S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 9, 2015

Introduced by M. of A. NOLAN, AUBRY, BENEDETTO, BLAKE, BRENNAN, BRINDISI, CAHILL, CLARK, COLTON, COOK, CRESPO, CUSICK, DINOWITZ, FAHY, FARRELL, GALEF, GANTT, GLICK, GOTTFRIED, GUNTHER, HEVESI, JAFFEE, JOYNER, LUPARDO, MILLER, MOSLEY, O'DONNELL, PAULIN, PICHARDO, ROSENTHAL, SCHIMMINGER, SIMON, STIRPE, WOERNER, ZEBROWSKI -- Multi-Sponsored by -- M. of A. BARRON, BROOK-KRASNY, BUCHWALD, HIKIND -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the civil rights law, in relation to the unlawful surveillance of an individual using GPS or similar technology

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 250.75 to read as follows:

S 250.75 UNLAWFUL SURVEILLANCE BY GLOBAL POSITIONING SYSTEM OR SIMILAR TECHNOLOGY.

1. A PERSON IS GUILTY OF UNLAWFUL SURVEILLANCE BY GLOBAL POSITIONING SYSTEM OR SIMILAR TECHNOLOGY WHEN:

(A) WITHOUT THE KNOWLEDGE OR CONSENT OF THE AUTHORIZED OPERATOR OF A MOTOR VEHICLE AND WITH INTENT TO MONITOR OR DETERMINE THE LOCATION OF A MOTOR VEHICLE, HE OR SHE INTENTIONALLY PLACES IN OR ON SUCH VEHICLE A GLOBAL POSITIONING SYSTEM DEVICE OR SIMILAR DEVICE AND THEREBY MONITORS OR DETERMINES THE LOCATION OF SUCH MOTOR VEHICLE, UNDER CIRCUMSTANCES WHERE SUCH AUTHORIZED OPERATOR HAS A REASONABLE EXPECTATION OF THE PRIVACY OF SUCH INFORMATION. FOR PURPOSES OF THIS PARAGRAPH AND SUBDIVISION THREE OF THIS SECTION, A "REASONABLE EXPECTATION OF PRIVACY" IS NOT EXTINGUISHED BY THE MERE PRESENCE OF A MOTOR VEHICLE IN A PUBLIC PLACE; OR

(B) WITHOUT THE KNOWLEDGE OR CONSENT OF A PERSON AND WITH INTENT TO MONITOR OR DETERMINE THE LOCATION OF A PERSON, HE OR SHE INTENTIONALLY PLACES ON THE BODY OF SUCH PERSON OR ON THE PERSONAL PROPERTY OF SUCH

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PERSON A GLOBAL POSITIONING SYSTEM DEVICE OR SIMILAR DEVICE, AND THEREBY MONITORS OR DETERMINES THE LOCATION OF SUCH PERSON.

2. (A) THIS SECTION SHALL NOT APPLY TO CONDUCT BY A LAW ENFORCEMENT OFFICIAL PURSUANT TO A WARRANT ISSUED BY AN AUTHORIZED COURT OR THAT IS AUTHORIZED BY LAWFUL EXCEPTION TO THE WARRANT REQUIREMENT.

(B) PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO A PERSON WHO IS AN OWNER OF THE VEHICLE IN OR ON WHICH THE DEVICE WAS PLACED, WHEN THE OPERATOR OF SUCH VEHICLE IS THE MINOR CHILD OF SUCH OWNER.

3. IT SHALL BE A DEFENSE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION THAT, UNDER THE CIRCUMSTANCES, THE DEFENDANT ENGAGED IN SUCH CONDUCT FOR A LEGITIMATE PURPOSE AND SUCH AUTHORIZED OPERATOR'S REASONABLE EXPECTATION OF PRIVACY WAS MINIMAL.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIMINISH OR ENLARGE ANY POWER OF THE COURTS, OR ANY AUTHORITY OF LAW ENFORCEMENT PERSONNEL ENGAGED IN THE CONDUCT OF THEIR AUTHORIZED DUTIES, WITH RESPECT TO THE CONDUCT DESCRIBED IN THIS SECTION.

