



**Electronic Privacy Advisory Committee**  
**Monday, October 18, 2010 1:30 p.m.**  
**General Assembly Building, 6th Floor, Speaker's Conference Room**

- Call to Order

Delegate May called the meeting to order.

- Review & discussion of draft legislation regarding electronic tracking devices

Staff directed the Committee's attention to HB 670/SB 599, which were referred to JCOTS for study by the 2010 General Assembly. Following the request of the Committee from the prior meeting on September 13, 2010, a redraft of the companion bills had been prepared for the Committee's consideration and discussion.

The first change noted on the redraft involved the addition of the word "malicious" as a descriptor for "intent." Staff noted that this would entail a higher level of difficulty for a successful prosecution. This also raised the question as to whether any exceptions would be necessary, given that maliciousness by anyone would not likely be excusable. If, however, the Committee decided not to include the word "malicious," a discussion would be necessary to determine which, if any, exceptions to the bill would need to be included.

Other changes noted on the redraft involved the issue of consent. Staff noted that the words "without authority" had been included instead of "consent" in order to alleviate the need to define what would constitute adequate consent. Additionally, an initial definition of "electronic tracking device" was provided on the redraft, but review would be necessary to ensure that the definition is comprehensive.

Following Staff's opening remarks, Delegate May invited the Committee members to provide any comments. He called this legislation an extension of computer trespass, and he noted that he had requested the inclusion of the word

“malicious” on Line 9 of the bill as a way of avoiding any unintended consequences that may occur by leaving mere intent. As a result, he suggested that he would be inclined to increase the level of crime from a Class 4 Misdemeanor.

A conversation among the committee members followed regarding the appropriateness of including the word “malicious.” One committee member suggested that other states are using the words “intentionally deceptive means” in spyware bills, and such a standard may be relevant to this bill. The Committee also considered whether the inclusion of “intentionally deceptive means” in the bill would negate the need to include “without authority.”

The Committee agreed that the intention behind the bill is to attack the act of placing a tracking device on another’s vehicle without him knowing, not to attack the technology used to do the tracking.

Next, the committee considered the level of crime the bill ought to be given. Because of the severity of the action, the Committee agreed that they wanted to make the penalty something more than a Class 4 Misdemeanor, but less than would entail a possibility for jail time. The Committee agreed on a Class 3 Misdemeanor, which entails up to a \$500 fine.

The Committee briefly considered a dual-purpose bill that would create two separate crimes: one regarding the installation of a tracking device and another regarding the use of data collected by a tracking device. Delegate May suggested that the Committee move forward with a bill that focuses solely on the placement of a tracking device and leave the “use of data” bill for future consideration.

Finally, the Committee requested that Staff provide another redraft of the bill that would integrate “intentionally deceptive means,” “without authority,” and raise the level of crime to a Class 3 Misdemeanor. The committee also requested that Staff consider what exceptions, if any, would be warranted in the bill. The redraft will be considered at the next Advisory Committee meeting.

- Discussion of potential privacy report

No discussion took place regarding a potential privacy report.

- Public comment

No Public Comments were received.

The meeting was adjourned. The next meeting of the Advisory Committee is to be determined.