

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

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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 15, 2021

HEARINGS

Tuesday		04/27/2021
(Day)		(Date)
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	HB 179-FN	relative to enhanced penalties based on prior convictions for driving under the influence of drugs or liquor.
1:15 p.m.	HB 347-FN	relative to driving with a suspended license.
1:30 p.m.	HB 129-FN	prohibiting the installation or use of electronic tracking software.
1:45 p.m.	HB 125	relative to post-arrest photo distribution by law enforcement officers.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98124930370>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,98124930370# or +13017158592,,98124930370#
4. Webinar ID: [981 2493 0370](https://www.zoom.us/j/98124930370)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:
HB 179-FN
Rep. Abbas
HB 347-FN
Rep. Abbas
HB 129-FN
Rep. Testerman

HB 125

Rep. Klein-Knight

Rep. Bouchard

Rep. Roy

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 129-FN, prohibiting the installation or use of electronic tracking software.

Hearing Date: April 27, 2021

Time Opened: 1:34 p.m.

Time Closed: 1:55 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill

Sponsors:

Rep. Testerman

Who supports the bill: Alvin See; Alexandra Mennella; Eric Pauer

Who opposes the bill: Maura Weston, The New England Cable and Telecommunications Association; Lisa McCabe, CTIA; Paula Minnehan, NH Hospital Association; Chief David Goldstein; Katherine Cooper, NH Association of Criminal Defense Lawyers; Michael Bagan; Robert Krieger; John Simonds, Sullivan County; Edward Garone; Chief Tara Laurent, Greenland Police Department; Chief Joseph Hoebeke, Hollis Police Department; Brendan LaFlamme, Hollis Police Department; James Maloney, Hollis Police Department; Domenic Richardi; David Croft; Sheriff Mark Brave; Christopher Connelly; Gary Fisher; Charles Pelton; Steven Russo; Joe Mahoney; Benjamin Sargent; Elizabeth Sargent, NH Association of Chiefs of Police; Stephani Cassioppini, US Cellular; Teresa Rosenberger, NH Health Care Association/NH Brain Injury Association; T Rosenberger, Pennichuck Water Works; Anthony Bean Burpee; Patrick Sullivan; Charles Reynolds; Emily Cobb; John Parsons; Timothy Carpenter; Bradley Osgood; Gregory Patten; David Noyes; Michael Bilodeau; Scott Lester; Gerald Lewis; Timothy Crowley; Bob Dunn, NH Catholic Charities; Christopher Gilrein, TechNet; Peter Morency; William Wright

Who is neutral on the bill: Lt. Brian Strong, NH State Police

Summary of testimony presented in support:

None

Summary of testimony presented in opposition:

Representative Horrigan

- Online privacy, especially location data, is something people are concerned about, but it is a fundamental aspect of the Internet.
- Companies use, buy, and sell personal data to provide services to consumers.
- Any type of crowd sourcing apps, like Google Maps, Waze or dating apps would be impacted by this.
- Many of these apps are essential and they are provided for free.
- There are false claims going around regarding Covid-19 tracking software being involuntarily installed.
- There are a lot of privacy protections built into these apps and people should take personal responsibility for their devices.
- Senator Kahn asked if the House committee received information from transportation or communications companies that use tracking.
 - Got a lot of information on similar bills. Is not on the Criminal Justice Committee where this bill was.

Paula Minnehan (NH Hospital Association)

- Hospitals obtain consent prior to placing an electronic device on a person.
- The proposed language would cause issues in these cases.
- A weighted detecting device can be used on a hospital bed to alert personnel if a patient falls out of bed.
- A central monitoring station, as referenced in the bill, could be a nurse's station to monitor those devices attached to beds.
- This bill would prohibit a monitoring station such as that.
- Requests language to explicitly exempt healthcare facilities and providers from this bill.

Lisa McCabe (CTIA)

- This bill would add to further fragmentation of consumer privacy laws and raise concerns as it is technology and sector specific.
- Consumer privacy protections should apply consistently across all sectors and protections should be consistent for any type of information.
- This bill only applies to location information.
- This is something consumers are unlikely to expect or understand.
- The bill could unintentionally affect reasonable uses, such as a company that uses a device to track a package for legitimate purposes, like fresh fish in order to ensure it is safe to eat upon delivery.
- This could also impede an employer's legitimate need to track fleet vehicles.
- Privacy issues are better approached with a holistic effort across the board in order to lessen any unintended consequences and provide consistent consumer protections.

