



# Adam Neylon

State Representative • 98th Assembly District

February 3, 2015

## GPS Privacy Act Testimony

I would like to start out by saying thank you to Chairman Kleefisch for holding this hearing today. Ladies and Gentleman of the committee, thank you for taking the time to consider this legislation.

I would also like to thank Senator for Petrowski for taking the lead in the Senate.

Technological advances are happening every day in Wisconsin, in America and around the world. As legislators in the business of creating jobs and improving the quality of life for our constituents, we should support and encourage such innovation.

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

This legislation is very simple and I ask that the committee keep this one important detail in mind. Our bill makes it a misdemeanor for someone to place a GPS device on someone else's vehicle without their knowledge.

It's important to protect the privacy of citizens against unwanted surveillance. GPS devices can be used to just that, it's digital stalking.

The bill passed out of this committee and the Senate's Judiciary committee unanimously last session. It was voted out of the Assembly on a voice vote in the final days of session, but time ran out before the Senate could get it to the floor.

Like many pieces of legislation, my office has received several inquiries from various lobby groups trying to figure out how this impacts their clients –

Currently, in most situations, police have to get a judge's approval before they can place a Global Positioning System or GPS device on a suspect's car. On the other hand, current law allows citizens to place a GPS device on a vehicle they do not own without anyone's permission.

With that, I'll conclude my opening remarks and take any questions the Chairman or Committee Members might have.

Thank you for your time.

## 2015 Assembly Bill 19 GPS Usage

My name is Thomas E. Fischer. I am currently the Vice President of the Professional Association of WI. License Investigators. As the Vice President of the State wide organization it is my responsibility to educate and have effective training conferences and seminars for our members. Prior to becoming a License Private Investigator in the State of WI I was a detective for the City of Milwaukee Police Department for over thirty years, and the Vice President of the Milwaukee Police Association.

Today some of our members and I are hear to ask you to reconsider letting this bill leave the committee. We would not like to see this bill proceed due to several reasons. First this legislation has not been discussed with various State and National Organizations that lobby our legislators like yourself. We would welcome the opportunity to sit down and work together in order to come up with a bill that protects the innocent person from having a GPS unit placed on their car for reasons that we in the industry consider to be illegal or unethical.

There are many reasons to use a GPS by a licensed investigator, an example of some of the reasons are teen driving activity, Cheating spouses or employee tracking and one of the largest uses for the unit is that it is used for insurance and disability claims. Our industry works hand in hand with the various insurance companies located in the State of WI to document the fraud that occurs by individuals that are attempting to prevent these fraudulent claims for being paid out.

This is not an industry that employed people to sneak around and take pictures of cheating spouses. The investigators that I have contracted with and have talked to have a very limited use for a GPS unit on a cheating spouses car. GPS Technology can be a very effect tool when it is used in conjunction with surveillance and can save the consumer money by not hiring several investigators for surveillance on a single person. The person that wants GPS technology to be used have to have part ownership in the vehicle and no restraining orders or harassment injunctions filed by the courts against them by the person. We as investigators have to use the technology legally and properly.

Law Enforcement has to get a search warrant in order to use a GPS unit. When we use a GPS unit there had to be ownership on the person that is hiring us and when it is placed on a person's vehicle it has to be done when that vehicle is in the public domain. Some may ask why should we be different from law enforcement when placing on a GPS unit on a car, and my response would we are not. If a person agrees to the GPS Unit on a car that they have ownership on no search warrant would not be needed. Further an investigator or insurances company representatives does not need to advise a person of their Miranda warning prior to questioning them. It is like comparing apples to oranges when we compare law enforcement officers to private investigators.

GPS units have been used to save lives. When I was working armed robbery/homicide offenses where the cab had a GPS unit it resulted in the apprehension of the offenders. I have worked investigations as a PI were item had been stolen from a warehouse on various occasions. The thefts involved over \$200,000.00 work of items being taken. With the GPS technology the suspect had been indentified abd

a criminal case was put together for law enforcement to investigate further. Car rental companies use GPS technology on a regular basis in order to recover their vehicles. Although the bill still allows coverage for those companies it could harm the 700 plus small business owners that are Investigators.

The membership of PAWLI is committed to having the best type of person to become investigators in the State of Wisconsin. Our membership is committed to working with you on this bill as well as others that effect our industry. We strive for our elected officials to come up with a bill that credits CEU (continuing education credits) for our industry and strict enforcement of the regulation we are governed by.

Thank you,

A handwritten signature in black ink that reads "Thomas E. Fischer". The signature is written in a cursive style with a large, sweeping initial "T".

