

We cannot predict with certainty the opinions that may be presented by parties who support H.B. 223 but can presume certain arguments that have been presented to us by the supporters in the few days preceding this hearing. In the interest of clarity and times, we are presenting our claims and supporting facts regarding H.B. 223 as it is presently considered:

- **H.B. 223 is not a victims-rights or victims-protection bill.** Supporters of the bill have opined they are presenting the legislation to protect victims of domestic violence from being tracked by offenders by use of GPS tracking devices.

In fact, the bill seeks to prohibit the use of GPS tracking devices without consent in all circumstances. Professional private investigators utilize GPS tracking technology to the benefit of domestic violence victims to identify and mitigate the potentially dangerous situations that may occur when offenders violate court ordered protections.

- **H.B. 223 is not a privacy rights protection bill.** Supporters of the bill have similarly opined they feel the use of GPS tracking devices is an invasion of personal privacy.

In fact, many state supreme courts and lower courts have ruled that persons do not have a reasonable expectation of privacy as they travel outside of their places of abode and that motor vehicles do not enjoy a right of privacy at all. Professional private investigators utilize GPS tracking devices to track material assets like a vehicle that *may* be driven or occupied by subjects of their legal investigations.

- **H.B. 223 specifically targets a specific regulated and licensed industry – professional private investigators.** Supporters of the bill suggest that the legislation addresses all persons in Utah.

In fact, the language in the bill specifically places additional burdensome restrictions on the use of GPS tracking technology that effectively prohibits the use of GPS tracking technology by professional private investigators in all circumstances.

- **H.B. 223 does not address an “on-going and dangerous problem” in Utah.** Supporters of the legislation have opined that there is an “on-going and dangerous problem” in Utah where private investigators are violating the rights of citizens and endangering domestic violence victims.

In fact, this is legislation in search of a problem that does not exist. Professional private investigators, as a matter of reasonable diligence, carefully screen clients and cases prior to deploying any surveillance efforts. If they discover that the *subject* of an investigation is protected by a court order, the responsible private investigator will not cause that order to be violated.

Further, responsible private investigators never permit their clients to have access to live GPS tracking data and will only release redacted data necessary for the furtherance of a legal matter to client’s legal counsel. This ensures that only the information necessary for a case is provided to any party. Of course, a reasonable exception to this practice may be

found in instances when the investigator is tracking an offender or stalker on behalf of a victim-client and the investigator perceives that the offender or stalker may have violated a court protective order or may intend harm to the victim. Here only limited information necessary to ensure the victim-client's safety is provided to the victim-client, their legal counsel and/or to law enforcement authorities.

Additionally, Utah professional private investigators are licensed and regulated by the Utah Department of Public Safety (the "DPS") which exercises the authority to vigorously investigate all complaints regarding private investigators. The DPS reports that they have neither received nor investigated any complaints with regards to private investigators and GPS tracking devices.

- **H.B. 223 will have a remarkable damaging financial impact on businesses and citizens.** Supporters of the bill have specifically stated that in the absence of the ability to use GPS tracking devices professional private investigators "will have to get from behind their desks and actually do their jobs."

Surveillance operations may be accomplished by:

- Continuous on-site surveillance. Effective continuous on-site surveillance requires at least two investigators and their associated assets to maintain long-term surveillance which are traditionally billed to the consumer at an *hourly* rate. This style of surveillance increases the chance that investigators will be discovered by subjects of the investigation, is unpredictable with regards to discovery of actionable activity, and is cost prohibitive for most consumers.
- GPS tracking device aided surveillance. Effective surveillance is accomplished by monitoring a placed GPS tracking device at a much lower and affordable *daily* rate. If actionable activity is detected, the investigator can be dispatched to conduct additional on-site surveillance. This legal, reasonable and prudent use of GPS tracking devices as an adjunct investigative tool by investigators saves time, reduces the opportunity for investigators to be discovered by subjects of the investigation, creates a safer environment for the investigator and their client, and reduces overall investigative costs to the consumer.

The PIAU strongly recommends that the Committee rejects H.B. 223 as it is currently proposed by its authors and supporters.

Respectfully submitted with warmest regards,

The Board of Directors

Private Investigators Association of Utah, Inc.



Utah Professional Private Investigators Protect Domestic Violence Victims

Most victims of domestic violence continue to be victimized by the same offender.¹

Abusers are determined to maintain control of their victims and often continue their abusive behaviors by stalking their victims, manipulating family and friends, exploiting the victim's electronic devices and even involving their children to harass their victims. The abuse often continues even after a law enforcement intervention and court orders. Professional private investigators can help victims of abuse.

Law enforcement agencies do all that they can to protect victims of domestic violence and abuse. Offender compliance can be a time and resource consuming responsibility that tax personnel and budgetary constraints. This can hamper an agency's ability to enforce court orders.