Maura Weston (New England Cable and Television Association)

- As written, this bill would criminalize common applications and software use in virtually all modern devices, while impeding companies' abilities to provide services that are critical to executing legitimate functions that are core to business operations.

- Badge access systems used to enter and exit buildings would be impacted by this by suggesting consent can be withdrawn or withheld, which is inappropriate and could pose safety and security threats.
- Location data related applications are important to consumer experience.
- Comcast offers a tool on their customer app to allow customers to know where a technician is and what they look like before they arrive at the customer's home.
- Technologies allow for enhanced consumer experiences and efficiency.
- The bill would prohibit the use of this technology even on a person's own property.
- NECTA member companies would be prohibited from placing tracking technology on their own vehicles or own equipment in their own buildings without consent.

Chief David Goldstein (Association of Chiefs of Police)

- Looking for an exception for law enforcement similar to the language proposed on HB384.
- Spoke with the prime sponsor and was given the impression that he does not object to adding the exception.
- Requesting an exemption for law enforcement and other emergency services.

Neutral Information Presented:

Lt. Brian Strong (NH State Police)

- There is a lack of law enforcement caveat or exception in this bill.
- Concerned that court order GPS trackers on vehicles or the activation of a vehicles GPS system to locate a driver would no longer be tools law enforcement can utilize under this bill.
- Senator Gannon asked if the exception language from HB384 would address the concerns.
 - Yes.

jch

Date Hearing Report completed: April 30, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB129 on 2021-04-27

Support: 3 Oppose: 43 Neutral: 1 Total to Testify: 6

Name	Email Address	Phone	Title	Representing	Position	Testifying	Signed Up
Weston, Maura	mauraweston@comcast.net	16034912853	A Lobbyist	The New England Cable and Telecommunications Association	Oppose	Yes	4/26/2021 1:42 PM
McCabe, Lisa	lmccabe@ctia.org	202.714.4948	A Lobbyist	CTIA	Oppose	Yes	4/20/2021 2:47 PM
Minnehan, Paula	pminnehan@nhha.org	603.496.1047	A Lobbyist	NH Hospital Association	Oppose	Yes	4/26/2021 6:04 PM
Goldstein, David	dgoldstein@franklinnh.org	16039989782	A Member of the Public	Myself	Oppose	Yes	4/27/2021 11:38 AM
Cooper, Katherine	katherine@nhacd.org	603.674.4885	A Lobbyist	NH Association of Criminal Defense Lawyers	Oppose	Yes	4/27/2021 12:22 PM
Strong, Brian	Brian.R.Strong@dos.nh.gov	603.223.8568	State Agency Staff	NH State Police	Neutral	Yes	4/27/2021 8:34 AM
Bagan, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:34 AM
Krieger, Robert	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 9:03 AM
Simonds, John	jsimonds@sullivancountynh.gov	603-863-4200	An Elected Official	Sullivan County	Oppose	No	4/27/2021 9:12 AM
Garone, Edward	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 10:19 AM
Laurent, Tara	tlaurent@greenlandpd.us	603.431.4624	A Member of the Public	Greenland Police Department	Oppose	No	4/27/2021 9:55 AM
Hoebeke, Joseph	jhoebeke@hollisnh.org	603.765.1595	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:51 AM
LaFlamme, Brendan	blaflamme@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:52 AM
Maloney, James	jmaloney@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:52 AM
Richard, Domenic	Not Given	Not Given	An Elected Official	Myself	Oppose	No	4/27/2021 7:09 AM
Croft, David	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:19 AM
Brave, Sheriff Mark	Mbrave@co.strafford.nh.us	Not Given	An Elected Official	Myself	Oppose	No	4/27/2021 7:23 AM
Connelly, Christopher	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:27 AM
Fisher, Gary	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:14 AM
Pelton, Charles	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:18 AM
Russo, Steven	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 12:22 PM
Mahoney, Joe	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 6:51 AM
Sargent, Benjamin	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 11:34 AM
Sargent, Elizabeth	echasesargent@gmail.com	603.568.0213	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	4/26/2021 5:22 PM
Cassioppini, Stephani	Not Given	Not Given	A Lobbyist	US Cellular	Oppose	No	4/26/2021 1:30 PM
Rosenberger, Teresa	Not Given	Not Given	A Lobbyist	NH Health Care Asso; NH Brain	Oppose	No	4/26/2021 12:13 PM

