2016 Regular Session

HOUSE BILL NO. 254

BY REPRESENTATIVE HAVARD

CRIMINAL/PROCEDURE: Provides with respect to certain electronic tracking devices

1	AN ACT	
2	To amend and reenact R.S. 15:1302(2) and 1316(C) and (D) and to enact R.S. 14:222.3 and	
3	R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318, relative to electronic	
4	surveillance; to create the crime of unlawful use of a cellular tracking device; to	
5	provide definitions; to provide criminal penalties; to provide exceptions; to prov	
6	for applicability; to provide procedures for use of a cellular tracking device by la	
7	enforcement officers and investigative officers; and to provide for related matters	
8	Be it enacted by the Legislature of Louisiana:	
9	Section 1. R.S. 14:222.3 is hereby enacted to read as follows:	
10	§222.3. Unlawful use of a cellular tracking device; penalty	
11	A. It shall be unlawful for any person to use a cellular tracking device for the	
12	purpose of collecting, intercepting, accessing, transferring, or forwarding the data	
13	transmitted or received by the communications device, or stored on the	
14	communications device of another without the consent of a party to the	
15	communication and by intentionally deceptive means.	
16	B. For the purposes of this Section:	
17	(1) "Cellular tracking device" means a device that transmits or receives radio	
18	waves to or from a communications device in a manner that interferes with the	
19	normal functioning of the communications device or communications network and	

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1	that can be used to intercept, collect, access, transfer, or forward the data transmitted	
2	or received by the communications device, or stored on the communications device;	
3	includes an international mobile subscriber identity (IMSI) catcher or other cell	
4	phone or telephone surveillance or eavesdropping device that mimics a cellular base	
5	station and transmits radio waves that cause cell phones or other communications	
6	devices in the area to transmit or receive radio waves, electronic data, location data,	
7	information used to calculate location, identifying information, communications	
8	content, or metadata, or otherwise obtains this information through passive means,	
9	such as through the use of a digital analyzer or other passive interception device; and	
10	does not include any device used or installed by an electric utility solely to the extent	
11	such device is used by that utility to measure electrical usage, to provide services to	
12	customers, or to operate the electric grid.	
13	(2) "Telecommunications device" means any type of instrument, device, or	
14	machine that is capable of transmitting or receiving telephonic, electronic, radio,	
15	text, or data communications, including but not limited to a cellular telephone, a text-	
16	messaging device, a personal digital assistant, a computer, or any other similar	
17	wireless device that is designed to engage in a call or communicate text or data. It	
18	does not include citizens band radios, citizens band radio hybrids, commercial two-	
19	way radio communication devices, or electronic communication devices with a push-	
20	to-talk function.	
21	C. The provisions of this Section shall not apply to any of the following:	
22	(1) An investigative or law enforcement officer, judicial officer, probation	
23	or parole officer, or employee of the Department of Public Safety and Corrections	
24	using a cellular tracking device when that person is engaged in the lawful	
25	performance of official duties and in accordance with other state or federal law,	
26	including using a cellular tracking device in accordance with the Electronic	
27	Surveillance Act and pursuant to a court order as provided for in R.S. 15:1317 and	
28	<u>1318.</u>	

1	(2) An operator of a switchboard, or any officer, employee, or agent of any	
2	electronic communications carrier, whose facilities are used in the transmission of	
3	a wire communication, to intercept, disclose, or use that communication in the	
4	normal course of his employment while engaged in any activity which is necessar	
5	to his service or to the protection of the rights or property of the carrier of such	
6	communication; however, such communications common carriers shall not utilize	
7	service observing or random monitoring, except for mechanical or service quality	
8	control checks.	
9	(3) An officer, employee, or agent of the Federal Communications	
10	Commission, in the normal course of his employment and in discharge of the	
11	monitoring responsibilities exercised by the commission in the enforcement of	
12	Chapter 5 of Title 47 of the United States Code.	
13	(4) The owner of a motor vehicle, including the owner of a vehicle available	
14	for rent, who has consented to the use of the tracking device with respect to that	
15	vehicle.	
16	(5) The lessor or lessee of a motor vehicle and the person operating the	
17	motor vehicle who have consented to the use of a tracking device with respect to that	
18	vehicle.	
19	(6) An automobile manufacturer, its affiliates, subsidiaries, or a related	
20	telematics provider installing a feature that could be considered a tracking device	
21	with respect to that vehicle.	
22	(7)(a) A parent or legal guardian of a minor child whose location or	
23	movements are being tracked by the parent or legal guardian.	
24	(b) When the parents of the minor child are living separate and apart or are	
25	divorced from one another, this exception shall apply only if both parents consent to	
26	the tracking of the minor child's location and movements, unless one parent has been	
27	granted sole custody, in which case consent of the noncustodial parent shall not be	
28	required.	