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DIVERSIFIED investigations, llc

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February 2, 2015

Wisconsin Assembly  
Attn: Criminal Justice Committee  
Madison, WI

Re: GPS tracking bill

Dear Representatives Kleefisch, Kremer, Spiros, Ott, Rodriguez, Horlacher, Novak, Born, Goyke, Kessler, Zamarripa, and Johnson,

Thank you for taking the time to read and listen to the message in this letter concerning the GPS tracking bill, which is in front of you today. I am fully in support of your mission to deter misuse & abuse of GPS technology. No one wants a stalker to be allowed to slap a GPS unit on a victim's vehicle and have the ability to monitor their every move.

The reason for my letter is to ensure that you fully understand the positive uses of GPS technology before enacting legislation that would jeopardize the safety of workers.

I am a retired Law Enforcement officer and currently a State of Wisconsin licensed private investigator. I have been conducting Workplace Violence Threat Assessments for Wisconsin businesses for 13 years. I work with local and county government agencies assisting them in investigating theft of time and falsifying official reports; For both of these areas of investigation, I have successfully used and justifiably documented the use of GPS technology.

**Workplace Violence GPS use example**

I was asked to do a Workplace Violence Threat Assessment where an individual had spray painted a threatening message on a Doctor's garage door at his home. The graffiti was cryptic, but made reference to "Kids being dead." A full investigation was conducted and 24-7 security set up on the Doctor and his family. The protection detail was in place for 5 days. We did not know who had made the threat. Late into the evening a male approached the Doctor's home again and when the security detail approached him he left the scene. The police were involved because of the imminent threat, however made it clear they did not have the resources to conduct 24-7 protection.

At this point we made the connection that the person was a former patient. In fact the Doctor had diagnosed the person with paranoid schizophrenia four years earlier.

We placed a GPS device on the vehicle operated by the patient. In the interest of balancing the individual's right to privacy with the safety of the Doctor and his family, we used GPS technology to put a "GEO-Fence" around the Doctor's residence and practice location. The GEO-fence was pierced 3 times in the next 4 months. The police were contacted each time and based on our joint efforts, tragedy most surely was averted. With this technology we were able to monitor the patient's location in comparison to the location of the Doctor's residence and had an early warning system in place.

Of interest to note, we were contacted by the police when it was reported the patient had left the parent's residence after making a suicide threat. The patient had taken the parent's vehicle. It did not have a GPS on it. Based on the patterns we had observed by watching the GPS, we were able to locate the patient and contact law enforcement within an hour of the call. The patient was unharmed and was placed on a 72-hour Hold. This could not have been accomplished were it not for the legal means to use GPS technology.

#### **Municipal Theft of Time Investigation**

I conducted an investigation into allegations that a social worker was falsifying her work documents by showing she had done home visits when she had not. Based on the information we placed a GPS Unit on her personal vehicle to monitor her work day. The employer did not have access to any of the data provided by the GPS and the monitoring took place only during the work day. We did physical surveillance using the GPS to re-locate her in situations when we lost her and found she did not do any home visits for an entire day. She filed at least 4 false reports claiming she had visited the homes of persons needing her services. Based on this she was terminated. She fought the termination at an Unemployment hearing. I testified at the hearing. The ALJ heard testimony about how the GPS was used and affirmed the justifiable & documented use under these circumstances.

I understand the need for criminalizing the use of GPS technology for the general public. I ask you as a committee to recommend this bill be rewritten before any vote is taken on its current wording. This tool is vital to the safety and wellness of our community. If you could draft the bill with "permissible purposes" language you will achieve the goal in which you set out to do. Protect the privacy of those needing protection and yet assisting companies and municipalities in conducting their due diligence protection of their employees and property.

Suggested permissible purposes could include the following:

By a State of Wisconsin Licensed and insured private investigator for the following purposes:

Workplace violence threat(s)

- After conducting a due diligence Workplace violence Threat Assessment:
- Threat is high or imminent
- GPS may be used to monitor the location
- No detailed locations may be disclosed to any employer/former employer
- GEO –fencing must be used
- Every effort to maintain the privacy while still ensuring the safety of the workplace must be taken

Workplace Fraud/Theft(s)

- After conducting a due diligence Workplace violence Threat Assessment:
- Threat is high or imminent
- GPS may be used to monitor the location
- No detailed locations may be disclosed to any employer/former employer
- GEO –fencing must be used
- Every effort to maintain the privacy while still ensuring the safety of the workplace must be taken

Based on the information provided above, I respectfully ask you to amend the GPS tracking bill to allow for "Permissible Purposes," much like the Drivers Protection Privacy Act and the Fair Credit Reporting Act allows.