Rosenberger, T	trosenberger@bernsteinshur.com	603-396-6865	A Lobbyist	Injury Asso. Pennichuck Water Works	Oppose	No	4/26/2021 12:14 PM
Bean Burpee, Anthony	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:16 PM
Sullivan, Patrick	Patsully@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:22 PM
Reynolds, Charles	reynolds.charles@comcast.net	603.781.0168	A Member of the Public	Myself	Oppose	No	4/26/2021 5:32 PM
Cobb, Emily	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:49 PM
Parsons, John	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:50 PM
Carpenter, Timothy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:54 PM
Osgood, Bradley	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:56 PM
Patten, Gregory	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:58 PM
Noyes, David	pdchief@wvpublicsafety.com	603.236.8809	A Member of the Public	Myself	Oppose	No	4/26/2021 3:09 PM
Bilodeau, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 3:18 PM
Lester, Scott	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 3:24 PM
Lewis, Gerald	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 3:38 PM
Crowley, Timothy	tcrowley@atkinson-nh.gov	978.888.3248	A Member of the Public	Myself	Oppose	No	4/26/2021 3:58 PM
Dunn, Bob	rdunn@rcbm.org	603.670.4597	A Lobbyist	NH Catholic Charities	Oppose	No	4/26/2021 4:13 PM
Gilrein, Christopher	cgilrein@technet.org	Not Given	A Lobbyist	TechNet	Oppose	No	4/26/2021 4:23 PM
See, Alvin	absee@4Liberty.net	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 4:56 PM
Mennella, Alexandra	am88@fastmail.com	646.610.9858	A Member of the Public	Myself	Support	No	4/26/2021 10:17 PM
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No	4/26/2021 10:24 PM
Morency, Peter	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 6:04 AM
Wright, William	William.h.wright1@gmail.com	603.520.6555	An Elected Official	Myself	Oppose	No	4/26/2021 6:00 PM

Testimony



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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www.technet.org | @TechNetNE

April 27, 2021

The Honorable Senator Sharon Carson, Chair
Senate Judiciary Committee
SH Rm 100
107 North Main Street
Concord, NH 03301

Re: HB 129 – Prohibiting the Installation or Use of Electronic Tracking Software

Dear Chair Carson and members of the Committee,

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

TechNet respectfully submits this letter in opposition to HB 129, which would prohibit the installation or activation of any application that can track or relay location information.

We appreciate the bill's intent to target and prohibit the malicious use of tracking software to surveil or monitor someone without their consent, however, as currently drafted, the bill is ambiguous in its application. Without significant changes, the bill could criminalize common applications and functions found on virtually all modern devices.

If the intent of the bill is truly to target illegal surveillance, we ask that the Committee pursue amendments to strictly define the criminal activity they are seeking to regulate and not unintentionally subject individuals or service providers to potential prosecution for utilizing or providing services they know and depend on.

Thank you for your consideration on this matter and please do not hesitate to contact me if I can provide any additional information or assistance.

Sincerely,

Christopher Gilrein
Executive Director, Massachusetts and the Northeast
TechNet
cgilrein@technet.org



**Testimony of
Lisa McCabe
CTIA
Opposition to New Hampshire House Bill 129
Before the Senate Judiciary Committee**

April 27, 2021

Chair Carson, Vice Chairman Gannon, and members of the Committee, on behalf of CTIA®, the trade association for the wireless communications industry, thank you for the opportunity to provide this testimony in opposition to House Bill 129, which prohibits the placement, installation, or activation of an application on an electronic device that can track an individual's proximity without consent. HB 129 is unnecessary, would add to the further fragmentation of consumer privacy laws, and raises particular concerns because it is technology-and-sector-specific.

CTIA and its member companies strongly believe that consumer information should be protected and that consumers should be given choices with respect to when and how their information is used. Mobile providers currently obtain the affirmative opt-in consent of their wireless consumers before using or sharing subscribers' precise location information – with limited exceptions for emergency situations and appropriate legal process. This is consistent with the Federal Trade Commission's (FTC) Privacy Framework and with other federal laws and regulations, which generally require telecommunications carriers to obtain opt-in consent prior to sharing mobile call location information. The FTC regularly brings



enforcement actions against companies that have misrepresented consumer control regarding collection and use of geolocation data.¹

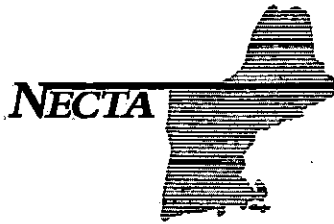
Consumer privacy protections should apply consistently across all industry sectors, and protections should be consistent for any given type of information. HB 129 applies to a specific type of information – location information – that is utilized by an application on a device for the purpose of tracking and sharing location. Because the requirements in HB 129 only apply to applications that can track location and relay that location, the legislation favors certain business models and particular competitors over others. For instance, many online companies have access to location data on consumer handsets and use that data for a variety of purposes. Operating system platforms can collect large amounts of location data from WiFi access points and sell ads based on this data without consumers' knowledge or consent. WiFi networks provide greater location accuracy and various third parties have mapped these networks. Nevertheless, the proposed law would not apply in this situation in which precise location data is collected, used, and shared. HB 129 is unfairly limited to the collection of one type of location data in the online ecosystem – something that consumers are unlikely to understand or expect. Furthermore, the bill exposes companies in New Hampshire to costly litigation.

