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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 339  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 339's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Manning and Antonio

**Local Impact Statement Procedure Required:** No

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### Highlights

- The bill will likely affect a relatively small number of cases where the alleged conduct includes the illegal use of a tracking device or application. The associated processing and sanctioning costs for any given county or municipal criminal justice system should be minimal annually, as would be any gain in revenue from fines and court costs and fees.

### Detailed Analysis

The bill (1) prohibits a person from knowingly installing a tracking device or application on another person's property without consent, (2) specifies circumstances in which previously granted consent is presumed to be revoked, and (3) provides exemptions to the prohibition. A violation of the prohibition is the offense of "illegal use of a tracking device or application," a first degree misdemeanor (punishable by a jail term up to 180 days, a fine up to \$1,000, or both).

### Prevalence

Unwanted tracking with a device or application has been increasingly reported since Apple AirTags came to market in April 2021. The technology allows users to easily track lost property such as their keys, wallet, or luggage, but has reportedly been used to commit theft, and more commonly, stalking. The number of new criminal cases stemming from the bill is difficult to estimate for several reasons, perhaps most notably because of the issue of detection. LBO is aware of one article<sup>1</sup> regarding the prevalence of the technology based on reports to police that their whereabouts was being tracked using AirTags. Based on public records obtained from

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<sup>1</sup> Cole, Samantha. ["Police Records Show Women Are Being Stalked with Apple AirTags across the Country."](#) VICE, April 6, 2022.

eight of the country's larger police departments covering an eight-month period, the article found 150 police reports where individuals were concerned that their movements were being tracked through AirTags.

## Charging

The bill can be seen, at least in part, as addressing conduct that, given rapidly changing technology, may not explicitly or unambiguously, violate an existing prohibition. The bill provides additional avenues to prosecute such conduct, but is unlikely to change the seriousness of sanctions than an offender could face. There appears to be anecdotal evidence suggesting that it is problematic for some local prosecutors and law enforcement officials to determine an appropriate charge for unwanted tracking, in the manner prohibited by the bill, because such conduct is not explicitly prohibited.

Currently, the conduct could be charged under the offense of "menacing by stalking," a violation of which is generally a first degree misdemeanor.<sup>2</sup> However, "menacing by stalking" requires a "pattern of conduct," which may be difficult to establish with a device or application, and thus making application of the law inconsistent in those cases. Prosecutors and officers may feel more comfortable charging the conduct under the new offense. Additionally, the charges maybe be more successfully prosecuted.

## Fiscal effect

The bill will likely affect a relatively small number of cases under the jurisdiction of county and municipal criminal justice systems. The costs associated with adjudication, prosecution, indigent defense (if applicable), and sanctioning, including a residential sanction such as jail, will be minimal at most annually. Counties and municipalities may gain minimal annual revenue collected from violators pursuant to the order of the sentencing court. Of note is that the court rarely imposes the maximum permissible fine, and collecting the fine and court costs and fees can be problematic. This is because offenders can be financially unable or unwilling to pay.

In addition, a court generally imposes \$29 in state court costs for a misdemeanor violation, of which \$20 is credited to the Indigent Defense Support Fund (Fund 5DY0) and the remainder, or \$9, is credited to the Victims of Crime/Reparations Fund (Fund 4020). The annual revenue gain to the state because of violations of the bill's prohibition will be minimal at most annually.

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<sup>2</sup> Menacing by stalking is generally a first degree misdemeanor, and increases to a felony of the fourth or fifth degree depending on the circumstances present.