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# Committee Report

**REGULAR CALENDAR**

**February 17, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 129-FN,**

**AN ACT prohibiting the installation or use of electronic tracking software. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.**

**Rep. Dave Testerman**

**FOR THE MAJORITY OF THE COMMITTEE**

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 129-FN**, prohibiting the installation or use of electronic tracking software. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Dave Testerman for the **Majority** of Criminal Justice and Public Safety. This bill merely codifies a commonsense rule: Nobody should tamper with your personal electronic devices without your permission. Recently smartphone manufacturers installed, but did not activate software that could be activated if a person tests positive for COVID-19, or for that point any reason the deem necessary. It uses Bluetooth software to sense other phones in the vicinity. The public health authorities could use the app to track a person under the guise of contact tracing. Those public health apps would then alert anyone whose smartphones had come near the infected person's phone in the prior 14 days. The American Civil Liberties Union has warned that using cellphone data to address the pandemic carries risks of "invasions of privacy, abuse, and stigmatization." It could in effect electronically brand people who are known to have been exposed to the virus with a "Scarlet C" and alert all in their area to be aware. "Intruder Alert!" It could also be used to approve or deny access to facilities or public travel. This bill requires users to be notified and clearly opt-in to such invasive tactics. **Vote 11-9.**

Original: House Clerk

Cc: Committee Bill File

**REGULAR CALENDAR**

**February 17, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 129-FN,**

**AN ACT prohibiting the installation or use of electronic tracking software. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Nicole Klein-Knight**

**FOR THE MINORITY OF THE COMMITTEE**

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 129-FN**, prohibiting the installation or use of electronic tracking software. **INEXPEDIENT TO LEGISLATE.**

Rep. Nicole Klein-Knight for the **Minority** of Criminal Justice and Public Safety. This bill takes away the personal obligation and accountability of the consumer to understand how to use their electronic devices; and opens the possibility of litigation to businesses that already have given consumer notices on privacy usage. The fiscal note puts the onus on the taxpayer to foot the bill on a privacy concern that should be the responsibility of the consumer.

Original: House Clerk  
Cc: Committee Bill File

## Karen Karwocki

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**From:** Daryl Abbas  
**Sent:** Wednesday, February 17, 2021 8:17 PM  
**To:** Karen Karwocki; Nicole KleinKnight  
**Subject:** Fwd: Committee Reports

**Categories:** CJ Committee reports

Minority report on HB129 and Majority Report on HB286 are approved.

Sent from my iPhone

Begin forwarded message:

**From:** Nicole KleinKnight <Nicole.KleinKnight@leg.state.nh.us>  
**Date:** February 17, 2021 at 7:40:24 PM EST  
**To:** Daryl Abbas <Daryl.Abbas@leg.state.nh.us>  
**Subject:** Re: Committee Reports

### Majority Report HB286

HB 286 establishing a committee to study the response of law enforcement and the criminal justice system to homelessness in New Hampshire. This bill would gather much needed state data regarding homelessness and incarceration. Some displaced New Hampshire residents do not get the assistance they need and continuously end up in the prison system. This results in tax payers repeatedly paying for the same cycle. This data is crucial to amending outdated laws and providing new solutions to the state's response on homelessness.

### Minority Report 129-FN

This bill takes away the personal obligation and accountability of the consumer to understand how to use their electronic devices; and opens the possibility of litigation to businesses that already have given consumer notices on privacy usage. The fiscal note puts the onus on the taxpayer to foot the bill on a privacy concern that should be the responsibility of the consumer.

Thank you!  
Rep Klein Knight

On Feb 17, 2021 7:17 PM, Daryl Abbas <Daryl.Abbas@leg.state.nh.us> wrote:  
Good evening:

I am sending out a friendly reminder that minority / majority reports must be submitted by 10:00 pm.

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Daryl Abbas, Esq.  
Upper Charles Law Group, LLC  
10 Kearney Road, Suite 101  
Needham, MA 02494  
(Office) (617) 600 – 7140

Majority Report (Revised)

HB 129 Prohibition on installation of tracking software

Vote 11 to 8 passed

By Rep Dave Testerman

This bill merely codifies a commonsense rule: Nobody should tamper with your personal electronic devices without your permission. Recently smartphone manufacturers installed, but did not activate software that could be activated if a person tests positive for COVID-19, or for that point any reason the deem necessary. It uses Bluetooth software to sense other phones in the vicinity. The public health authorities could use the app to track a person under the guise of contact tracing. Those public health apps would then alert anyone whose smartphones had come near the infected person's phone in the prior 14 days. The American Civil Liberties Union has warned that using cellphone data to address the pandemic carries risks of "invasions of privacy, abuse, and stigmatization." It could in effect electronically brand people who are known to have been exposed to the virus with a "Scarlet C" and alert all in their area to be aware. "Intruder Alert!" It could also be used to approve or deny access to facilities or public travel. This bill requires users to be notified and clearly opt-in to such invasive tactics.

## Karen Karwocki

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**From:** Daryl Abbas  
**Sent:** Thursday, February 18, 2021 11:02 PM  
**To:** Dave Testerman  
**Cc:** Karen Karwocki  
**Subject:** Re: HB129 Blurb Updated

The minority report is approved. Is the vote count correct? I have it at 11-9.

Sent from my iPhone

On Feb 18, 2021, at 10:36 PM, David Testerman <Dave@sanbornhall.net> wrote:

I updated the Majority Report

Cheers!

Dave Testerman  
Representative for Franklin and Hill  
603-320-9524

Cheers!

