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

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2011

Mr. FRANKEN (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Location Privacy Pro-
tection Act of 2011”.

SEC. 2. DEFINITION.

In this Act, the term “geolocation information” has
the meaning given that term in section 2713 of title 18,
United States Code, as added by this Act.
SEC. 3. VOLUNTARY LOCATION TRACKING OF ELECTRONIC COMMUNICATIONS DEVICES.

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended by adding at the end the following:

“§ 2713. Voluntary location tracking of electronic communications devices

“(a) DEFINITIONS.—In this section—

“(1) the term ‘covered entity’ means a non-governmental individual or entity engaged in the business, in or affecting interstate or foreign commerce, of offering or providing a service to electronic communications devices, including, but not limited to, offering or providing electronic communication service, remote computing service, or geolocation information service;

“(2) the term ‘electronic communications device’ means any device that—

“(A) enables access to, or use of, an electronic communications system, electronic communication service, remote computing service, or geolocation information service; and

“(B) is designed or intended to be carried by or on the person of an individual or travel with the individual, including, but not limited to, a vehicle the individual drives;
“(3) the term ‘express authorization’ means express affirmative consent after receiving clear and prominent notice that—

“(A) is displayed by the electronic communications device, separate and apart from any final end user license agreement, privacy policy, terms of use page, or similar document; and

“(B) provides information regarding—

“(i) what geolocation information will be collected; and

“(ii) the specific nongovernmental entities to which the geolocation information may be disclosed;

“(4) the term ‘geolocation information’—

“(A) means any information—

“(i) concerning the location of an electronic communications device that is in whole or in part generated by or derived from the operation or use of the electronic communications device; and

“(ii) that may be used to identify or approximate the location of the electronic communications device or the individual that is using the device; and
“(B) does not include any temporarily assigned network address or Internet protocol address of the individual; and

“(5) the term ‘geolocation information service’ means the provision of a global positioning service or other mapping, locational, or directional information service.

“(b) COLLECTION OR DISCLOSURE OF GEOLOCATION INFORMATION TO OR BY NONGOVERNMENTAL ENTITIES.—

“(1) In general.—Except as provided in paragraph (2), a covered entity may not knowingly collect, receive, record, obtain, or disclose to a nongovernmental individual or entity the geolocation information from an electronic communications device without the express authorization of the individual that is using the electronic communications device.

“(2) Exceptions.—A covered entity may knowingly collect, receive, record, obtain, or disclose to a nongovernmental individual or entity the geolocation information from an electronic communication device without the express authorization of the individual that is using the electronic communications device if the covered entity has a good
faith belief that the collection, receipt, recording, obtaining, or disclosure is—

“(A) necessary to locate a minor child or provide fire, medical, public safety, or other emergency services;

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

“(C) expressly required by statute, regulation, or appropriate judicial process.

“(c) Anti-Cyberstalking Protection.—Not earlier than 24 hours, and not later than 7 days, after the time an individual provides express authorization to a covered entity providing a geolocation information service to the individual for the express purpose of authorizing disclosure of geolocation information relating to the individual to another individual, the covered entity shall provide the individual a verification displayed by the electronic communications device that informs the individual—

“(1) that geolocation information relating to the individual is being disclosed to another individual; and
“(2) how the individual may revoke consent to
the collection, receipt, recording, obtaining, and dis-
closure of geolocation information relating to the in-
dividual.
“(d) CIVIL REMEDIES.—
“(1) ACTION BY ATTORNEY GENERAL OF THE
UNITED STATES.—If the Attorney General of the
United States has reasonable cause to believe that
an individual or entity is violating this section, the
Attorney General may bring a civil action in an ap-
propriate United States district court.
“(2) ACTION BY STATE ATTORNEYS GEN-
ERAL.—If the attorney general of a State has rea-
sonable cause to believe that an interest of the resi-
dents of the State has been or is threatened or ad-
versely affected by a violation of this section, the at-
torney general of the State may bring a civil action
on behalf of the residents of the State in an appro-
priate United States district court.
“(3) RIGHT OF ACTION.—Any individual ag-
grieved by any action of an individual or entity in
violation of this section may bring a civil action in
an appropriate United States district court.
“(4) PENDING PROCEEDINGS.—
“(A) FEDERAL ACTION.—If the Attorney General has brought a civil action alleging a violation of this section, an attorney general of a State or private person may not bring a civil action under this subsection against a defendant named in the civil action relating to a violation of this section that is alleged in the civil action while the civil action is pending.

“(B) STATE ACTION.—If the attorney general of a State has brought a civil action alleging a violation of this section, an individual may not bring a civil action under this subsection against a defendant named in the civil action for a violation of this section that is alleged in the civil action while the civil action is pending.

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

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

“(B) punitive damages;

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

“(D) such other preliminary or equitable relief as the court determines to be appropriate.
“(6) Period of Limitations.—No civil action may be brought under this subsection unless such civil action is begun within 2 years from the date of the act complained of or the date of discovery.

“(7) Limitation on Liability.—A civil action may not be brought under this subsection relating to any collection, receipt, recording, obtaining, or disclosure of geolocation information that is authorized under any other provision of law or appropriate legal process.