A truly, well written GPS tracking bill would certainly protect Wisconsin's citizens, but not ultimately hinder the success, profitability, and ultimate safety of Wisconsin businesses and their employees.

Wisconsin Department of Professional Services is responsible for issuing rules and regulations regarding technology and investigative uses of the technology. I urge you to collaborate with them to put rules in place to protect Wisconsin citizens from the misuse of this technology, but not tie or hands as legitimate licensed professionals acting in the best interests of the public at large.

Thank you for your time, attention, and good faith effort to come up with legislation that makes good sense overall. I welcome any questions and offer any assistance I may provide.



Respectfully submitted,  
Julie Russell, V.P. of Operation  
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# JERRY PETROWSKI

WISCONSIN STATE SENATOR

## *Assembly Bill 19*

### *GPS Tracking*

March 24, 2015

Thank you, Mr. Chairman and members of the committee, for the opportunity to speak on Assembly Bill 19.

In short, the bill before us better protects individuals against stalking, harassment, and other occasions where someone attempts to track or locate an individual without that person's consent. The bill establishes penalties for people who place a GPS on a vehicle owned or leased by another person without that person's consent, and for people who use a GPS to intentionally gain information about a person's movement or location without that person's consent.

Our offices worked with the Department of Justice and the Wisconsin Coalition Against Domestic Violence to ensure this bill offered appropriate protections for individual privacy. Both the Wisconsin Coalition Against Domestic Violence and the ACLU have registered in favor of this bill, and it already passed the Assembly on a voice vote.

As Representative Neylon stated when this measure came before the Assembly Committee on Criminal Justice and Public Safety, this bill does not impair the ability of law enforcement to perform their official duties. In addition to law enforcement, this bill also makes exemptions for the parents or guardians of a minor child, lienholders for purposes of repossession, employers tracking the movement of their organization's vehicles, and automobile manufacturers who install in-vehicle navigation telematics systems.

Lastly, at the request of my constituents, I am offering a simple amendment to clarify the way this bill deals with treatment of wards. As currently written, the penalties in this bill would not apply to parents or guardians who use a GPS to track the movement or location of their minor ward. The amendment will remove the word "minor," clarifying that parents or guardians of wards are allowed track their movement.

Thank you for the opportunity to speak on this topic. I'm happy to answer any questions you may have.

29TH SENATE DISTRICT

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# **Position on Bill AB19**

## **Wisconsin GPS Trackers**

### **Professional Association of Wisconsin Licensed Investigators**

#### **Impact**

On Sunday night, February 1<sup>st</sup>, 2015, notice was given of a bill AB19 written by Rep Nylan, Wisconsin State Assembly. The hearing took place in Madison on that next Tuesday Feb 4<sup>th</sup>, at 10 am.

This bill would outlaw the use of GPS tracking by anyone other than law enforcement "acting in his or her official capacity". The only exceptions are if the installer gains permission from the driver of the vehicle. Not even the owner can install one when the other driver is a legal adult.

As for Professional Investigators, this bill outlaws the use of GPS trackers for any practical purpose.

To date, Professional Private Investigators have used trackers as a manner of efficiency. Before their creation, the investigator would preferably require more than one professional to keep eyes on the subject for an extensive period of time for maybe weeks or months. This would include video, photos, and keeping logs to document the activities of the subject, as per the requirements of the case.

With differing abilities, it should be pointed out that there are 2 different types of trackers: Passive and active. The passive tracker logs the activities and is downloaded after removal from the vehicle. It does not transmit any RF signal. The active tracker has a cell phone text message ability that transmits the data at preprogrammed intervals to a host website or phone.

The result of this bill is creating a prohibitively higher expense to the client, who already is suffering capital losses and may be after information by whom and where the stolen property has gone. Or the person under threat of harm wanting protection or at least advance warning of danger.

There are many other situations where this tool has proven itself invaluable to the professional. Placing a tracker on a vehicle, documents where the VEHICLE has gone, is going, how fast it is getting there.

The major differences in the "eyes on" method and the GPS tracker is, the tracker is actually less intrusive. It is keeping an "eye" on the vehicle, not the subject. There are no movies or photos. There is no following into the shopping center or bars. The person is actually not the subject, it's the vehicle. But by utilizing the technology, the gain is a pattern of activity, automatic alert that indicate transport into restrained areas and frequented locations all at a vastly lesser use of person-hours.