Dave Testerman  
Representative for Franklin and Hill  
603-320-9524

<Majority Report HB 129 Tracking Software Revised.docx>



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# Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 129-FN

**BILL TITLE:** prohibiting the installation or use of electronic tracking software.

**DATE:** February 17, 2021

**LOB ROOM:** 204

**MOTIONS:** OUGHT TO PASS

Moved by Rep. Testerman

Seconded by Rep. True

Vote: 11-9

CONSENT CALENDAR: NO

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Jennifer Rhodes, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on Bill # 129

BILL TITLE: prohibiting the installation or use of electronic tracking software  
DATE: 2/17/2021

LOB ROOM: \_\_\_\_\_

MOTION: (Please check one box)

- OTP       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)      (if offered)

Moved by Rep. Testerman      Seconded by Rep. True      Vote: 11/9

MOTION: (Please check one box)

- OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

CONSENT CALENDAR:      YES      4 NO

Minority Report? ψ Yes      No      If yes, author, Rep: Klein-Krist Motion \_\_\_\_\_

Respectfully submitted: \_\_\_\_\_  
Rep Natalie Wells, Clerk  
Sen. Ken Rhodes



2021 SESSION

Criminal Justice and Public Safety

Bill #: 129 Motion: OTP AM #: \_\_\_\_\_ Exec Session Date: 2/17/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	11		
Welch, David A. Vice Chairman	1		
Burt, John A.	2		
Hopper, Gary S.	3		
Green, Dennis E.	4		
Wallace, Scott	5		
Testerman, Dave	6		
True, Chris	7		
Pratt, Kevin M.	8		
Marston, Dick	9		
Rhodes, Jennifer M. Clerk	10		
Harriott-Gathright, Linda C.		1	
Pantelakos, Laura C.		2	
O'Hearne, Andrew S.			
Bordenet, John		3	
Meuse, David		4	
Newman, Ray E.		5	
Bouldin, Amanda C.		6	
Conley, Casey M.		7	
Klein-Knight, Nicole		8	
Bradley, Amy		9	

# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 129-FN

**BILL TITLE:** prohibiting the installation or use of electronic tracking software.

**DATE:** February 17, 2021

**LOB ROOM:** 204                      **Time Public Hearing Called to Order:** 9:45 a.m.  
**Time Adjourned:** 10:05 a.m.

**Committee Members:** Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

**Bill Sponsors:**  
Rep. Testerman

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Testerman – Bill Sponsor**

- Does not like that phone (mobile) companies put tracking software without notifying owners

**Q:** Rep. True – Is it true that the app is able to be on your phone at time of purchase?

**A:** Yes

**Q:** Rep. Pantelakos – Does this bill not allow the app to be on the phone?

**A:** You would have to be notified, and agree

**Q:** Rep. Meuse – How did you know it was on your phone?

**A:** A friend

**Q:** Rep. Bradley – Do you use the easy pass?

**A:** Yes – I know and accepted it has a tracker

**Q:** Rep. Harriot-Gathright – Have you considered going to the FCC?

**A:** Want to keep it local

**Q:** Rep. Bouldin – Do you know DHHS knows about the app and didn't activate it?

**A:** I don't want to be tracked and not know

**Q:** Rep. O'Hearne – How would this be enforced?

**A:** I would have each seller – "turn off" this app/setting

**Q:** Rep. Green – When did you realize it was on your phone?

**A:** Friend told me

Respectfully submitted,

Rep. Jennifer Rhodes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON Bill # 129

BILL TITLE: *Prohibit installation or use of electronic software*

DATE: *2/17/2021*

LOB ROOM:

Time Public Hearing Called to Order:

*9:45*

Time Adjourned:

*10:05*

**Committee Members:** Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

**Bill Sponsors:**

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

# Testimony



# **Fiscal Note**

**HB 129-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT prohibiting the installation or use of electronic tracking software.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill, which amends RSA 644:A:4, contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$55	\$55
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

RSA 644-A:6 provides penalties for violation of RSA 644-A. In addition to a class B misdemeanor penalty, an individual or person who is injured as a result of a violation of this chapter may file a civil action against a government entity, individual, or person that fails to comply with the provisions of the chapter. The cost to the Judicial Branch of an average routine civil case in the superior court in fiscal year 2022 is \$526. These numbers do not consider the cost of any appeals that may be taken following trial.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

# Bill as Introduced

HB 129-FN - AS INTRODUCED

2021 SESSION

21-0074  
05/04

HOUSE BILL

***129-FN***

AN ACT

prohibiting the installation or use of electronic tracking software.

SPONSORS:

Rep. Testerman, Merr. 2

COMMITTEE:

Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits a person from, without consent, installing or activating an application on an electronic device that can track an individual's proximity to similar equipment or otherwise relay the individual's location information.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT prohibiting the installation or use of electronic tracking software.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Electronic Device Location Information; Conditions of Use of Location Information; Proximity  
2 Applications. Amend RSA 644-A:4 to read as follows:

3           644-A:4 Conditions of Use of Location Information. No individual or person shall, without  
4 consent, place, locate, or install an electronic device on the person or property of another and obtain  
5 location information from such electronic device. ***Nor shall an individual or person, without***  
6 ***consent, place, install, or activate an application on an electronic device that can track an***  
7 ***individual's proximity to similar equipment or relay an individual's location to a similar***  
8 ***device or to a central monitoring station or other similar agency.*** No such consent shall be  
9 required by the parent, foster parent, or legal guardian of a minor, or by the legal guardian for the  
10 subject of his or her guardianship, or for persons under house arrest or probation or parole  
11 supervision who are issued ankle bracelets.

12           2 Effective Date. This act shall take effect January 1, 2022.