1	(8) The Department of Public Safety and Corrections tracking an offender	
2	who is under its custody or supervision.	
3	(9) Any provider of a commercial mobile radio service (CMRS), such as a	
4	mobile telephone service or vehicle safety or security service, which allows the	
5	provider of CMRS to determine the location or movement of a device provided to	
6	a customer of such service.	
7	(10) Any commercial motor carrier operation.	
8	(11) A provider of a mobile application or similar technology that a consumer	
9	affirmatively chooses to download onto the consumer's wireless device, or any	
10	technology used in conjunction with the mobile application or similar technology.	
11	(12) Any use of technology provided by an entity based upon the prior	
12	consent of a consumer for such use.	
13	(13) A person acting in good faith on behalf of a business entity for a	
14	legitimate business purpose.	
15	(14) A law enforcement agency conducting training or calibration and	
16	maintenance of tracking equipment on the cell phone of another law enforcement	
17	officer who has given consent for his phone to be tracked for training or calibration	
18	and maintenance purposes.	
19	D. Whoever violates the provisions of this Section shall be fined not more	
20	than three thousand dollars, imprisoned with or without hard labor for not more than	
21	two years, or both.	
22	Section 2. R.S. 15:1302(2) and 1316(C) and (D) are hereby amended and reenacted	
23	and R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318 are hereby enacted to read as	
24	follows:	
25	§1302. Definitions	
26	As used in this Chapter:	
27	* * *	
28	(2) "Attorney for a governmental entity" means an attorney on the staff or	
29	under the direct supervision of the district attorney authorized by law to prosecute	

1	such offenses as are subject of the pen register, or a trap and trace device, or a
2	cellular tracking device.
3	* * *
4	(3.1) "Cellular tracking device" means a device that transmits or receives
5	radio waves to or from a communications device in a manner that interferes with the
6	normal functioning of the communications device or communications network and
7	that can be used to intercept, collect, access, transfer, or forward the data transmitted
8	or received by the communications device, or stored on the communications device;
9	includes an international mobile subscriber identity (IMSI) catcher or other cell
10	phone or telephone surveillance or eavesdropping device that mimics a cellular base
11	station and transmits radio waves that cause cell phones or other communications
12	devices in the area to transmit or receive radio waves, electronic data, location data,
13	information used to calculate location, identifying information, communications
14	content, or metadata, or otherwise obtains this information through passive means,
15	such as through the use of a digital analyzer or other passive interception device; and
16	does not include any device used or installed by an electric utility solely to the extent
17	such device is used by that utility to measure electrical usage, to provide services to
18	customers, or to operate the electric grid.
19	* * *
20	(16.1) "Telecommunications device" or "communications device" means any
21	type of instrument, device, or machine that is capable of transmitting or receiving
22	telephonic, electronic, radio, text, or data communications, including but not limited
23	to a cellular telephone, a text-messaging device, a personal digital assistant, a
24	computer, or any other similar wireless device that is designed to engage in a call or
25	communicate text or data. It does not include citizens band radios, citizens band
26	radio hybrids, commercial two-way radio communication devices, or electronic
27	communication devices with a push-to-talk function.
28	* * *

