



Electronic Privacy Advisory Committee
Monday, November 21, 2011 1:00 p.m.
General Assembly Building, House Room C

- Call to Order; Roll Call

The meeting was called to order and roll was taken.

- Overview of DCJS Regulation of Private Investigators

Leon Baker of the Virginia Department of Criminal Justice Services provided an overview of the current regulations over private investigators in the Commonwealth. The regulatory program has been in effect since 1978. Currently, 2,634 private investigators are registered in Virginia, and 522 businesses are licensed.

Basic requirements for private investigators include initial training, application, fee, proper age, continuing education classes, in-service requirements, and renewal every two years. All private investigators are fingerprinted with a criminal history conducted at both state and federal levels. DCJS investigates allegations of criminal violations for sanctions and fines only, but criminal investigations are conducted by law enforcement for the purpose of bringing criminal charges against an offending private investigator.

Very few investigations occur by DCJS, and most involve contract disputes, not criminal allegations. Investigations originate with a registered complaint. The Code of Virginia provides a formal schedule for the types of crimes that would disqualify a person from licensing.

- Review & Discussion of HB 2032 (Unauthorized Use of Tracking Devices)

Staff provided an overview of the requested changes made to the bill draft following the previous meeting of the advisory committee. The bill's intent standard of "intentionally deceptive means" was changed to "intentionally deceptive means and without consent." Among the exceptions listed in the bill are bail bondsmen and owners of fleet vehicles. Language from a similar Michigan statute was also included regarding an exception for private investigators.

During the discussion of the bill's new language, the committee suggested looking at the question of whether a person tracking a patient with dementia would be provided for as an exception.

The committee also considered the issue within the context of the case, *U.S. v. Jones*, which is currently being considered by the Supreme Court and deals with the question of whether or not police should be required to obtain a court-issued warrant before the placement of GPS tracking devices on a suspect's automobile.

The chairman submitted a substitute version of the bill for discussion by the committee members. Under the new version, use of GPS tracking by private investigators would be affirmatively regulated by DCJS with consideration to the Supreme Court's final determination in *Jones*.

After discussion, several members of the committee suggested that the ability of private investigators to use GPS tracking should be limited to situations in which the investigator is attempting to locate an individual known to be a fugitive from justice or attempting to locate lost or stolen property or other assets that have been awarded by a court.

The committee adopted, with one dissenting vote, the chairman's substitute with the further limitations on the use of GPS tracking by private investigators. The committee also agreed to include exceptions for bail bondsmen and owners of fleet vehicles.

- **Revisit of Electronic Meetings Issues (Time Permitting)**

Upon request, staff summarized recommendations as to how the Virginia Freedom of Information Act's restrictions on electronic meetings might be revised. However, because the committee did not have time during the Interim to fully discuss issues related to electronic meetings, the committee recommended that JCOTS study the issue more comprehensively in the 2012 Interim.

- **Other Business & Public Comment**

The chairman opened the floor for public comment, but no comments were taken.

The committee adjourned. This will be the final meeting of the Privacy Advisory Committee.