UNLAWFUL SURVEILLANCE BY GLOBAL POSITIONING SYSTEM OR SIMILAR TECHNOLOGY IS A CLASS B MISDEMEANOR.

S 2. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. UNAUTHORIZED SURVEILLANCE BY GLOBAL POSITIONING SYSTEM OR SIMILAR TECHNOLOGY. 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, ANY PERSON WHO:

(A) WITHOUT THE KNOWLEDGE OR CONSENT OF THE AUTHORIZED OPERATOR OF A MOTOR VEHICLE AND WITH INTENT TO MONITOR OR DETERMINE THE LOCATION OF A MOTOR VEHICLE, INTENTIONALLY PLACES IN OR ON SUCH VEHICLE A GLOBAL POSITIONING SYSTEM DEVICE OR SIMILAR DEVICE AND THEREBY MONITORS OR DETERMINES THE LOCATION OF SUCH MOTOR VEHICLE, UNDER CIRCUMSTANCES WHERE SUCH AUTHORIZED OPERATOR HAS A REASONABLE EXPECTATION OF THE PRIVACY OF SUCH INFORMATION; OR

(B) WITHOUT THE KNOWLEDGE OR CONSENT OF A PERSON AND WITH INTENT TO MONITOR OR DETERMINE THE LOCATION OF A PERSON, HE OR SHE INTENTIONALLY PLACES ON THE BODY OF SUCH PERSON OR ON THE PERSONAL PROPERTY OF SUCH PERSON A GLOBAL POSITIONING SYSTEM DEVICE OR SIMILAR DEVICE, AND THEREBY MONITORS OR DETERMINES THE LOCATION OF SUCH PERSON; MAY BE LIABLE, IN A CIVIL CAUSE OF ACTION, FOR COMPENSATORY DAMAGES, IF ANY, AS WELL AS EXEMPLARY DAMAGES. THE COURT MAY ALSO AWARD REASONABLE COSTS AND ATTORNEYS FEES TO A PREVAILING PLAINTIFF. FOR PURPOSES OF PARAGRAPH (A) OF THIS SUBDIVISION AND PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, A "REASONABLE EXPECTATION OF PRIVACY" IS NOT EXTINGUISHED BY THE MERE PRESENCE OF A MOTOR VEHICLE IN A PUBLIC PLACE.

2. (A) THIS SECTION SHALL NOT APPLY TO CONDUCT BY A LAW ENFORCEMENT OFFICIAL PURSUANT TO A WARRANT ISSUED BY AN AUTHORIZED COURT OR THAT IS AUTHORIZED BY LAWFUL EXCEPTION TO THE WARRANT REQUIREMENT.

(B) PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY: (I) TO A PERSON WHO IS AN OWNER OF THE VEHICLE ON WHICH THE DEVICE WAS PLACED, WHEN THE OPERATOR OF SUCH VEHICLE IS THE MINOR CHILD OF SUCH OWNER; OR (II) WHEN, UNDER THE CIRCUMSTANCES, THE ACTOR ENGAGED IN SUCH CONDUCT FOR A LEGITIMATE PURPOSE AND SUCH AUTHORIZED OPERATOR'S REASONABLE EXPECTATION OF PRIVACY WAS MINIMAL.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIMINISH ANY POWER OF THE COURTS, OR TO DIMINISH OR ENLARGE ANY AUTHORITY OF LAW ENFORCEMENT PERSONNEL ENGAGED IN THE CONDUCT OF THEIR AUTHORIZED DUTIES, WITH RESPECT TO THE CONDUCT DESCRIBED IN THIS SECTION.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABRIDGE OR LIMIT ANY OTHER RIGHT OR REMEDY AN AGGRIEVED PERSON MAY HAVE UNDER ANY OTHER PROVISION OF LAW.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.