



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 171

**Assembly
Substitute Amendment 1**

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Current law prohibits stalking by making it illegal for a person to engage in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

2009 Assembly Bill 171 makes it unlawful to place a global positioning device on another person's vehicle without that person's knowledge and consent or to intentionally obtain information regarding another person's movement or location generated by a global positioning device without that person's knowledge or consent. A person who does so is guilty of a Class I felony and is subject to a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both. Assembly Bill 171 exempts law enforcement officers acting in their official capacity and an employer acting to track the movement or location of a commercial motor vehicle during business hours.

Assembly Substitute Amendment 1 makes it a Class A misdemeanor to place a global positioning device on another person's vehicle without that person's knowledge and consent or to intentionally obtain information regarding another person's movement or location generated by a global positioning device without that person's knowledge or consent. The substitute amendment exempts:

- Persons acting within the scope of their employment who install a subscription-based communication or navigation system.
- Law enforcement officers acting within the scope of their capacity and pursuant to a warrant issued according to the provisions of the substitute amendment.
- Employers, as defined by s. 343.245 (1) (b), acting to track the movement or location of a commercial motor vehicle owned, leased, or assigned for use by the employer during business hours.

Assembly Substitute Amendment 1 makes it a Class A misdemeanor for a spouse, after a petition for an annulment, divorce, or legal separation has been filed, to place a global positioning device on a vehicle used primarily by his or her spouse without that person's knowledge or consent.

Assembly Substitute Amendment 1 establishes requirements for making an application for and obtaining an order for the installation and use of a global positioning device. Under the substitute amendment, an attorney general or a district attorney may make an application for an order or extension of an order authorizing or approving the installation and use of a global positioning device, in writing under oath, to a circuit court for the county where the device is to be located. The application must contain the identity of the person making the application, identity of the law enforcement agency conducting the investigation, a statement of the facts and circumstances, including details of a particular offense, that the applicant has probable cause to believe has been, is being, or is about to be committed by a person who owns the vehicle to which the global positioning device is to be attached, and certification by the applicant that the information likely to be obtained is relevant to the ongoing criminal investigation being conducted.

If an application meets the requirements set out in the substitute amendment as discussed above, the court shall enter an *ex parte* order authorizing the installation and use of the global positioning device, for a period not to exceed 60 days, if the court finds that there is probable cause to believe that the person who owns the vehicle to which the global positioning device is to be attached has, is, or will commit an offense and that the applicant has certified that the information likely to be obtained is relevant to the ongoing criminal investigation. Assembly Substitute Amendment 1 requires the order to specify the identity of the person and the vehicle information, if known, and identify the offense. Under the substitute amendment, such an order is to be sealed until otherwise ordered by the court, and evidence obtained in contravention of the provisions of the substitute amendment, or of s. 940.315, may not be introduced in a criminal trial.

Legislative History

Assembly Substitute Amendment 1 was a committee amendment. On October 15, 2009, the Assembly Committee on Personal Privacy recommended the amendment for adoption by a vote of Ayes, 6; Noes, 0. Assembly Bill 171, as amended, was recommended for passage on a vote of Ayes, 6; Noes, 0.

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