Licensed professional private investigators help to protect domestic violence victims by conducting targeted investigations focused on threat identification, prevention and mitigation. They can discover and report the information necessary for law enforcement and the courts to take effective action.

Victim Protection Services Provided by Professional Private Investigators

- Surveillance and counter-surveillance
- Offender tracking and monitoring
- Electronic device manipulation detection
- Background investigations
- Court order compliance monitoring
- Corroborating with law enforcement
- Reporting and court testimony

(1) Source: <https://www.bjs.gov/content/pub/pdf/ipv9310.pdf>



VOTE NO! On HB 223

- 1) DPS / BCI reports ZERO GPS COMPLAINTS throughout the history of licensed Private Investigators in Utah.
- 2) This bill originates from ONE mis-stated, CITY incident with A PERSONAL AGENDA behind it, wherein the *actual facts have been omitted* to legislators.
- 3) The language is EXTREMELY VAGUE, TOO **BROAD**, and full of TOO MANY **LOOPHOLES**.
- 4) The PENALTY IS FAR TOO EGREGIOUS for unintentional violation. It would constitute jail time, loss of licensure, fines, and livelihood!
- 5) HB 223 is an UNJUST and EXTREME against law abiding companies.
- 6) This bill will financially HURT OR DESTROY many legitimate, law abiding, and respectable UTAH SMALL BUSINESSES *that have never violated any law or ethical policy*.
- 7) GPS PROVIDES PHYSICAL SAFETY TO INVESTIGATORS & UNBIASED EVIDENCE TO ATTORNEYS AND THE COURTS.
- 8) Federal Gramm–Leach–Bliley Act provides a legitimate permissible purpose:

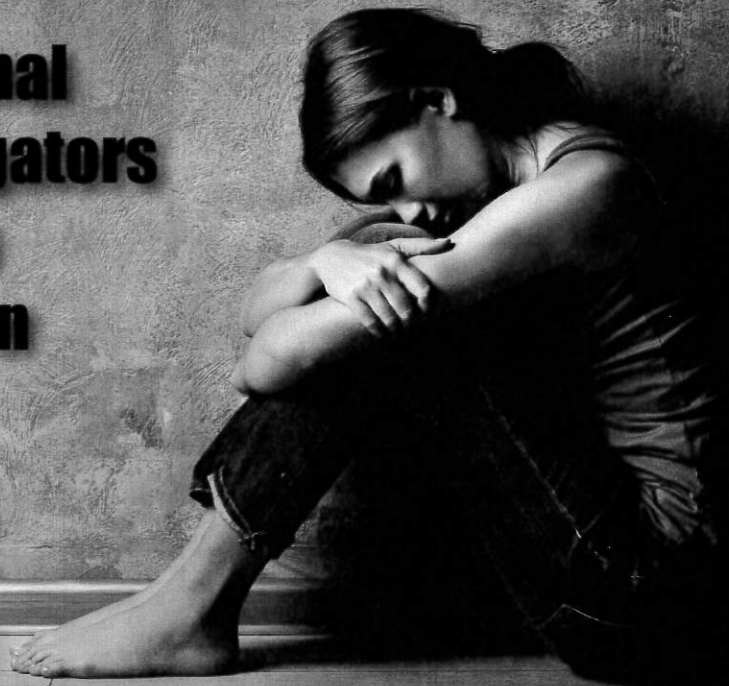
“To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”
- 9) Federal Driver's Privacy Protection Act provides several legitimate permissible purposes:

“For use by any licensed private investigative agency or licensed security service for use in connection with any civil, criminal, administrative, or arbitral proceeding, in any federal, state, or local court or agency, or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court.”

“For use by any licensed private investigative agency or licensed security service working for any insurer or insurance support organization, or self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities or antifraud activities.”
- 10) As we are many members of YOUR CONSTITUENCY we respectfully ask that you;

VOTE HB 223 DOWN!

Utah Professional Private Investigators Help Parents to Protect Children



Children and adolescents may be placed at great risk of exposure to abuse and neglect behavior and parents sometimes need assistance discovering and preventing potential hazards and high-risk behaviors to ensure their children's safety, health and well-being.

Today, children and adolescents are at greater risk of neglect, abuse and harm than in generations past. Parents and guardians find it more difficult to keep pace with the ever changing challenges their children and adolescents face.

Child and adolescent harm may come at the hands of trusted family members and friends, peers, and even the children themselves. Victims may be targeted by offenders in online communities and parents may feel helpless and without the skills necessary to effectively discover the details of the abuse or harmful activity.

Licensed professional private investigators can help parents by conducting targeted investigations focused on threat identification, mitigation and prevention. These investigations may include identifying offenders, alcohol and drug abuse, dangerous driving behaviors, unsafe dating behaviors, peer-group hazards, and other perils to child and adolescent safety.

