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**COMMENTS IN SUPPORT OF 13-H 5681 –
RELATING TO CRIMINAL PROCEDURE – CELL PHONE TRACKING
March 27, 2013**

The ACLU of Rhode Island strongly supports this legislation, which would implement critical safeguards for the use of GPS location tracking by law enforcement. Advancements in technology have provided law enforcement with significant new tools in the pursuit of investigations, but the laws regarding the use of these technologies have failed to keep up. This legislation allows law enforcement to use continue the pursuit of legitimate investigations, while protecting innocent Rhode Islanders from significant intrusions of privacy.

Cell phones obtain and store a more complete record of our daily behavior than anything that has come before. Cell phones maintain several types of information about the users' past and present location and movements, including cell site location data, triangulation data, and Global Positioning System data. Approximately every seven seconds, a cell phone searches for the nearest cell phone tower to ensure the best signal to the user. By recording this cell site location data, even the most rudimentary cell phones record tremendous amounts of information about our locations on a daily basis. This information becomes a complete record of the location of any cell phone user at any given time. As the quality of our cell phone service has increased over time because of the construction of new cell towers, so has the detail of information available about our movements. Through triangulation, or a record of the precise time and angle an individual's cell phone signal reaches a tower, current technology can pinpoint the location of the cell phone to an accuracy of within 50 meters or less anytime the phone is on. Data from a GPS chip is automatically more precise, typically allowing an individual's location to be pinpointed within 10 meters if they are outside. If they are inside, a combination of GPS and triangulation is used to obtain accurate location information.

Whenever a cell phone is turned on, cell phone tracking data is available in real time and with great precision. Further, as the attached document demonstrates, all cell phone companies keep historical records on where cell phones have been for months or even years. As such, these ubiquitous devices in our pockets have become the most complete records of where we go, who we are, and what we value, allowing any individual with access to these records to know intimate facts about our daily lives. Given the significant detail of this information and the serious threat to privacy carried by release of this information, a warrant is not only reasonable but necessary.

Under current law, however, this wealth of private information is largely unprotected. In 2011, the ACLU of Rhode Island participated in a nationwide coordinated public records request examining the use of cell phone location data by law enforcement to track Americans. In Rhode Island, we requested information from the Rhode Island State Police and the Providence Police Department. Although both departments engaged in cell phone tracking, neither department held any policies or procedures governing how this information was to be obtained or retained.

Courts nationwide have begun grappling with the use of cell phone location records, but it will likely be years before any uniform standard is in place. However, in 2012, the U.S. Supreme Court held that GPS tracking of vehicles constituted a search under the Fourth Amendment. While the Court did not weigh in on whether or not obtaining this information without a warrant was a violation of the Fourth Amendment, the Court did encourage legislators to address these privacy issues legislatively. In his concurring opinion on behalf of four Justices, 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.”

While this legislation bars law enforcement from obtaining location information without a warrant in most circumstances, police do not need a warrant if there is an articulable concern of death or serious physical injury to any person. Following the disclosure of any location information, the individual affected must be notified of the disclosure, but that notification can be delayed if a court determines that it could have an adverse result. Finally, the Attorney General must report the number of warrants approved and denied each year in order to provide information about the prevalence of this type of search activity. 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.

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.