

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.**

**S. 1223**

To address voluntary location tracking of electronic communications devices, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Location Privacy Pro-  
5 tection Act of 2012”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “geolocation information” has  
8 the meaning given that term in section 2713 of title 18,  
9 United States Code, as added by this Act.

1 **SEC. 3. VOLUNTARY LOCATION TRACKING OF ELECTRONIC**  
2 **COMMUNICATIONS DEVICES.**

3 (a) IN GENERAL.—Chapter 121 of title 18, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 2713. Voluntary location tracking of electronic**  
7 **communications devices**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘covered entity’ means a non-  
10 governmental individual or entity engaged in the  
11 business, in or affecting interstate or foreign com-  
12 merce, of offering or providing a service to electronic  
13 communications devices, including, but not limited  
14 to, offering or providing an electronic communication  
15 service, remote computing service, or geolocation in-  
16 formation service;

17 “(2) the term ‘electronic communications de-  
18 vice’ means any device that—

19 “(A) enables access to, or use of, an elec-  
20 tronic communications system, electronic com-  
21 munication service, remote computing service,  
22 or geolocation information service; and

23 “(B) is designed or intended to be carried  
24 by or on the person of an individual or travel  
25 with the individual, including, but not limited

1 to, in or as part of a vehicle the individual  
2 drives;

3 “(3) the term ‘express authorization’ means ex-  
4 press affirmative consent after receiving clear and  
5 prominent notice that—

6 “(A) is displayed by the electronic commu-  
7 nications device, separate and apart from any  
8 final end user license agreement, privacy policy,  
9 terms of use page, or similar document; and

10 “(B) provides information regarding—

11 “(i) what geolocation information will  
12 be collected, received, recorded, or ob-  
13 tained;

14 “(ii) the specific individuals or non-  
15 governmental entities to which the  
16 geolocation information may be disclosed  
17 by the covered entity; and

18 “(iii) how the individual may elec-  
19 tronically revoke consent to the collection,  
20 receipt, recording, obtaining, and disclo-  
21 sure of the geolocation information;

22 “(4) the term ‘geolocation information’—

23 “(A) means any information—

24 “(i) concerning the location of an elec-  
25 tronic communications device that is in

1 whole or in part generated by or derived  
2 from the operation or use of the electronic  
3 communications device; and

4 “(ii) that may be used to identify the  
5 location of the individual that is using the  
6 device;

7 “(B) includes, but is not limited to—

8 “(i) Global Positioning System data  
9 and data from multilateration of cell an-  
10 tennae signals, WiFi signals, or other tech-  
11 nologies; and

12 “(ii) cellular antenna connection  
13 records, including data regarding the geo-  
14 graphic location, attributes, and sectors of  
15 the antenna transmitting a wire or elec-  
16 tronic communication to or from an elec-  
17 tronic communications device; and

18 “(C) does not include—

19 “(i) the name of the individual;

20 “(ii) the home, business, or billing ad-  
21 dress of the individual, or any of the com-  
22 ponent parts of such an address;

23 “(iii) the local and long distance tele-  
24 phone connection records, or records of

1 session times and durations, of the indi-  
2 vidual;

3 “(iv) the length of service (including  
4 start date) and types of service utilized by  
5 the individual;

6 “(v) the telephone or instrument num-  
7 ber or other subscriber number or identity,  
8 including any network or Internet Protocol  
9 address, of the individual; and

10 “(vi) the means and source of pay-  
11 ment for a service (including any credit  
12 card or bank account number) of the indi-  
13 vidual;

14 “(5) the term ‘geolocation information service’  
15 means the provision of a global positioning service or  
16 other mapping, locational, or directional information  
17 service; and

18 “(6) the term ‘knowingly’ means having actual  
19 knowledge.

20 “(b) COLLECTION OR DISCLOSURE OF GEOLOCATION  
21 INFORMATION TO OR BY NONGOVERNMENTAL ENTI-  
22 TIES.—

23 “(1) IN GENERAL.—Except as provided in para-  
24 graphs (2) and (3), a covered entity may not know-  
25 ingly collect, receive, record, obtain, or disclose to a

1 nongovernmental individual or entity the geolocation  
2 information from an electronic communications de-  
3 vice without the express authorization of the indi-  
4 vidual that is using the electronic communications  
5 device.