¹ See, e.g., *In the Matter of InMobi Pte Ltd., a private limited company*. F.T.C. June 22, 2016. 3:16-cv-03474; *In the Matter of Nomi Technologies, Inc., a corporation*. F.T.C. September 3, 2015. 132-3251; *In the Matter of Goldenshores Technologies, LLC, a limited liability company, and Erik M. Geidl, individually and as the managing member of the limited liability company*. F.T.C. March 31, 2014. 132-3087.



Moreover, because this bill is overly broad it could have unintended consequences. For example, the bill could capture uses that are reasonable, such as a company that uses a device in their packages to track the package for legitimate purposes (e.g. tracking produce or fish to make sure it remains safe to eat upon delivery). This bill could also impede an employer's legitimate need to track fleet vehicles for business purposes.

Privacy issues are better addressed with a holistic approach and at the federal level, so that the law does not apply differently to different types of data or on a patchwork, state-by-state basis, or favor one business model over another. A comprehensive approach will lessen any unintended consequences and provide consistent consumer protections. For these reasons, CTIA respectfully requests that you report this bill Inexpedient to Legislate. Thank you for your consideration.



New England Cable & Telecommunications Association, Inc.
The Enterprise Center • 121 Loring Avenue • Suite 340 • Salem, MA 01970
Tel: 781.843.3418

New England Cable & Telecommunications Association, Inc.

April 27, 2021

The Honorable Senator Sharon Carson
Senate Judiciary Committee
SH Room 100
107 North Main Street
Concord, NH 03301

Dear Chair Carson and Members of the Senate Judiciary Committee,

On behalf of the New England Cable and Telecommunications Association (NECTA), I am writing to express concerns with HB129, Prohibiting the Installation or Use of Electronic Tracking Software. NECTA is a five-state regional trade association representing substantially all private cable telecommunications companies in New Hampshire. Our members, including Atlantic Broadband, Charter and Comcast, are New Hampshire's leading broadband and communications providers with over 450,000 customers in more than 184 communities.

NECTA appreciates the intent of HB129 to target and prohibit the use of tracking software to maliciously surveil or monitor someone without their consent, but as drafted, this legislation is overly broad in its application and would have unintended consequences on legitimate business practices in a variety of industries. Without clarifying language, this legislation would criminalize common applications and software used in virtually all modern devices, while impeding companies' abilities to use these technologies for services that are critical to executing legitimate functions core to business operations.

Many private businesses utilize software and hardware devices for a range of security, safety, environmental and customer service operations which would fall under the prohibition created in HB129. A common example of this type of use is a badge access system, which businesses utilize for security purposes to enter and exit facilities and to manage internal access within those facilities. Badge systems can also be used for routine everyday business functions such as using copiers and printers or to access product and inventory storage. Requiring that an employer make these types of uses optional by suggesting that consent can be withdrawn or withheld is not only inappropriate, but it could pose a safety and security threat to employees and business operations.

Another use of software that would be prohibited under this legislation is fleet vehicle management software, which any modern company who has a large fleet of vehicles to manage utilizes. New

Hampshire's cable industry owns and operates the largest vehicle fleets in the state, with Comcast alone managing hundreds of vehicles in New Hampshire. Fleet management software monitors everything from engine idle time to lower emissions to vehicle location for efficient routing and time management. The efficient operation and maintenance of the state's most capable broadband networks serving more than 450,000 homes and businesses is made possible in part through fleet analytics collected by hardware and software that would ultimately be prohibited under HB129 without consent. Again, requiring an employer to obtain consent from employees for this technology utilization or allowing it to be optional is not practical and would have a critical impact on day-to-day business operations and efficiency.

Location data related applications are also very important to customer experience in a variety of industries. In the cable-broadband industry for example, Comcast offers a tool on their customer app which allows customers to see additional information about their Comcast technician when they are within thirty minutes of an appointment window. This not only enhances convenience for customers by reducing the time they have to wait at their house for a technician, but it also gives them more visibility into who their technician is which provides for greater consumer safety. Overall, this technology allows for enhanced consumer experience and greater efficiency—all modern-day advances that consumers have grown to expect from companies providing customer service, like the companies NECTA represents.