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1	§1316. Assistance in installation and use of pen register, or a trap and trace device,
2	or a cellular tracking device
3	* * *
4	C. Upon receipt of a court order issued pursuant to the request of an
5	investigative or law enforcement agency authorized to install and use a cellular
6	tracking device pursuant to this Part, a provider of a wire or electronic
7	communication service, landlord, custodian, or other person shall furnish such
8	investigative or law enforcement officer with all information, facilities, and technical
9	assistance necessary, if applicable, to accomplish the placement by the applicant of
10	a cellular tracking device unobtrusively and with minimal interference with the
11	services that the person so ordered by the court accords the party with respect to
12	whom the installation and use is to take place, if such assistance is directed by a
13	court order or investigative or law enforcement agency pursuant to the provisions of
14	<u>R.S. 15:1317 and 1318.</u>
15	C.D. A provider of a wire or electronic communication service, landlord,
16	custodian, or other person who furnishes facilities or technical assistance pursuant
17	to this Section shall be compensated for such reasonable expenses incurred in
18	providing such facilities and assistance.
19	D. <u>E.</u> No cause of action shall lie in any Louisiana court against any provider
20	of a wire or electronic communication service, its officers, employees, agents, or
21	other specified persons for providing information, facilities, or assistance in
22	accordance with the terms of a court order under pursuant to this Part.
23	<u>§1317.</u> Application for an order for use of a cellular tracking device
24	A. An investigative or law enforcement officer shall not use a cellular
25	tracking device unless either of the following occur:
26	(1) The investigative or law enforcement agency has obtained an order
27	issued by a court to use the tracking instrument.
28	(2) Exigent circumstances exist that necessitate using the tracking instrument
29	without first obtaining a court order.

1	(3) If an investigative or law enforcement agency uses a cellular tracking
2	device based upon the existence of exigent circumstances, the investigative or law
3	enforcement agency shall seek to obtain an order issued by a court not later than
4	seventy-two hours after the initial use of the cellular tracking device.
5	B. An application made pursuant to this Section shall include:
6	(1) The identity of the investigative or law enforcement officer making the
7	application and the identity of the law enforcement agency conducting the
8	investigation.
9	(2) A certification by the applicant attesting that the information sought is
10	relevant to an ongoing felony criminal investigation being conducted by that agency,
11	and includes in that certification a recital of facts or information constituting the
12	reasonable suspicion upon which the application is based.
13	§1318. Issuance of an order for a cellular tracking device
14	A. Upon an application made pursuant to R.S. 15:1317, the court may enter
15	an ex parte order authorizing the use of the cellular tracking device if the court finds
16	that the investigative or law enforcement officer has certified to the court that the
17	information likely to be obtained by such use is relevant to an ongoing felony
18	criminal investigation, and that the certification does include reasonable suspicion
19	as required by R.S. 15:1317.
20	B. An order issued pursuant to the provisions of this Section shall specify,
21	if applicable:
22	(1) The telephone number or other unique subscriber account number
23	identifying the wire or electronic communications service account used by the device
24	to which the cellular tracking device is to be attached or used.
25	(2) The physical location, if known, of the device for which the cellular
26	tracking device is to be attached or used.
27	(3) The type of device to which the cellular tracking device is to be attached
28	or used.

1	(4) All categories of metadata, data, or information to be collected by the	
2	cellular tracking device from the targeted device including but not limited to	
3	geolocation information.	
4	(5) Whether or not the cellular tracking device will incidentally collec	
5	metadata, data, or information from any parties or devices not specified in the court	
6	order, and if so, what categories of information or metadata will be collected.	
7	(6) Any disruptions to access or use of a communications or internet access	
8	network that may be created by use of the cellular tracking device.	
9	(7) A statement of the offense to which the information is likely to be	
10	obtained by the cellular tracking device.	
11	C. An order issued pursuant to the provisions of this Section shall direct,	
12	upon request of the applicant, the furnishing of information, facilities, and technical	
13	assistance necessary to accomplish the use of the cellular tracking device under R.S.	
14	<u>15:1316 and 1317.</u>	
15	D.(1) An order issued pursuant to the provisions of this Section shall	
16	authorize the use of a cellular tracking device for a period not to exceed sixty days.	
17	(2) Extensions of such an order may be granted, but only upon an application	
18	for an order pursuant to R.S. 15:1317 and upon the judicial finding required by the	
19	provisions of this Section. The period of extension shall be for a period not to	
20	exceed sixty days.	
21	E. An order authorizing or approving the use of a cellular tracking device	
22	shall direct that:	
23	(1) The order be sealed until otherwise ordered by the court.	
24	(2) The person who has been ordered by the court to provide assistance to	
25	the applicant not disclose the existence of the cellular tracking device or the	
26	existence of the investigation to the listed subscriber, or to any other person, unless	
27	or until otherwise ordered by the court.	

