



AB 358: Technology Reform for Access to Crime Evidence (TRACE) Amendment

Summary:

Assembly Bill 358 seeks to protect victims of stalking and domestic abuse by enhancing law enforcement's ability to access electronic tracking devices found in victim's private space. The bill amends California Electronic Communications Privacy Act (CalECPA) to allow law enforcement, with the consent of an individual who finds a device, used solely for tracking or recording, in their home, vehicle or personal property.

Background:

In 2016, the California Electronic Protection Act (CalECPA) was established in response to the growing concerns surrounding privacy and the collection of electronic information. This legislation expanded Fourth Amendment protections, introducing stricter requirements for law enforcement seeking to search electronic devices or information, usually necessitating a warrant. The intent was to protect individuals from potential overreach by law enforcement, recognizing the integral role of electronic devices in daily life.

Problem:

While CalECPA serves to protect privacy, it has also inadvertently created challenges in urgent situations. The act's strict legal framework means that law enforcement must often obtain a warrant before accessing most electronic devices. This can slow down investigations that are critical for both the victim's right to an expedient inquiry and public safety, and allow for perpetrators to remotely delete critical evidence.

Moreover, the expanded legal standing under CalECPA has resulted in complications for authorities trying to investigate illegal tracking or spying. Individuals using devices to surreptitiously

monitor others can leverage their rights under CalECPA, preventing law enforcement from effectively addressing unlawful surveillance. This situation raises concerns, particularly in cases of domestic abuse, where timely intervention is essential to avoid loss of evidence such as remote deletion of data.

Solution:

The TRACE amendment proposes a narrow expansion of CalECPA. The bill allows law enforcement to access and search tracking and surveillance devices with the specific consent from an individual who locates the device within their residence, automobile, or personal property, and the device is reasonably believed to have been used for the purpose of recording or tracking the individual without their permission.

The bill only applies to *"a tracking or surveillance device"*, which means *an electronic device the sole purpose of which is to record audio or visual information or to permit the tracking of a person*. This includes AirTags, spy cameras and other GPS trackers.

This change aims to streamline investigations and enhance the ability of law enforcement to act quickly, especially in critical cases like stalking and domestic abuse.

Staff Contact:

Chris Jonsmyr, Communications Director
Assemblymember David Alvarez, District 80
Office: 619-498-2080
Cell: (619) 800-2080
Chris.Jonsmyr@asm.ca.gov

Support:

San Diego District Attorney Summer Stephan
(Sponsor)
California District Attorney's Association
California State Sheriff's Association
Crime Victim's Alliance
San Diego Deputy Sheriff's Association

