

March 25, 2014

To: Members of the Senate Committee on Judiciary & Labor
From: Senator Glenn Grothman
Re: Senate Bill 673 – relating to unlawful GPS tracking

Thank you for the opportunity to testify in support of Senate Bill 673.

As technology continues to advance at a rapid pace, concerns over the personal privacy of individual citizens are becoming more and more prevalent. Policy-makers and the courts are increasingly being called upon to delineate the limits of technology's reach into our lives.

This bill simply prohibits private individuals from using a Global Positioning Device (GPS) to obtain information regarding movement or location of an individual without the individual's knowledge. This prohibition would apply to the use of a GPS device on a vehicle without the owner's knowledge.

There are several exceptions to the provisions of this bill which would constitute *lawful* use of a GPS:

- A parent or guardian - to track their minor child or ward
- An employer/business owner – to track their a fleet vehicle
- A law enforcement officer acting in his/her official capacity
- An employee who installs subscription-based communication or navigation devises (Car manufacturers)

This bill would further clarify a 2012 US Supreme Court (*United State v. Jones*) case in which the court held that the use of a GPS device constituted a search under the 4th amendment. Currently, law enforcement must obtain a warrant before using a GPS unit to investigate a crime, but private citizens are allowed to track someone without this authorization by a judge. This bill will clarify that private citizens will not be allowed to use GPS to engage in "a search" of another without their consent.

This is an important bill which will help to align current law with the technology of the day and further protect the right to privacy for the citizens of Wisconsin.



Adam Neylon

State Representative • 98th Assembly District

March 25, 2014

Dear Members of the Committee on Criminal Justice and Labor:

I am here this afternoon to testify on behalf of Senate Bill 673. The genesis of this bill comes from the desire to protect civil liberties in Wisconsin. Technological advances are happening every day in Wisconsin, in America and around the world. As legislators, we are in the business of working to create a favorable environment for businesses to create jobs and improve the quality of life for our constituents, and I support and encourage this innovation.

However, it's equally important that we as legislators keep a vigilant watch over how these technologies could potentially violate our privacy as private citizens.

For some background on the legislation, a version of this bill passed the Assembly in 2009 but no action was taken in the Senate.

Very simply, this legislation makes it a class A misdemeanor for a person to:

- Use a GPS device to obtain information regarding another person's movement or location without that person's knowledge
- For an individual to place a GPS device on a vehicle that another person owns or uses without that person's knowledge

IMPORTANT NOTE: In an effort to protect the interests of businesses with company vehicles, and ensure law enforcement officials can continue to serve and protect, this legislation does not affect them. Additionally, an amendment was adopted in the Assembly allowing parents and guardians to use a GPS device to track their children.

Concluding, I would like to thank everyone today for their time. I am available for any questions from Committee Members.

Thank you.

Rep. Adam Neylon

Watching your every move: Private use of GPS trackers is still legal

Posted on: 10:16 pm, February 8, 2012, by Bryan Polcyn, updated on: 09:24am, February 9, 2012

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GLENDALE — Police now need a judge's permission to place a GPS tracking device on a person's car, but in Wisconsin a private citizen can do the same thing without anybody's permission.

Last month, the U.S. Supreme Court ruled that when police apply a GPS device to a suspect's car, it constitutes a 'search' under the 4th amendment. The ruling means that – in most situations – they need to get a search warrant first. The decision has no effect, however, on private use of GPS.



GPS tracking device found on car

Last summer, a Milwaukee County woman – we'll call her Lisa – suspected that her ex-boyfriend was following her around.

"I hadn't golfed in a long time and I went golfing and then I get a text saying, 'Don't worry about your daughter, worry about your golf game,'" Lisa said.

That's when she decided to seek help.

"And I talked to my attorney and he said, 'Take your car in and have it checked out.' He said, 'There's got to be some kind of tracking device on your car.'"

She took her car to Black Forest Mercedes in Glendale, where a mechanic put it up on a lift.

"We barely got it up in the air, looked underneath, and pretty much at the same time, we both pointed it," said Michael McKinney, owner of Black Forest.

They found a small black box behind the right rear axle, attached by a magnet to the car's undercarriage.

"I think we both were in shock," said Lisa. "To me, it's stalking."

Glendale police disagreed. When they traced the device back to its owner, they found it wasn't her ex-boyfriend who put it on the car. It was a private investigator working for him.

Police determined there was "insufficient evidence" to warrant further investigation.

many people you put in the middle.”

We’ve chosen not to reveal Lisa’s true identity or that of her ex-boyfriend in order to protect their three-year-old child, who is at the center of a custody dispute.

The private investigator told a Milwaukee County judge that he used the GPS device to protect his client’s safety, since Lisa had brought a convicted criminal along to some of the child exchanges.

Lisa said that was just an excuse for her ex-boyfriend to keep tabs on her. She told the court he had already used GPS to track her once before while they were still dating.

“One day he just happened to leave a bunch of work papers and I was being inquisitive, I guess, and saw logs of pretty much everywhere I had been.”

This “he said, she said,” case raises troubling questions about the state of the law in Wisconsin concerning the private use of GPS.

Tony Sherman, also a private investigator, says PI’s must be very careful with privacy laws. In fact, he been burned before by a client who tried to use him to stalk an ex-girlfriend.

“Everyone has their ‘oh crap’ moment where they learn from their mistakes, and that was ours,” Sherman said.

That’s a big reason Sherman says he shies away from using GPS devices in domestic disputes.

“Domestically speaking, there isn’t any law pertaining to GPS and the use of GPS devices,” Sherman said. “It’s that ethical standard that you want to live by and abide by.”

Although the Supreme Court ruled that police have to get a judge’s approval in most cases before they can stick a GPS device on a suspect’s car, current Wisconsin law allows any private citizen to do it without anyone’s permission.

Bruce Boyden, a Marquette University law professor, says that in Texas it is misdemeanor offense to secretly place a GPS device on someone’s car without the owner’s consent, but in Wisconsin, it’s no crime, and while instances like this may have potential to be a civil lawsuit, Boyden admits even that speculation.

“The law is definitely unclear here, so there’s a definite need for legislative clarification of the use of GPS devices,” Boyden said.

In 2009, the Wisconsin Court of Appeals urged the Legislature to limit the use of GPS by both police and private individuals.

State assemblyman Bill Kramer, got the court’s message.

“I could put a GPS device on your car or anybody who’s watching and keep track of everywhere you go.”

Two years ago, the Waukesha Republican teamed up with Democrat Marlin Schneider on a bill that would have made it a felony for a private citizen to secretly place a GPS device on a car without the owner's consent.

However the bill died in the Senate in 2010 and hasn't resurfaced since.

"I felt like I lived in a prison, by this person's hand for over three years," Lisa said. She hopes policy makers in Madison will take it serious and try again.