1	F. The head of each law enforcement agency possessing or making		
2	application for the use of a cellular tracking device shall establish and implemen		
3	procedures which shall provide for and ensure the following:		
4	(1) That only the chief officer of the law enforcement agency or specifical		
5	authorized representative of the agency chief shall have the authority to authorize the		
6	use of a cellular tracking device and only pursuant to this Section and R.S. 15:1317.		
7	(2) That no cellular tracking device in the possession of the law enforcement		
8	agency shall be subject to unauthorized use.		
9	G. A law enforcement agency authorized to use a cellular tracking device in		
10	accordance with this Part shall do all of the following, if applicable:		
11	(1) Take all steps necessary to limit the collection of any information or		
12	metadata to the target specified in the applicable court order.		
13	(2) Take all steps necessary to permanently delete any information or		
14	metadata collected from any party not specified in the applicable court order		
15	immediately following such collection and shall not transmit, use, or retain such		
16	information or metadata for any purpose whatsoever.		
17	(3) Delete any information or metadata collected from the target specified		
18	in the court order within thirty-five days if there is no probable cause to support the		
19	belief that such information or metadata is evidence of a crime.		
20	H. For the purposes of this Section and R.S. 15:1317, "investigative or law		
21	enforcement officer" means:		
22	(1) Any commissioned officer of the office of state police.		
23	(2) Any full-time commissioned city police officer of a municipality of this		
24	state.		
25	(3) Any sheriff or deputy sheriff of a parish of this state who has been		
26	specifically designated by the sheriff of that parish as responsible for preparation of		
27	applications for use of cellular tracking devices.		

1	(4) The attorney general, or any assistant attorney general or attorney
2	general's investigator who has been specifically designated by the attorney general
3	as responsible for preparation of applications for use of cellular tracking devices.
4	(5) A federal law enforcement agent having the power to arrest for a
5	violation of federal law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 254 Reengrossed	2016 Regular Session	Havard

Abstract: Creates the crime of unlawful use of a cellular tracking device and provides for procedures for law enforcement and investigative officers to use such devices.

<u>Proposed law</u> creates the crime of unlawful use of a cellular tracking device. Provides exceptions for law enforcement and investigative officers, telecommunications employees, providers of devices consented to by the consumer, good faith actors on behalf of a business entity, mobile applications consented to by the consumer, law enforcement training exercises, and FCC employees in the performance of their duties.

<u>Proposed law</u> provides penalties of a fine of not more than \$3,000, imprisonment with or without hard labor for not more than two years, or both.

<u>Present law</u> provides procedures for law enforcement and investigative officers to obtain warrants from the court to use a trap and trace device or pen register (wire tapping equipment).

<u>Proposed law</u> retains <u>present law</u> and adds similar provisions for the use of cellular tracking devices.

(Amends R.S. 15:1302(2) and 1316(C) and (D); Adds R.S. 14:222.3 and R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

- 1. Changes the definition of "cellular tracking device".
- 2. Adds an exception for technology which has been consented to by the consumer including mobile applications.
- 3. Adds an exception for a good faith actor on behalf of a business entity for a legitimate business purpose.
- 4. Adds an exception for use of devices by law enforcement agencies for certain purposes.
- 5. Adds federal law enforcement officers to the definition of an "investigative or law enforcement officer" for purposes of <u>proposed law</u>.

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