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Substitute Bill Comparative Synopsis

Sub. H.B. 91

135th General Assembly

House Criminal Justice

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

H.B. 91 (As Introduced)	Sub. H.B. 91 (I_135_2398)
Illegal use of a tracking device or application	
<p>Prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent (<i>R.C. 2903.211(B)(1)</i>).</p> <p>No provision.</p>	<p>Adds that the prohibition applies to installing a tracking device or tracking application on another person, in addition to another person's property (<i>R.C. 2903.211(B)(1)(a)</i>).</p> <p>Prohibits a person from knowingly using a tracking device or tracking application to remotely determine or track the position or movement of another person or another person's property (<i>R.C. 2903.211(B)(1)(b)</i>).</p>

H.B. 91
(As Introduced)

Sub. H.B. 91
(I_135_2398)

Revocation of consent

Provides that if a person has given consent for another to install a tracking device or a tracking application on the consenting person's property, the person's consent is presumed to be revoked if either of the following applies (*R.C. 2903.211(B)(2)*):

- The consenting person and the person to whom consent was given are lawfully married and one of them files a petition for divorce or dissolution of marriage from the other.

- The consenting person or the person to whom consent was given files a petition or motion requesting the issuance of a protection order or temporary protection order against the other person.

Adds that the provision applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application, and applies to installing or using a tracking device or tracking application on a consenting person's person, in addition to on a consenting person's property (*R.C. 2903.211(B)(2)*):

- Same provision, but clarifies that one of them files a complaint for divorce or *a petition for* dissolution of marriage from each other.

Same provision, but adds that not later than five days after being served with a complaint or petition, the person to whom consent was given must lawfully uninstall or discontinue use of the tracking device or application. If the person to whom consent was given cannot lawfully uninstall or discontinue use of the tracking device or tracking application, the person to whom consent was given must notify the court in writing that the person has installed or is using a tracking device or tracking application on the previously consenting person's person or the person's property and cannot uninstall or discontinue its use without violating a court order.

- Same provision, but adds that not later than 72 hours after being served with the ex parte order, protection order, or temporary protection order, the person to whom consent was given must lawfully uninstall or discontinue use of the tracking device or application. If the person to whom consent was given cannot lawfully uninstall or discontinue use of the tracking device or tracking application, the person to whom consent was given must notify the court in writing that the person has installed or is using a tracking device or tracking application on the previously consenting person's person or the person's

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	property and cannot uninstall or discontinue its use without violating a court order.
Exceptions	
<p>Provides that the offense of illegal use of a tracking device or application does not apply to any of the following (<i>R.C. 2903.211(B)(3)</i>):</p> <ul style="list-style-type: none"> ▪ A law enforcement officer, or any law enforcement agency, that lawfully installs a tracking device or tracking application on another person’s property as part of a criminal investigation (<i>R.C. 2903.211(B)(3)(a)</i>); ▪ A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child’s property if any of the following applies (<i>R.C. 2903.211(B)(3)(b)</i>): <ul style="list-style-type: none"> ▫ The parents or legal guardians of the child are lawfully married to each other and are not separated or otherwise living apart, and either of those parents or legal guardians consents to the installation of the tracking device or tracking application; ▫ The parent or legal guardian of the child is the sole surviving parent or legal guardian of the child; 	<p>Same provision but makes the following modifications (<i>R.C. 2903.211(B)(3)</i>):</p> <ul style="list-style-type: none"> ▪ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application, and applies to installing or using a tracking device or tracking application on another person, in addition to on another person’s property (<i>R.C. 2903.211(B)(3)(a)</i>); ▪ Adds that the exception applies to using a tracking device or tracking application to remotely determine or track the position or movement of the parent’s or legal guardian’s child if any of the following applies (<i>R.C. 2903.211(B)(3)(b)</i>): <ul style="list-style-type: none"> ▫ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application; ▫ Same provision;

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<ul style="list-style-type: none"> ▫ The parent or legal guardian of the child has sole custody of the child; ▫ The parents or legal guardians of the child are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application. ▪ A caregiver of an elderly person or disabled adult, if the elderly person's or disabled adult's treating physician certifies that the installation of the tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult <i>(R.C. 2903.211(B)(3)(c))</i>; ▪ A person acting in good faith on behalf of a business entity for legitimate business purpose, provided that this provision does not apply to a private investigator engaged in the business of private investigation on behalf of another person unless the activities would otherwise be exempt if performed by the person engaging the private investigator <i>(R.C. 2903.211(B)(3)(d))</i>; ▪ An owner or lessee of a motor vehicle who installs, or directs the installation of, a tracking device or tracking application on the vehicle during the period of ownership or lease if any of the following applies <i>(R.C. 2903.211(B)(3)(e))</i>: <ul style="list-style-type: none"> ▫ The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires; 	<ul style="list-style-type: none"> ▫ Same provision; ▫ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application, and applies to parents or legal guardians that are both subject to a shared parenting decree or order. ▪ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application, and applies to installing or using a tracking device or tracking application on the elderly person or disabled adult, in addition to on the elderly person's or disabled adult's property <i>(R.C. 2903.211(B)(3)(c))</i>; ▪ Removes provisions stating that the provisions do not apply to a private investigator engaged in the business of private investigation on behalf of another person unless the activities would otherwise be exempt if performed by the person engaging the private investigator <i>(R.C. 2903.211(B)(3)(d))</i>; ▪ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application <i>(R.C. 2903.211(B)(3)(e))</i>; ▫ Same provision;