## **Cited Foundation**

The complaint that the bill has been written to answer, are the few violations of Reasonable Expectation of Privacy, (REP), stalking, harassing. All of which are by private citizens violating already unlawful use.

And that is one of my points. Not only have there not been any cases brought to this argument where a Wisconsin Professional Investigator has used a device unlawfully, but the complaints are based on trespassing and search and seizure situations. Which are the laws that already cover these complaints without additional legislation.

The definition of trespass, when applied to a vehicle according to Wis V Sveum 2009, Paragraph 6.  
<http://law.justia.com/cases/wisconsin/court-of-appeals/2009/36414.html/>

States that use does not violate REP or trespassing statues if the tracker is placed on the vehicle in a public domain off the subject's property. Break and enter violations are not violated if the tracker is placed on the outside of the vehicle without disturbing the function. Ie: wired to vehicle power, drilling holes.

The new law that is being cited as grounds for this is US v Jones.  
<https://supreme.justia.com/cases/federal/us/565/10-1259/>

Where the Supreme Court has ruled that the data received from the trackers was suppressed because the warrant that was issued to install a tracker had run out of time before the installation. This is not a precedent for our situation. The use of these devices historically, would have not needed a warrant if it had been placed of the vehicle anywhere but on Jones's driveway.

Also, the idea of data being logged while the vehicle is parked at the house is not true. All tracker conserve batteries by going to sleep anytime the vehicle is parked for more than a minute. And wake up when the motion starts again.

Additionally, Antonin Scalia, the opinion writer of Jones, supports the conclusion, with Katzin v US.  
<https://supreme.justia.com/cases/federal/us/389/347/case.html>

This again refers to trespassing and SEP, where wiretapping was used. This is listening to phone conversations, nothing to do with GPS, nor the use in the public domain where SEP is not valid.

One more cite for to strengthen the opinion was Kyllo v US.  
<https://supreme.justia.com/cases/federal/us/533/27/case.html>

This again is looking at the private property and reasonable expectation of privacy, where LEOs used thermal imaging to check the heat signature of his house to find his growing rooms.

## What is the Laws Purpose?

So it is obvious that the reason Jones stands up for the authorities needed a warrant is because the GPS was attached to the vehicle on the subject's property. We maintain that attachment on the street in public is not trespassing.

If attaching something to a vehicle in a public place is trespass, then the flyers placed under a wiper blade is trespass.

If the placement of a tracker on the outside of the vehicle, parked on the side of a city street, for the purpose of gaining information on the movement of the vehicle, constitutes trespass, then the meter maid placing a mark on the tires of all vehicles on the street to ascertain the length of time the vehicle is parked would constitute the same application.

Should the meter maid get a warrant for every car on the street?

The only difference would be the amount of data collected. If the decision for violation of SEP was based on the amount of data documented, then restricting the use of trackers and forcing the Professional Investigator to utilize a surveillance team, cameras and tailing, will actually increase the intrusion.

So the question to be asked is what is the purpose of the law? "To outlaw GPS devices just because they are GPS devices"? Or is the goal to protect a citizen from unwarranted privacy invasion?

GPS trackers are tools.

There are a myriad of reasons why trackers should be allowed. The few situations where they are used for bad things on innocent people are what should be regulated. And most, if not all are already covered by stalking, trespass and harassment laws.

## Conclusion:

- The use of these devices by Professional Investigators historically, have not been the subject of any complaints.
- The use has decreased the intrusion into the lives of the investigative subjects.
- The use has greatly decreased the financial loss to the clients.
- The use has made it possible to protect a victim where no other means have been possible.
- The cited law is directed at where the unit is installed not the general ability of use.
- REP is not violated when action is taken place on public property.
- AB19 does nothing to further protect any one since the complaints in use are already covered by trespassing, harassment, stalking and search and seizure laws.
- All AB19 succeed with is directly effecting 700 small businesses that are Wisconsin Professional Investigators as well as the ability to protect life and property of thousands of individuals, small and large businesses who are the clients of the 700.

We suggest that the bill be held back until the language of the bill will address the purpose without causing harm to the individuals and businesses that AB19 now restricts. The protection offered is redundant and the harm to business is debilitating.

An amendment expanding the authorized use to the Professional Licensed Private Investigator.

A self-contained GPS tracking unit, to be installed on public property to the outside of the vehicle, used in the performance of his/her duties without violations of trespass, break and enter and stalking laws that are already on the books.

  
James Greenwold

President

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