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COMMENTS IN SUPPORT OF 16-H 7167 – CELL PHONE TRACKING February 24, 2016

Approximately every seven seconds, a cell phone searches for the nearest tower. This information becomes a complete record of the location of any cell phone user at any given time, and is accurate to within 50 meters even if the phone's GPS is not activated. This information is stored by the telecommunications providers and available for release at their whim.

Given the significant detail of this information and the serious threat to privacy carried by its release, oversight as to its release is not only reasonable but necessary. Yet, the laws surrounding this information have failed to keep up. Telecommunications companies possess their own internal policies and procedures regarding the storage and release of this information, but those vary wildly and provide no real protection to the individuals who find their every move scrutinized solely because they carried a cell phone. In fact, in 2013 Rhode Island made it even easier for telecommunications companies to release information to any person, for any reason.

This legislation serves to compliment laws like the Kelsey Smith Act, barring law enforcement from obtaining location information without a warrant, except in emergency situations where there is an articulable concern of death or serious physical injury to any person including the risk of death or serious physical injury. Following the disclosure of any location information, the individual affected must be notified of the disclosure, unless a court determines this notification may have an adverse result. With these privacy protections in place, Rhode Island will be able to appropriately balance the need for swift information by law enforcement with the privacy protections necessary for innocent cell phone users.

Rhode Islanders cannot wait for the long and costly process of court appeals to protect their rights, an opinion shared by Justice Alito in his 2012 opinion regarding GPS tracking of vehicles. In his concurring opinion, Justice Alito encouraged legislators not to wait for the courts to address these issues, writing:

“In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislation ... A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”

Cell phone tracking represents both a powerful tool for law enforcement, and the most comprehensive surveillance of individuals we have faced to date. Passage of this legislation will preserve the legitimate use of this technology and the Fourth Amendment rights of all Rhode Islanders. For all of these reasons, we urge the committee to support this legislation.