6 “(2) EXCEPTIONS.—A covered entity may  
7 knowingly collect, receive, record, obtain, or disclose  
8 to a nongovernmental individual or entity the  
9 geolocation information from an electronic commu-  
10 nications device without the express authorization of  
11 the individual that is using the electronic commu-  
12 nications device if the covered entity has a good  
13 faith belief that the collection, receipt, recording, ob-  
14 taining, or disclosure is—

15 “(A) to allow a parent or legal guardian to  
16 locate a minor child;

17 “(B) for the provision of fire, medical,  
18 public safety, or other emergency services;

19 “(C) for the sole purpose of transmitting  
20 the geolocation information to the individual or  
21 another authorized recipient, including another  
22 third party authorized under this subparagraph;

23 “(D) necessary to protect the rights or  
24 property of the covered entity, or protect cus-  
25 tomers of the covered entity or other covered

1 entities from fraudulent, abusive, or unlawful  
2 use of, or subscription to, such services;

3 “(E) pursuant to a court order, in a civil  
4 proceeding upon a showing of compelling need  
5 for the information that cannot be accommo-  
6 dated by any other means, if—

7 “(i) the individual is given reasonable  
8 notice, by the person seeking the disclo-  
9 sure, of the court proceeding relevant to  
10 the issuance of the court order; and

11 “(ii) the individual is afforded the op-  
12 portunity to appear and contest the claim  
13 of the person seeking the disclosure;

14 “(F) requested by a law enforcement or in-  
15 telligence agency of the United States, a State,  
16 or a political subdivision of a State pursuant to  
17 any lawful authority or activity, including under  
18 this chapter, chapter 119, the Foreign Intel-  
19 ligence Surveillance Act of 1978 (50 U.S.C.  
20 1801 et seq.), the Federal Rules of Criminal  
21 Procedure, or any other provision of Federal or  
22 State law, if the covered entity uses the  
23 geolocation information collected, received, re-  
24 corded, or obtained in response to the request

1 solely for law enforcement or intelligence pur-  
2 poses; or

3 “(G) a collection of geolocation information  
4 that is necessary for network operation by an  
5 individual or entity that is subject to section  
6 222 or 631 of the Communications Act of  
7 1934, if the entity only uses the information  
8 solely for purposes of network operation.

9 If an order is granted under subparagraph (E), the  
10 court shall impose appropriate safeguards against  
11 unauthorized disclosure.

12 “(3) RULES OF CONSTRUCTION.—

13 “(A) ONE TIME CONSENT.—A covered en-  
14 tity shall not be required to obtain express au-  
15 thorization for each individual collection, re-  
16 ceipt, recording, obtaining, or disclosure of  
17 geolocation information for which an express  
18 authorization is required under paragraphs (1)  
19 and (2) if—

20 “(i) an express authorization was ob-  
21 tained before the initial collection, receipt,  
22 recording, obtaining, or disclosure;

23 “(ii) the nature of the geolocation in-  
24 formation being collected, received, re-

1 corded, or obtained has not changed since  
2 the express authorization; and

3 “(iii) the geolocation information is  
4 being disclosed to a nongovernmental indi-  
5 vidual or entity specified at the time of the  
6 express authorization.

7 “(B) FIRST PARTY RESPONSIBILITY.—A  
8 covered entity that collects, receives, records, or  
9 obtains geolocation information from the cov-  
10 ered entity that initially collected, received, re-  
11 corded, or obtained the geolocation information  
12 from the electronic communications device shall  
13 not be required to obtain an express authoriza-  
14 tion for that collection, receipt, recording, or  
15 obtaining or any subsequent disclosures of the  
16 geolocation information.

17 “(C) LEGACY AND FUTURE DEVICES.—A  
18 covered entity that has a reasonable belief that  
19 it is impossible to communicate the information  
20 described in subsection (a)(3)(B) by means of a  
21 display on the electronic communications device,  
22 as required under subsection (a)(3)(A), may  
23 communicate the information and obtain the ex-  
24 press affirmative consent required under para-  
25 graph (1) orally or in writing.