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<ul style="list-style-type: none"> ▫ The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; ▫ The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle. ▪ No provision; ▪ No provision; ▪ No provision; 	<ul style="list-style-type: none"> ▫ Same provision; ▫ Adds that the exception applies to using a tracking device or tracking application, in addition to installing a tracking device or tracking application. ▪ A surety bond bail agent, or any employee or contractor of a surety bail bond agent, that lawfully installs or uses a tracking device or tracking application on another person or another person's property as part of the surety bail bond agent's, employee's, or contractor's official responsibilities or duties (<i>R.C. 2903.211(B)(3)(f)</i>); ▪ Except as provided in the next two dot points, a Class A, B, or C, licensee, or any employee of a Class A, B, or C licensee, who lawfully installs or uses a tracking device or tracking application on another person or another person's property as part of the Class A, B, or C licensee's or employee's official responsibilities or duties (<i>R.C. 2903.211(B)(3)(g)(i)</i>); ▪ A Class A, B, or C licensee, or any employee of a Class A, B, or C licensee, must not install or use a tracking device or tracking application on another person or another person's property as part of the Class A, B, or C licensee's official responsibilities or duties, if the Class A, B, or C licensee or employee is hired by a district board of education or governing authority of a school and the purpose for which the Class A, B, or C licensee or employee is hired is to determine a student's position, movement, or address (<i>R.C. 2903.211(B)(3)(g)(ii)</i>);

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<ul style="list-style-type: none"> ▪ No provision; ▪ No provision; ▪ No provision; ▪ No provision. 	<ul style="list-style-type: none"> ▪ A Class A, B, or C licensee, or any employee of a Class A, B, or C licensee, must not install or use a tracking device or tracking application on another person’s motor vehicle as part of the Class A, B, or C licensee’s or employee’s responsibilities or duties, unless the Class A, B, or C licensee or employee has the consent of the owner or lessee of the motor vehicle <i>(R.C. 2903.211(B)(3)(g)(iii))</i>; ▪ A probation officer, parole officer, or employee of the Department of Rehabilitation and Correction, if the officer or employee is engaged in the lawful performance of the officer’s or employee’s official duties <i>(R.C. 2903.211(B)(3)(h))</i>; ▪ A person or business entity that installs or uses a tracking device or tracking application on any fixed wing aircraft or rotorcraft operated or managed by the person or business entity in accordance with the Federal Aviation Administration’s regulations <i>(R.C. 2903.211(B)(3)(i))</i>; ▪ A person who installs or uses a tracking device or tracking application on another person’s property in which the person has an ownership or contractual interest, unless the person is the subject of a protection order and the property is likely to be used by the person who obtained the protection order <i>(R.C. 2903.211(B)(3)(j))</i>.
<p>Penalty</p>	
<p>No provision.</p>	<p>Specifies that if any of the following apply, the penalty for a violation of the offense is fourth degree felony <i>(R.C. 2903.211(C)(2)(a), (e), (g), and (i) and (D)(2))</i>:</p>

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	<ul style="list-style-type: none"> ▪ The offender previously has been convicted of or pleaded guilty to a violation of illegal use of a tracking device or application, menacing by stalking, or aggravated trespass. ▪ The offender has a history of violence toward the victim or any other person or has a history of violence of other violent acts toward the victim or any other person. ▪ At the time of the commission of the offense, the offender was the subject of a criminal protection order, civil stalking protection order, or a civil sexually oriented offense protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person. ▪ Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.
<p>Definitions</p>	
<p>Defines “tracking application” as any software program, the primary purpose of which is to track or identify the location or movement of an individual <i>(R.C. 2903.211(F)(18))</i>.</p> <p>Defines “tracking device” as any device, the primary purpose of which is to reveal its location or movement by the transmission of electronic signals <i>(R.C. 2903.211(F)(19))</i>.</p>	<p>Modifies the definition of “tracking application” to mean any software program that allows a person to remotely determine or track the position or movement of another person or another person’s property <i>(R.C. 2903.211(F)(19))</i>.</p> <p>Modifies the definition of “tracking device” to mean any electronic or mechanical device that allows a person to remotely determine or track the position or movement of another person or another person’s property <i>(R.C. 2903.211(F)(20))</i>.</p>

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No provision.	Defines “business of security services” as either of the following: (1) furnishing, for hire, watchpersons, guards, private patrol officers, or other persons whose primary duties are to protect persons or property, or (2) furnishing, for hire, guard dogs, or armored motor vehicle security services, in connection with the protection of persons or property (<i>R.C. 2903.211(F)(14) and 4749.01, not in the bill</i>).
No provision.	Defines “Class A license” as a specified license that qualifies the person issued the license to engage in the business of private investigation and the business of security services (<i>R.C. 2903.211(F)(14) and 4749.01, not in the bill</i>).
No provision.	Defines “Class B license” as a specified license that qualifies the person issued the license to engage only in the business of private investigation (<i>R.C. 2903.211(F)(14) and 4749.01, not in the bill</i>).
No provision.	Defines “Class C license” as a specified license that qualifies the person issued the license to engage only in the business of security services (<i>R.C. 2903.211(F)(14) and 4749.01, not in the bill</i>).
No provision.	Defines “surety bail bond agent” as a person who is qualified, licensed, and appointed as a surety bail bond agent under R.C. Chapter 3905 (<i>R.C. 2903.211(F)(18)</i>).