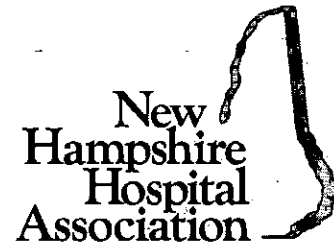
Lastly, HB 129 is different from the existing statutory language because the prohibition applies even on a person's own property. As drafted, NECTA member companies would be prohibited from placing tracking and monitoring technology on their vehicles or equipment in their own buildings without consent. The existing statute clarifies that the placement or installation of a device is limited to being on the property of another, but this important distinction is not included in HB129 which creates a new and distinct prohibited conduct in statute.

Because of these concerns highlighted above, we respectfully ask the committee to amend the bill to include clarifying language that would not prohibit or impede a companies' ability to use these important technologies for legitimate business purposes. NECTA would be happy to assist in the development of amendment language to clarify the allowance of these legitimate uses while still maintaining the original intent of this legislation, which is to ultimately target and criminally prohibit illegal and malicious surveillance.

Thank you for your time and attention to the above concerns included in HB129 as drafted. Please do not hesitate to reach out with any questions or if NECTA can provide additional information.

Respectfully,

Timothy O. Wilkerson
President



SENATE JUDICIARY COMMITTEE

April 27, 2021

HB 129 – Prohibiting the Installation of Use of Electronic Tracking Software

Testimony

Good afternoon, Madam Chair, and members of the committee. My name is Paula Minnehan, Senior VP, State Government Relations with the New Hampshire Hospital Association (NHHA), representing all 26 of the state's community hospitals as well as all specialty hospitals.

NHHA is concerned with the proposed language in HB 129-FN. While hospitals obtain consent before placing an electronic device on a person, the proposed language would cause issues in cases where medical devices could be considered one of the devices described in this bill. For example, a weigh detecting device could be used on a hospital bed to alert healthcare personnel if a patient falls out of the bed. There may likely be a central monitoring station, such as a nurse's station, to monitor these devices and this bill, as written, would prohibit such a monitoring station. While the sponsor may not have intended this bill to apply to health care facilities, as drafted, it would impact them. If this bill were to move forward, we would ask that you consider amending the bill to ensure that hospitals and other health care facilities that utilize devices and equipment for the safety of patients, are not negatively impacted. One suggestion is to explicitly exempt health care facilities and providers from the bill.

NHHA appreciates the opportunity to comment on HB 129-FN. I am happy to answer any questions.

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB129

Hearing date: _____

Executive Session date: _____

Motion of: ITL Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Kahn

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Thursday, May 6, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 129-FN**

AN ACT

prohibiting the installation or use of electronic tracking software.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator Jay Kahn
For the Committee

This bill would prohibit 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. Due to significant concerns regarding the unintended consequences that would arise as a result of this bill, the Committee recommends it to be Inexpedient to Legislate.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 129-FN, prohibiting the installation or use of electronic tracking software.

Inexpedient to Legislate, Vote 5-0.

Senator Jay Kahn for the committee.

This bill would prohibit 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. Due to significant concerns regarding the unintended consequences that would arise as a result of this bill, the Committee recommends it to be Inexpedient to Legislate.

General Court of New Hampshire - Bill Status System

Docket of HB129

Docket Abbreviations

Bill Title: prohibiting the installation or use of electronic tracking software.*Official Docket of HB129.:*

Date	Body	Description
1/4/2021	H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety HJ 2 P. 36
2/17/2021	H	Public Hearing: 02/17/2021 09:45 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/98063742762 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
2/26/2021	H	Majority Committee Report: Ought to Pass (Vote 11-9; RC) HC 18 P. 34
2/26/2021	H	Minority Committee Report: Inexpedient to Legislate
4/7/2021	H	Ought to Pass: MA DV 194-175 04/07/2021 HJ 5 P. 140
4/13/2021	S	Introduced 04/08/2021 and Referred to Judiciary; SJ 12
4/15/2021	S	Remote Hearing: 04/27/2021, 01:30 pm; Links to join the hearing can be found in the Senate Calendar; SC 20
5/6/2021	S	Committee Report: Inexpedient to Legislate; Vote 5-0; CC; 05/13/2021; SC 23
5/13/2021	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 05/13/2021; SJ 15

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB29

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan
Committee Aide

8/12/21
Date

Senate Clerk's Office AK