1           “(D) SHARED DEVICES.—A covered entity  
2 shall not be required to obtain an express au-  
3 thorization for the collection, receipt, recording,  
4 obtaining, or disclosure of geolocation informa-  
5 tion from an individual if the covered entity—

6           “(i) does not have actual knowledge  
7 that the electronic device from which the  
8 covered entity is collecting, receiving, re-  
9 cording, or obtaining geolocation informa-  
10 tion is being used by an individual dif-  
11 ferent from the individual from whom the  
12 covered entity obtained express authoriza-  
13 tion; and

14           “(ii) is not collecting, receiving, re-  
15 cording, or obtaining the geolocation infor-  
16 mation of the individual in a manner that  
17 the covered entity knows and intends to be  
18 imperceptible to the individual.

19           “(c) ANTI-CYBERSTALKING PROTECTION.—Except  
20 for an instance in which geolocation information is being  
21 collected under the exception described in subsection  
22 (b)(2)(F), if a covered entity collects, receives, records, or  
23 obtains the geolocation information of an individual in a  
24 manner that the covered entity knows and intends to be  
25 imperceptible to the individual, not earlier than 24 hours

1 and not later than 7 days after the initial collection, re-  
2 ceipt, recording, or obtaining, the covered entity shall pro-  
3 vide the individual a notice that informs the individual—

4 “(1) what geolocation information relating to  
5 the individual is being collected, received, recorded,  
6 or obtained;

7 “(2) the nongovernmental individuals or entities  
8 to which the geolocation information has been or is  
9 being disclosed; and

10 “(3) how the individual may electronically re-  
11 voke consent to the collection, receipt, recording, ob-  
12 taining, and disclosure of the geolocation informa-  
13 tion.

14 “(d) CIVIL REMEDIES.—

15 “(1) ACTION BY ATTORNEY GENERAL OF THE  
16 UNITED STATES.—If the Attorney General of the  
17 United States has reasonable cause to believe that  
18 an individual or entity is violating this section, the  
19 Attorney General may bring a civil action in an ap-  
20 propriate United States district court.

21 “(2) ACTION BY STATE ATTORNEYS GEN-  
22 ERAL.—If the attorney general of a State has rea-  
23 sonable cause to believe that an interest of the resi-  
24 dents of the State has been or is threatened or ad-  
25 versely affected by a violation of this section, the at-

1       torney general of the State may bring a civil action  
2       on behalf of the residents of the State in an appro-  
3       priate United States district court.

4               “(3) RIGHT OF ACTION.—Any individual ag-  
5       grieved by any action of an individual or entity in  
6       violation of this section may bring a civil action in  
7       an appropriate United States district court.

8               “(4) EFFECT ON OTHER PROCEEDINGS.—

9                       “(A) FEDERAL ACTION.—On and after the  
10       date on which the Attorney General of the  
11       United States files a civil action alleging a vio-  
12       lation of this section, an attorney general of a  
13       State or an individual may not bring a civil ac-  
14       tion under this subsection against a defendant  
15       named in the civil action relating to a violation  
16       of this section that is alleged in the civil action.

17                      “(B) STATE ACTION.—On and after the  
18       date on which the attorney general of a State  
19       files a civil action alleging a violation of this  
20       section, an individual may not bring a civil ac-  
21       tion under this subsection against a defendant  
22       named in the civil action for a violation of this  
23       section that is alleged in the civil action.

24               “(5) RELIEF.—In a civil action brought under  
25       this subsection, the court may award—

1           “(A) actual damages, but not less than  
2 damages in the amount of \$2,500;

3           “(B) punitive damages;

4           “(C) reasonable attorney’s fees and other  
5 litigation costs reasonably incurred; and

6           “(D) such other preliminary or equitable  
7 relief as the court determines to be appropriate.

8           “(6) PERIOD OF LIMITATIONS.—

9           “(A) IN GENERAL.—Subject to subpara-  
10 graph (B), a civil action may not be brought  
11 under this subsection unless the civil action is  
12 filed not later than 2 years after the later of the  
13 date of the act complained of or the date of dis-  
14 covery of the act complained of.

15           “(B) LIMITATION.—In no instance may a  
16 civil action be filed under this subsection after  
17 the date that is 10 years after the date of the  
18 act complained of.

19           “(7) LIMITATION ON LIABILITY.—A civil action  
20 may not be brought under this subsection relating to  
21 any collection, receipt, recording, obtaining, or dis-  
22 closure of geolocation information that is explicitly  
23 authorized under another provision of Federal law.

