrolman, or any officer, agent, or 120
employee of this state or any of its agencies, instrumentalities, 121
or political subdivisions upon whom, by statute, the authority to 122
arrest violators is conferred, when the officer, agent, or 123
employee is acting within the limits of that statutory authority. 124

(4) "Prosecutor" means the prosecuting attorney of a county, 125
the village solicitor, city director of law, or similar chief 126
legal officer of a municipal corporation, and any assistant of any 127
of those officers. 128

(B) A law enforcement officer of a law enforcement agency in 129
the county in which the tracking device is to be installed, or a 130
prosecutor who serves that county or a municipal corporation 131
within that county, may apply to a judge of the court of common 132
pleas of that county for the issuance of a search warrant 133
authorizing the installation, use, and removal of a tracking 134
device. Each application for a search warrant of that nature shall 135
be in writing upon oath or affirmation to a judge of the court of 136
common pleas of the county in which the tracking device is to be 137
installed and shall contain all of the following: 138

(1) A full and complete statement of the facts relied on by 139
the applicant that are sufficient to establish probable cause to 140
believe that a particular crime has been committed, is being 141

committed, or will be committed and that the person or object to 142
be tracked is involved, was involved, or will be involved in the 143
commission or facilitation of that crime; 144

(2) A full and complete statement of the facts relied on by 145
the applicant that are sufficient to establish probable cause to 146
believe that the use of a tracking device will result in the 147
prevention of a criminal offense under investigation, the seizure 148
of evidence relevant to the investigation or prosecution of a 149
criminal offense, or the whereabouts of a fugitive from justice or 150
a suspect, victim, or witness relating to a criminal offense; 151

(3) A particular description of the person or object upon 152
which a tracking device is to be installed. 153

(C) Upon the written application of a law enforcement officer 154
or prosecutor made pursuant to division (B) of this section, a 155
judge of a court of common pleas with whom the application is made 156
may issue a search warrant authorizing the installation, use, and 157
removal of a tracking device. If a judge of a court of common 158
pleas issues a search warrant of that nature, all of the following 159
apply: 160

(1) A tracking device authorized by the search warrant shall 161
be installed within ten days after the issuance of the warrant and 162
shall be installed within the county served by the issuing judge. 163
The date and time of installation shall be recorded and included 164
in the return described in division (C)(4) of this section that is 165
made to the issuing judge. If the tracking device is not installed 166
within the ten-day period specified in this division, the warrant 167
shall be returned to the issuing judge as unexecuted. 168

(2) The search warrant shall authorize the use of a tracking 169
device for a reasonable period of time, not to exceed forty-five 170
days, unless extended as provided in this division, commencing on 171
the date on which the tracking device is installed upon the person 172

or object to be tracked. Upon written application for an extension 173
of the authorized time for use of the device and upon a finding of 174
good cause, the issuing judge may authorize one or more extensions 175
of the search warrant for a reasonable period of time, not to 176
exceed forty-five days for each such extension. 177

(3) When the period of time authorized for the use of a 178
tracking device under the search warrant or the last extension of 179
the period of time for the use of the device has expired, 180
monitoring of the tracking device shall be discontinued 181
immediately. 182

(4) Within ten days after the period of time authorized for 183
the use of a tracking device under the search warrant or the last 184
extension of the period of time for the use of the device has 185
expired, the officer executing the warrant shall make a return of 186
the warrant to the issuing judge. The return shall specify the 187
date on which and the time at which the tracking device was 188
installed, the address or location of installation of the tracking 189
device, the date on which and the time at which the monitoring was 190
discontinued, and a general summary of the movements of the object 191
or person tracked during the duration of the tracking. 192

(5) Within ten days after the period of time authorized for 193
the use of a tracking device under the search warrant or the last 194
extension of the period of time for the use of the device has 195
expired, the officer executing the warrant shall serve a copy of 196
the warrant on the person who was tracked or whose property was 197
tracked. The office shall accomplish service of the warrant on a 198
person under this division by delivering a copy of it to the 199
person, by leaving a copy of it at the person's residence or usual 200
place of abode with an individual of suitable age and discretion 201
who resides at that location, or by mailing a copy of it to the 202
person's last known address. Upon the request of the law 203
enforcement officer or prosecutor who applied for the warrant or 204

the officer who executed the warrant, the issuing judge may delay 205
for a reasonable time service of the notice otherwise required 206
under this division. If the issuing judge delays service of notice 207
upon request as described in this division, the notice shall be 208
served not later than ten days after the issuance of an arrest 209
warrant, indictment, or information based wholly or in part upon 210
information derived from the use of a tracking device pursuant to 211
the warrant. 212

(6) A tracking device installed and used under the authority 213
of the search warrant may be used within the county served by the 214
issuing judge and, provided the device is installed within that 215
county, may be used outside that county. 216

(7) Except as otherwise provided in this division, the search 217
warrant and any extension of the warrant, the application upon 218
which the warrant and extensions, if any, were issued, the 219
affidavit supporting the warrant and extensions, if any, the 220
return made under division (C)(4) of this section, and any request 221
for an order granting a delay in the service of notice made as 222
described in division (C)(5) of this section shall be filed with 223
the clerk of the court of common pleas served by the issuing 224
judge, or with the issuing judge if so ordered, at the time the 225
return is made or when the warrant has been returned pursuant to 226
division (C)(1) of this section as unexecuted. The judge who 227
issues the search warrant may order that the documents described 228
in this division be sealed while an investigation remains ongoing 229
until such time that an arrest warrant, indictment, or information 230
based wholly or in part upon information derived from the use of 231
the tracking device installed and used under the authority of the 232
warrant is issued. 233

(D)(1) Any investigative officer or law enforcement officer 234
who is specially designated in writing by the attorney general or 235
by a prosecuting attorney for the purpose of having installed and 236

using a tracking device without the prior issuance of a search 237
warrant, may have installed and use a tracking device without the 238
prior issuance of a search warrant pursuant to divisions (B) and 239
(C) of this section, subject to division (D)(2) of this section, 240
if the officer reasonably determines both of the following: 241

(a) That an emergency situation exists that involves either 242
immediate danger of death or serious physical harm to any person 243
or conspiratorial activities characteristic of organized crime and 244
the emergency situation requires the installation and use of a 245
tracking device before a search warrant authorizing that 246
installation and use can, with due diligence, be obtained pursuant 247
to divisions (B) and (C) of this section; 248

(b) There are grounds upon which a search warrant could be 249
issued pursuant to divisions (B) and (C) of this section to 250
authorize such installation and use. 251

(2) If an investigative officer or law enforcement officer 252
has installed and uses a tracking device under authority of 253
division (D)(1) of this section, within forty-eight hours after 254
the time the tracking device is installed, the officer or another 255
investigative officer or law enforcement officer serving the same 256
law enforcement agency as that officer shall apply for and obtain 257
in accordance with divisions (B) and (C) of this section a search 258
warrant approving the installation or use of the device. 259

(3) If an application for a search warrant is made as 260
described in division (D)(2) of this section and it is granted, 261
division (C) of this section applies to the further installation 262
and use of the tracking device. 263

If an application for a search warrant is made as described 264
in division (D)(2) of this section and the application is denied, 265
or if the installation or use of the tracking device under 266
division (D)(1) of this section is terminated without a search 267

warrant having been issued pursuant to divisions (B) and (C) of 268
this section, any tracking information or other surveillance 269
effected pursuant to division (D)(1) of this section is 270
confidential and shall not be disclosed or be admissible in any 271
court of this state except to prove violations of this section or 272
section 2917.51 of the Revised Code. 273