“(e) Effects on Other Law.—

“(1) In General.—This section shall supersede a provision of the law of a State or political subdivision of a State that requires or allows collection or disclosure of geolocation information prohibited by this section.

“(2) Common Carriers and Cable Services.—This section shall not apply to the activities of an individual or entity to the extent the activities are subject to section 222 or 631 of the Communications Act of 1934 (47 U.S.C. 222 and 551).”.

(b) Technical and Conforming Amendments.—Chapter 121 of title 18, United States Code, is amended—

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

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

(2) in section 2702—

(A) in subsection (b), by striking “A pro-

vider” and inserting “Except as provided under

section 2713, a provider”; and

(B) in subsection (c), by striking “A pro-

vider” and inserting “Except as provided under

section 2713, a provider”.

SEC. 4. GEOLOCATION INFORMATION USED IN INTERSTATE

DOMESTIC VIOLENCE OR STALKING.

(a) IN GENERAL.—Chapter 110A of title 18, United

States Code, is amended—

(1) by redesignating section 2266 as section

2267;

(2) by inserting after section 2265 the fol-

lowing:

“§ 2266. Geolocation information used in interstate

domestic violence or stalking

“(a) OFFENSES; UNAUTHORIZED DISCLOSURE OF

GEOLLOCATION INFORMATION IN AID OF INTERSTATE DO-

MESTIC VIOLENCE OR STALKING.—A covered entity

that—

“(1) knowingly and willfully discloses

geolocation information about an individual to an-

other individual;
“(2) knew that a violation of section 2261, 2261A, or 2262 would result from the disclosure; and

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

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

(3) in section 2267, as so redesignated, by adding at the end the following:

“(11) COVERED ENTITY; GEOLOCATION INFORMATION.—The terms ‘covered entity’ and ‘geolocation information’ have the meanings given those terms in section 2713.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

(B) in chapter 110A—
(i) in the table of sections, by striking the item relating to section 2266 and inserting the following:

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(2) in section 2256—

(A) in paragraph (8), by striking the period at the end and inserting a semicolon;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon;

(C) in paragraph (10), by striking “and” at the end;

(D) in paragraph (11), by striking the period at the end and inserting “; and”; and

(E) by adding at the end the following:

“(12) the term ‘geolocation information’ has the meaning given that term in section 2713.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2252C the following:

“2252D. Sale of geolocation information of young children.”.

SEC. 6. NATIONAL BASELINE STUDY OF USE OF GEOLOCATION DATA IN VIOLENCE AGAINST WOMEN.

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

(b) SCOPE.—
(1) IN GENERAL.—The study conducted under subsection (a) shall examine the role that various new technologies that use geolocation information may have in the facilitation of domestic violence, dating violence, or stalking, including, but not limited to—

(A) global positioning system technology;

(B) smartphone mobile applications;

(C) in-car navigation devices; and

(D) geo-tagging technology.

(2) EVALUATION.—The study conducted under subsection (a) shall evaluate the effectiveness of the responses of Federal, State, tribal, and local law enforcement agencies to the conduct described in paragraph (1).

(3) RECOMMENDATIONS.—The study conducted under subsection (a) shall propose recommendations to improve the effectiveness of the responses of Federal, State, tribal, and local law enforcement agencies to the conduct described in paragraph (1).

(c) TASK FORCE.—

(1) IN GENERAL.—The Attorney General, acting through the Director of the Office on Violence Against Women, shall establish a task force to assist in the development and implementation of the study
conducted under subsection (a) and guide implementation of the recommendations proposed under subsection (b)(3).

(2) MEMBERS.—The task force established under paragraph (1) shall include—

(A) representatives from—

(i) the National Institute of Standards and Technology; and

(ii) the Federal Trade Commission;

and

(B) representatives appointed by the Director of the Office on Violence Against Women from—

(i) the offices of attorney generals of States;

(ii) national violence against women nonprofit organizations; and

(iii) the industries related to the technologies described in subsection (b)(1).

(d) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that describes the results of the study conducted under subsection (a).
SEC. 7. GEOLOCATION CRIME REPORTING CENTER.

(a) IN GENERAL.—The Attorney General, acting through the Director of the Federal Bureau of Investigation, and in conjunction with the Director of the Bureau of Justice Assistance, shall create a mechanism using the Internet Crime Complaint Center to register complaints of crimes the conduct of which was aided by use of geolocation information.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Attorney General, acting through the Director of the Federal Bureau of Investigation, and in conjunction with the Director of the Bureau of Justice Assistance, shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that—

(1) discusses the information obtained using the mechanism created under subsection (a);

(2) evaluates the potential risks that the widespread availability of geolocation information poses in increasing crimes against person and property;

(3) describes programs of State and municipal governments intended to reduce these risks; and

(4) makes recommendations on measures that could be undertaken by Congress to reduce or eliminate these risks.
SEC. 8. NATIONAL GEOLOCATION CURRICULUM DEVELOPMENT.

The Attorney General shall develop a national education curriculum for use by State and local law enforcement agencies, judicial educators, and victim service providers to ensure that all courts, victim advocates, and State and local law enforcement personnel have access to information about relevant laws, practices, procedures, and policies for investigating and prosecuting the misuse of geolocation information.