24           “(e) EFFECTS ON OTHER LAW.—

1           “(1) IN GENERAL.—This section shall super-  
2       sede a provision of the law of a State or political  
3       subdivision of a State that requires or allows collec-  
4       tion, receipt, recording, obtaining or disclosure of  
5       geolocation information prohibited by this section.

6           “(2) STATE CONSUMER PROTECTION LAWS.—  
7       Nothing in this section shall be construed to pre-  
8       empt the law of a State that grants greater con-  
9       sumer protections relating to the collection, receipt,  
10      recording, obtaining, or disclosure of geolocation in-  
11      formation from electronic communications devices.

12          “(3) RIGHTS AND REMEDIES.—Nothing in this  
13      section shall be construed to effect the rights and  
14      remedies of any individual under any other State or  
15      Federal law.

16          “(4) COMMON CARRIERS AND CABLE SERV-  
17      ICES.—This section shall not apply to the activities  
18      of an individual or entity to the extent the activities  
19      are subject to section 222 or 631 of the Communica-  
20      tions Act of 1934 (47 U.S.C. 222 and 551).”.

21          (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
22      Chapter 121 of title 18, United States Code, is amended—

23              (1) in the table of sections, by adding at the  
24      end the following:

“2713. Voluntary location tracking of electronic communications devices.”;

25      and

1 (2) in section 2702—

2 (A) in subsection (b), by striking “A pro-  
3 vider” and inserting “Except as provided under  
4 section 2713, a provider”; and

5 (B) in subsection (c), by striking “A pro-  
6 vider” and inserting “Except as provided under  
7 section 2713, a provider”.

8 (c) EFFECTIVE DATE.—This section and the amend-  
9 ments made by this section shall take effect 180 days after  
10 the date of enactment of this Act.

11 **SEC. 4. GEOLOCATION INFORMATION USED IN INTERSTATE**  
12 **DOMESTIC VIOLENCE OR STALKING.**

13 (a) IN GENERAL.—Chapter 110A of title 18, United  
14 States Code, is amended—

15 (1) by redesignating section 2266 as section  
16 2267;

17 (2) by inserting after section 2265 the fol-  
18 lowing:

19 **“§ 2266. Geolocation information used in interstate**  
20 **domestic violence or stalking**

21 **“(a) OFFENSES; UNAUTHORIZED DISCLOSURE OF**  
22 **GEOLOCATION INFORMATION IN AID OF INTERSTATE DO-**  
23 **MESTIC VIOLENCE OR STALKING.—A covered entity or an**  
24 **employee of a covered entity that—**

1           “(1) knowingly and intentionally discloses  
2 geolocation information about an individual to an-  
3 other individual;

4           “(2) knew that a violation of section 2261,  
5 2261A, or 2262 could result from the disclosure;  
6 and

7           “(3) intends to aid in a violation of section  
8 2261, 2261A, or 2262 as a result of the disclosure,  
9 shall be punished as provided in subsection (b).

10          “(b) PENALTIES.—A covered entity or employee of  
11 a covered entity that violates subsection (a) shall be fined  
12 under this title, imprisoned for not more than 2 years,  
13 or both.”; and

14           (3) in section 2267, as so redesignated, by add-  
15 ing at the end the following:

16           “(11) COVERED ENTITY; GEOLOCATION INFOR-  
17 MATION.—The terms ‘covered entity’, ‘geolocation  
18 information’, and ‘knowingly’ have the meanings  
19 given those terms in section 2713.”.

20          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21           (1) TITLE 10.—Section 1561a(b) of title 10,  
22 United States Code, is amended by striking “section  
23 2266(5)” and inserting “section 2267(5)”.

24           (2) TITLE 18.—Title 18, United States Code, is  
25 amended—

1 (A) in section 1992(d)(14), by striking  
2 “section 2266” and inserting “section 2267”;  
3 and

4 (B) in chapter 110A—  
5 (i) in the table of sections, by striking  
6 the item relating to section 2266 and in-  
7 serting the following:

“2266. Geolocation information used in interstate domestic violence or stalking.  
“2267. Definitions.”;

8 and

9 (ii) in section 2261(b)(6), by striking  
10 “section 2266 of title 18, United States  
11 Code,” and inserting “section 2267”.

