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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 854 Session of  
2015

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INTRODUCED BY COSTA, FOLMER, FONTANA, VULAKOVICH, BOSCOLA,  
TARTAGLIONE, HUGHES, BREWSTER, VOGEL, RAFFERTY, PILEGGI AND  
BROWNE, MAY 28, 2015

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REFERRED TO JUDICIARY, MAY 28, 2015

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in assault, further providing for  
3 stalking; and, in wiretapping and electronic surveillance,  
4 providing for prohibited use of mobile tracking devices.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 2709.1(a), (b), (e) and (f) of Title 18  
8 of the Pennsylvania Consolidated Statutes are amended to read:

9 § 2709.1. Stalking.

10 (a) Offense defined.--A person commits the crime of stalking  
11 when the person [either]:

12 (1) engages in a course of conduct or repeatedly commits  
13 acts toward another person, including following the person  
14 without proper authority, under circumstances which  
15 demonstrate either an intent to place such other person in  
16 reasonable fear of bodily injury or to cause substantial  
17 emotional distress to such other person; [or]

18 (2) engages in a course of conduct or repeatedly

1 communicates to another person under circumstances which  
2 demonstrate or communicate either an intent to place such  
3 other person in reasonable fear of bodily injury or to cause  
4 substantial emotional distress to such other person[.]; or

5 (3) uses a tracking device without proper authority to  
6 track another person as prohibited under section 5762(a)  
7 (relating to prohibited use of mobile tracking devices).

8 (b) Venue.--

9 (1) An offense committed under this section may be  
10 deemed to have been committed at either the place at which  
11 the communication or communications were made or at the place  
12 where the communication or communications were received.

13 (2) Acts indicating a course of conduct which occur in  
14 more than one jurisdiction may be used by any other  
15 jurisdiction in which an act occurred as evidence of a  
16 continuing pattern of conduct or a course of conduct.

17 (3) An offense committed under subsection (a)(3) may be  
18 prosecuted in the jurisdiction where the person was tracked  
19 or in the jurisdiction where the tracking was monitored.

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21 (e) Application of section.--

22 (1) This section shall not apply to conduct by a party  
23 to a labor dispute as defined in the act of June 2, 1937  
24 (P.L.1198, No.308), known as the Labor Anti-Injunction Act,  
25 or to any constitutionally protected activity.

26 (2) The provisions of subsection (a)(3) shall not apply  
27 to conduct authorized under section 5761 (relating to mobile  
28 tracking devices) or 5762(b) (relating to prohibited use of  
29 mobile tracking devices).

30 (f) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this  
2 subsection:

3 "Communicates." To convey a message without intent of  
4 legitimate communication or address by oral, nonverbal, written  
5 or electronic means, including telephone, electronic mail,  
6 Internet, facsimile, telex, wireless communication or similar  
7 transmission.

8 "Course of conduct." A pattern of actions composed of more  
9 than one act over a period of time, however short, evidencing a  
10 continuity of conduct. The term includes lewd, lascivious,  
11 threatening or obscene words, language, drawings, caricatures or  
12 actions, either in person or anonymously. Acts indicating a  
13 course of conduct which occur in more than one jurisdiction may  
14 be used by any other jurisdiction in which an act occurred as  
15 evidence of a continuing pattern of conduct or a course of  
16 conduct.

17 "Emotional distress." A temporary or permanent state of  
18 mental anguish.

19 "Family or household member." Spouses or persons who have  
20 been spouses, persons living as spouses or who lived as spouses,  
21 parents and children, other persons related by consanguinity or  
22 affinity, current or former sexual or intimate partners or  
23 persons who share biological parenthood.

24 "Tracking device." An electronic or mechanical device that  
25 permits only the tracking of the movement of a person or object.

26 Section 2. Title 18 is amended by adding a section to read:  
27 § 5762. Prohibited use of mobile tracking devices.

28 (a) Prohibition.--Except as authorized under section 5761  
29 (relating to mobile tracking devices) or subsection (b), a  
30 person may not:

1           (1) intentionally install or place or cause to be  
2 installed or placed a mobile tracking device by intentionally  
3 deceptive means; and

4           (2) use the mobile tracking device to track the location  
5 of another person without the lawful consent of the person.

6       (b) Exceptions.--The provisions of subsection (a) shall not  
7 apply to the installation, placement or use of an electronic  
8 tracking device by any of the following:

9           (1) A law enforcement officer, judicial officer,  
10 probation officer, parole officer or employee of the  
11 Department of Corrections if the person is conducting  
12 official duties in accordance with Federal and State law.

13          (2) The parent or legal guardian of a minor if the  
14 parent or legal guardian is tracking any of the following:

15           (i) The minor.

16           (ii) A person authorized by the parent or legal  
17 guardian as a caretaker of the minor during any time when  
18 the minor is under the person's sole care.

19          (3) A legally authorized representative of an  
20 incapacitated or incompetent adult.

21          (4) The owner of a fleet vehicle who is tracking the  
22 fleet vehicle.

23          (5) An electronic communications provider if all of the  
24 following apply:

25           (i) The installation, placement or use of the  
26 electronic tracking device is disclosed in the electronic  
27 communications provider's terms of use, privacy policy or  
28 similar document, which is made available to the  
29 customer.

30           (ii) The electronic communications provider does not

1 commit willful and wanton misconduct in transmitting,  
2 storing or caching electronic communications or messages  
3 of others.

4 (c) Definitions.--As used in this section, the following  
5 words and phrases shall have the meanings given to them in this  
6 subsection:

7 "Electronic communications provider." Telecommunications  
8 carriers, commercial mobile service providers and providers of  
9 information services, including Internet service providers and  
10 hosting service providers.

11 "Fleet vehicle." A motor vehicle that is:

12 (1) owned by a single entity and operated by employees  
13 or agents of the entity for business or government purposes;  
14 or

15 (2) held for lease, rent or sale by a motor vehicle  
16 dealer for the general public.

17 "Tracking device." An electronic or mechanical device that  
18 permits a person to remotely determine or track the position and  
19 movement of another person.

20 Section 3. This act shall take effect in 60 days.