
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 690 **Hearing Date:** April 28, 2015
Author: Stone
Version: April 6, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Privacy*

HISTORY

Source: Crime Victims Action Alliance

Prior Legislation: SB 1667 (Burton) Ch. 449, Stats. 1998

Support: Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California District Attorneys Association; Fraternal Order of Police; Long Beach Police Officers Association; Los Angeles County Professional Peace Officers Association; Riverside Sheriffs Association; Santa Ana Police Officers Association; Sacramento County Deputy Sheriffs' Association

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to expand provisions making it a misdemeanor to use an electronic tracking device to determine the movement of a person to also prohibit the use of such a device to track an object.

Existing law provides that no person or entity in this state shall use an electronic tracking device to determine the location or movement of a person. (Penal Code § 637.7(a))

This bill also provides that no person or entity shall use an electronic device to determine the location or movement of an object.

Existing law provides that the prohibition on tracking with an electronic device shall not apply when the registered owner, lessor or lessee of a vehicle has consented to the use of the electronic device with respect to that vehicle. (Penal Code § 637(b))

This bill also clarifies that the owner, lessor or lessee of an object can consent.

Existing law provides that "electronic tracking device" means any device attached to a vehicle or other movable thing that reveals its location or movement by the transmission of electronic signals. (Penal Code § 637(c))

This bill provides instead that "electronic tracking device" means any electronic or mechanical device that permits the tracking of the movement of a person or object.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Currently Penal Code Section 637.7 prohibits a private citizen from using an electronic tracking device to determine the location or movement of a person. However Penal Code Section 637.7 has failed to keep up with new methods of tracking an individual's movements and/or location. This has created a public safety emergency for victims of stalking, domestic violence and sexual assault.

Penal Code Section 637.7 only prohibits the attaching of an electronic device on vehicle to determine the movement of the vehicle (or other moveable thing). When Penal Code Section 637.7 was enacted the term "cyberstalking" hadn't even been coined yet.

Today there are multiple versions of spyware available that allow individuals to track a victims location and movements by downloading applications onto a victim's Smartphone, tablet or computer (often without the victims consent or knowledge). Victims are also increasingly being tracked by individuals who hack into their vehicles navigation systems or On-Star type devices. Some victims have even been tracked by individuals placing GPS trackers in their clothes and accessories. Unfortunately this type of conduct is not prohibited by Penal Code Section 637.7.

A recent NPR investigation found 75% of domestic violence shelters surveyed said they are assisting victims whose abusers tracked them using GPS technology or whose abusers eavesdropped on their conversations remotely using hidden apps on their Smartphone, tablet or computer. Stalking and domestic violence victims have also been tracked by abusers who have hidden GPS trackers in their clothing or accessories such as a purse.

SB 690 will help protect victims of stalking, domestic violence and sexual assault from their abusers by replacing the narrow, outdated definition of electronic tracking device currently contained in Penal Code Section 637.7 with the broader, more technologically updated definition of tracking device contained in Penal Code Section 1534. Penal Code Section 1534 governs the application and use of tracking device search warrants by law enforcement. Penal Code Section 1534 was specifically enacted to deal with the use of GPS technology and other forms of electronic tracking of both persons and objects in response to a United States Supreme Court decision involving GPS trackers.

2. Prohibition on Tracking Objects

Existing law makes it a misdemeanor to use an electronic tracking device to track a person unless the person has consented. This bill would also make it a misdemeanor to use a device to track an object.

The supporters state that there is evidence that abusers and stalkers use the GPS tracking devices to track their victims. According to an NPR article:

85 percent of the shelters we surveyed say they're working directly with victims whose abusers tracked them using GPS. Seventy-five percent say they're working with victims whose abusers eavesdropped on their conversation remotely—using hidden mobile apps. And nearly have the shelters we surveyed have a policy against using Facebook on premises, because they are concerned a stalker can pinpoint location. (Shahani, Aarti "Smartphones Are Used to Stalk Control Domestic Abuse Victims" NPR all tech considered September 16, 2014)

According to the sponsor:

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Should the law also prohibit the tracking of an object without consent?

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