12 (3) OMNIBUS CRIME CONTROL AND SAFE  
13 STREETS ACT OF 1968.—Section 2011(c) of title I of  
14 the Omnibus Crime Control and Safe Streets Act of  
15 1968 (42 U.S.C. 3796gg-5(c)) is amended by strik-  
16 ing “section 2266” and inserting “section 2267”.

17 **SEC. 5. NATIONAL STUDY OF USE OF GEOLOCATION DATA**  
18 **IN VIOLENCE AGAINST WOMEN.**

19 (a) IN GENERAL.—The National Institute of Justice,  
20 in consultation with the Office on Violence Against  
21 Women, shall conduct a national study to examine the role  
22 of geolocation information in violence against women.

23 (b) SCOPE.—

1           (1) IN GENERAL.—The study conducted under  
2           subsection (a) shall examine the role that various  
3           new technologies that use geolocation information  
4           may have in the facilitation of domestic violence,  
5           dating violence, sexual assault, or stalking, includ-  
6           ing, but not limited to—

7                   (A) global positioning system technology;

8                   (B) smartphone mobile applications;

9                   (C) in-car navigation devices; and

10                  (D) geo-tagging technology.

11           (2) RECOMMENDATIONS.—The study conducted  
12           under subsection (a) shall propose recommendations  
13           to improve the effectiveness of the responses of Fed-  
14           eral, State, tribal, and local law enforcement agen-  
15           cies to the conduct described in paragraph (1).

16           (c) CONSULTATION.—The Attorney General, acting  
17           through the Director of the Office on Violence Against  
18           Women and the Director of the National Institute of Jus-  
19           tice, shall consult with representatives from the Federal  
20           agencies, offices of State attorneys general, national victim  
21           advocacy organizations and the industries related to the  
22           technologies described in subsection (b)(1) to assist in the  
23           development and implementation of the study conducted  
24           under subsection (a) and guide implementation of the rec-  
25           ommendations proposed under subsection (b)(3).

1 (d) REPORT.—Not later than 2 years after the date  
2 of enactment of this Act, the Attorney General shall sub-  
3 mit to the Committee on the Judiciary of the Senate and  
4 the Committee on the Judiciary of the House of Rep-  
5 resentatives a report that describes the results of the study  
6 conducted under subsection (a).

7 **SEC. 6. GEOLOCATION CRIME INFORMATION AND REPORT-**  
8 **ING.**

9 (a) IMPLEMENTATION.—The Attorney General shall  
10 direct the Internet Crime Complaint Center to provide  
11 education and awareness information to the public and law  
12 enforcement and register complaints regarding the abuse  
13 of geolocation information to commit domestic violence,  
14 dating violence, sexual assault, stalking, or other related  
15 crimes.

16 (b) CONSULTATIONS.—In determining what informa-  
17 tion will be provided to the public and collected in com-  
18 plaints under subsection (a), the Attorney General shall  
19 consult with nongovernmental entities that have dem-  
20 onstrated expertise relating to the abuse of the Internet  
21 or geolocation information to commit stalking, domestic  
22 violence, dating violence, sexual assault, or other related  
23 crimes.

24 (c) REPORT.—Not later than 18 months after the  
25 date of enactment of this Act, the Attorney General shall

1 submit to the Committee on the Judiciary of the Senate  
2 and the Committee on the Judiciary of the House of Rep-  
3 resentatives a report that discusses and summarizes the  
4 information collected in complaints filed under subsection  
5 (a).

6 **SEC. 7. NATIONAL GEOLOCATION CURRICULUM TRAINING.**

7 (a) IN GENERAL.—The Attorney General, through  
8 the Director of the Office on Violence Against Women,  
9 may make grants to entities to develop and provide train-  
10 ing to law enforcement officers, prosecutors, judges, and  
11 victim service personnel throughout the United States re-  
12 garding relevant Federal, State, territorial, or local law  
13 and promising practices, procedures, and policies relating  
14 to investigating and prosecuting the misuse of geolocation  
15 information in the commission of stalking, domestic vio-  
16 lence, dating violence, sexual assault, and other crimes.

17 (b) APPLICATION.—An eligible entity desiring a grant  
18 under this section shall submit an application to the Attor-  
19 ney General at such time, in such manner, and accom-  
20 panied by such information as the Attorney General may  
21 reasonably require.