

# Rob Hutton

STATE REPRESENTATIVE • 13<sup>TH</sup> ASSEMBLY DISTRICT

## Testimony of Representative Rob Hutton in Support of Assembly Bill 536

Mr. Chairman and members of the Judiciary Committee, I want to take this opportunity to thank you for allowing a public hearing on AB 536. The intent of this bill is to establish a clear guideline for law enforcement to obtain current or historic location information of a cellular telephone or other personal communication devices. The guidelines in this bill will;

- Provide clarity for law enforcement in tracking and obtaining criminal evidence.
- Enhance the integrity of the evidence submitted in court leading to proper convictions.
- Provide appropriate privacy protections for law abiding citizens.

Although infrequently exercised, current law allows for law enforcement officers to request and use location information to identify or track the location of a personal communications device without first obtaining a court order. After thorough discussion with the Wisconsin Department of Justice and local law enforcement this bi-partisan legislation clearly outlines how law enforcement can obtain the location information of a personal communication device.

This bill establishes guidelines for law enforcement when collecting information location for personal wireless communications devices. Based on probable cause, law enforcement officer may apply for a warrant that authorizes the use of location information to identify or track a personal communication device. A judge may then issue a warrant authorizing the use of location information for a period of no more than 60 days, with the possibility of 60 day extensions upon request of the attorney general or district attorney.

There are emergency occurrences for law enforcement where time is of the essence. It is important to note this bill would protect law enforcement's ability to obtain cellular phone location information without a warrant in those emergency cases. Situations involving a death or serious bodily harm to a person would be exempt from this law, and is consistent with federal Electronic Communications Privacy Act (ECPA).

I ask for your support of this bi-partisan legislation to help protect our local police officers and investigators, as well as the privacy of Wisconsin's citizens.

Thank you.



December 19, 2013

To: Members of the Assembly Committee on Judiciary  
From: Senator Glenn Grothman  
Re: Assembly Bill 536

Thank you for the opportunity to testify in support of AB 536.

In this age of rapidly advancing technology, it is often we find the use of certain technologies intersects with individual privacy rights during police investigations. To prevent against potential abuses, the legislature must establish guidelines to weigh the interests of law enforcement and private citizens to ensure a balance between the integrity of criminal investigations and the constitutional rights of individuals.

Current law allows law enforcement officers to request and use the location and tracking information from a personal communication device without first obtaining a warrant from the court. This bill prevents this tracking without a warrant and provides a clear set of guidelines for law enforcement to obtain a warrant during criminal investigations. This bill also defines probable cause as the standard which will dictate a judge's decision to sign a warrant for personal communications tracking.

Another imperative aspect of this bill is to preserve law enforcement's ability to obtain immediate access to tracking data without a warrant in emergency situations where a delay could result in death or harm to a victim. This will allow an immediate response to time-sensitive safety concerns.

This important legislation balances the needs of law enforcement to conduct criminal investigations and the right to privacy for citizens of this state. As new technologies continue to emerge, it will be of great importance to continue addressing the intersections of technology and individual liberties.

Montana and Maine have recently enacted similar legislation with many states currently ushering bills through the legislative process. Wisconsin can continue to be among the states leading the nation in addressing these important issues of privacy.

Please join me in support of this bill to protect law enforcement and the privacy of Wisconsin citizens.



# Wisconsin State Public Defender

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December 18, 2013

Representative Rob Hutton  
3 North, State Capitol  
Madison, WI 53708

Dear Representative Hutton,

Thank you for your work in drafting and introducing Assembly Bill 536 which provides a process for requesting a warrant to track the location of a cellular telephone. The Wisconsin Judicial Council's Criminal Procedure Committee has done work to identify best practices in this area and AB 536 meets nearly all the benchmarks for this topic. Based on the committee's research, we have identified four minor changes that would further enhance AB 536.

First, based on federal legislation (Online Communications and Geolocation Protection Act, House Resolution 983) language could be added to further clarify what information may be tracked or intercepted. From Section 2601 of H. Res. 983: "Geolocation information means, with respect to an individual, any information that is not the content of the communication, concerning the location of a communication device or tracking device that, in whole or in part, is generated by or derived from the operation of that device and that could be used to determine or infer information regarding the present, prospective, or historical location of the individual."

Second, additional language could be added to clarify what constitutes probable cause in the warrant application. From *U.S. v. Powell*, May 3, 2013--- F.Supp.2d --- (Eastern District Michigan District Court): "In sum, because "the belief that the items sought will be found at the location to be searched must be supported by less than prima facie proof but more than mere suspicion," to establish probable cause for long-term, real-time, cell-site tracking, the government should have to demonstrate a *nexus between a suspect and the phone, the phone and the criminal activity, as well as the criminal activity and suspect's location in protected areas, rather than merely probable cause that the person is engaged in criminal activity.*"

Next, additional language could be added to proposed s. 968.373(4) regarding the 60 day duration of the warrant: ...or the period necessary to achieve the objective of the warrant, whichever is less.

Finally, language in proposed s. 968.373(7m) could more explicitly state that evidence obtained in violation of the section may not be introduced before and federal, state, or local tribunal or authority.

Again, these suggestions are meant to improve an already well drafted bill. Thank you again for your efforts. If you have any questions, please do not hesitate to contact me.

Sincerely,

Adam Plotkin  
Legislative Liaison