



February 24, 2023

SENATE BILL No. 161

DIGEST OF SB 161 (Updated February 21, 2023 12:16 pm - DI 106)

Citations Affected: IC 35-31.5; IC 35-45; IC 35-50.

Synopsis: Stalking through use of tracking device. Provides that a person who, with the intent to track an individual, and without the individual's knowledge, places a tracking device on an individual or the individual's property commits remote criminal tracking, a Class C misdemeanor. Provides certain exceptions. Increases the penalty to a Class A misdemeanor if the person is the subject of a protective order issued on behalf of the individual. Establishes a sentence enhancement if a person uses a tracking device to commit or facilitate the commission of a felony.

Effective: July 1, 2023.

Crider

January 9, 2023, read first time and referred to Committee on Corrections and Criminal Law.
February 23, 2023, amended, reported favorably — Do Pass.

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February 24, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 161

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-31.5-2-255.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2023]: **Sec. 255.3. "Protective order", for**
4 **purposes of IC 35-45-10-7, has the meaning set forth in**
5 **IC 35-45-10-7.**

6 SECTION 2. IC 35-31.5-2-337.5, AS ADDED BY P.L.170-2014,
7 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2023]: Sec. 337.5. "Tracking device", for purposes of
9 IC 35-33-5, **IC 35-45-10-7, IC 35-50-2-19**, and this chapter, means an
10 electronic or mechanical device that allows a person to remotely
11 determine or track the position or movement of another person or an
12 object. The term includes the following:

- 13 (1) A device that stores geographic data for subsequent access or
14 analysis.
15 (2) A device that allows real-time monitoring or movement.
16 (3) An unmanned aerial vehicle.
17 (4) A cellular telephone or other wireless or cellular

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1 communications device, or an electronic device that
 2 communicates with a cellular telephone or other wireless or
 3 cellular communications device, including by means of an
 4 application installed on or accessed through a cellular
 5 telephone or other wireless or cellular communications device.

6 SECTION 3. IC 35-45-10-7 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2023]: Sec. 7. (a) This section does not apply to the following:

9 (1) A parent who uses a tracking device to determine the
 10 location of the parent's minor child.

11 (2) A person who places a tracking device on property in
 12 which the person has an ownership or contractual interest,
 13 unless the person is the subject of a valid protective order
 14 issued on behalf of an individual who may use the property.

15 (3) A tracking device placed on a person or the property of a
 16 person:

17 (A) who is incarcerated;

18 (B) as a condition of probation, parole, home detention,
 19 community corrections, bail, prosecutorial diversion, or
 20 supervised release; or

21 (C) pursuant to a court order.

22 (4) A law enforcement officer lawfully engaged in the
 23 execution of the officer's duties.

24 (5) A device installed as original equipment by the
 25 manufacturer of a motor vehicle.

26 (b) As used in this section, "protective order" means an order
 27 described in IC 35-46-1-15.1(a).

28 (c) A person who:

29 (1) with the intent to remotely determine or track the position
 30 or movement of an individual; and

31 (2) without the knowledge of the individual;

32 places a tracking device on the individual or on property owned or
 33 used by the individual, commits remote criminal tracking, a Class
 34 C misdemeanor. However, the offense is a Class A misdemeanor if
 35 the person is the subject of a valid protective order issued on behalf
 36 of the individual.

37 SECTION 4. IC 35-50-2-19 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2023]: Sec. 19. (a) The state may seek, on a page separate from

40 the rest of a charging instrument, to have a person who allegedly
 41 committed a felony sentenced to an additional fixed term of
 42 imprisonment if the state can show beyond a reasonable doubt that



1 the person knowingly or intentionally used a tracking device:

2 (1) in the commission of the felony; or

3 (2) to facilitate the commission of the felony.

4 (b) If the person was convicted of the felony in a jury trial, the
5 jury shall reconvene to hear evidence in the enhancement hearing.
6 If the trial was to the court, or the judgment was entered on a
7 guilty plea, the court alone shall hear evidence in the enhancement
8 hearing.

9 (c) If the jury (if the hearing is by jury) or the court (if the
10 hearing is to the court alone) finds that the state has proven beyond
11 a reasonable doubt that the person knowingly or intentionally used
12 a tracking device in the commission of the felony, or to facilitate
13 the commission of the felony, the court may sentence the person to
14 an additional fixed term of imprisonment of:

15 (1) if the felony did not result in serious bodily injury to
16 another person, between six (6) months and two and one-half

17 (2 1/2) years; or

18 (2) if the felony resulted in serious bodily injury to another
19 person, between one (1) and six (6) years.

20 (d) A person who commits more than one (1) felony comprising
21 a single episode of criminal conduct may be sentenced to only one
22 (1) additional fixed term under this section.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 161, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 13, delete "protection" and insert "**protective**".

Page 2, between lines 23 and 24, begin a new line block indented and insert:

"(5) A device installed as original equipment by the manufacturer of a motor vehicle."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 161 as introduced.)

FREEMAN, Chairperson

Committee Vote: Yeas 8, Nays 0.