Please see the obverse for more details.

Child Protection Services Provided by Professional Private Investigators

- ◆ Dangerous driving behavior detection
- ◆ Drug and alcohol abuse awareness
- ◆ Threat identification and mitigation
- ◆ Surveillance and counter-surveillance
- ◆ Offender identification, tracking and monitoring
- ◆ Electronic device manipulation detection
- ◆ Background investigations
- ◆ Identification of abusive patterns and warning signs
- ◆ Court order compliance monitoring
- ◆ Corroborating with law enforcement
- ◆ Reporting and court testimony

Adolescents and young adults take more risks than any other age group.

Source: Dr. L. D. Steinberg, Department of Psychology, Temple University

Adolescents are very interested in the rewards they perceive accompany strong peer relationships. Accordingly, they are also more sensitive to peer exclusion and disfavor. This combination of reward and regret increases their motivation to engage in high risk behavior. Aggravating an already sensitive growth period is their access and participation in difficult-to-monitor social media and online platforms, constant contact with peers by personal electronic communication, and living in a generally faster more connected world than their parents.

While some high-risk behaviors may have limited consequences, others like the misuse of alcohol and drugs, dangerous driving behavior, and sexual experimentation can have devastating and far reaching effects and may lead to physical and mental health complications, civil liability, criminal activity and even depression and suicide. Parents may find they need help to identify and address these behaviors before suffering their devastating effects.

One in every two marriages end in divorce.

36 million children and adolescents currently live with one biological parent.

Source: U.S. Census Bureau

While these children may now live with a single parent or in a new blended-family it is certain that in many instances the other biological parent does not fully know how and under what circumstances their children are being cared for.

Pr-Adjudication Discovery

The courts attempt to issue rulings that are in the best interests of children but can only decide matters based on the information presented to them. Evidence presented may be incomplete or worse, devoid of fact and merit. Orders based on erroneous data are difficult to correct and usually at great financial expense to the litigants and even greater emotional expense to the children involved.

Missing or Kidnapped Children

Some non-custodial parents or guardians fail to comply with court ordered visitation requirements and do not return children to their custodial homes as required. Occasionally non-compliant parents remove children from the state or the country – sometimes for days or even years. Disregard for the court's orders may place children in danger of neglect and abuse.

Non-Compliant Parents & Guardians

Regrettably not all parents are good parents and sometimes they feel they do not need to heed the direction and orders of the court or may simply be incapable of providing a safe environment and supervision for their children. While under the scrutiny of the courts or government they may appear to be at their best behavior but return to neglectful or even abusive behavior when they feel they are not being observed.

Split Families

Uncertainty of a child's wellbeing can create further discontent in an already tense relationship. Investigation of good faith concerns of neglect or abuse may reduce the opportunity for harm and improve a child's opportunities for healthy family and social relationships.

Utah Professional Private Investigators

The first mention of independent investigators is recorded in the Old Testament Book of Numbers where God commanded Moses to spy on Canaan.¹



Private investigators then...

The roots of modern private investigations date back thousands of years and has included some famous characters. Some early investigators were soldiers and law enforcers and even privateers like Eugène Vidocq who founded the first private detective agency in 1833 pioneering the basic concepts of record keeping, criminology, and ballistics in the then new field of criminal investigations.

At about the same time in the U.S., Allan Pinkerton found fame by accident identifying a local counterfeiting gang. He would soon become the first police detective in Chicago, Illinois and later partnered with an attorney to form the Pinkerton National Detective Agency coining the phrase “private eye” – believed to be taken from the Pinkerton insignia: a wide-open eye with the caption “We never sleep.”

and now.

Professional private investigators have come a long way since Moses’s band of reconnoiters and Pinkerton’s famous sleuths. They are nothing like the private-eyes portrayed by best-selling novelists or those featured in movies and television. PIs do not employ non-existent high-tech crime fighting tools, solve cases in a 40-minute episode, or even don trench coats and fedoras (although they are known to use a magnifying glass on occasion).

Utah professional private investigators are experienced professionals fully vetted and regulated by the Utah Department of Public Safety. They are skilled in the trade-craft of intelligence gathering, technically competent in detection, surveillance, and evidence assessment, and are law abiding advocates of the best interests of the public and their clients.

UTAH PRIVATE INVESTIGATORS

- ♦ Passed rigorous law enforcement background investigation.
- ♦ Licensed and regulated by the Utah Department of Public Safety.
- ♦ Meet statutory minimum experience standards.
- ♦ Carry statutory minimum professional liability insurance.
- ♦ Participate in regular ongoing training and education.
- ♦ Are committed to providing ethical services.

Especially when working diligently with legal counsel, the professional private investigator is a client’s safest and most affordable resource to gather the information and evidence necessary to effectively adjudicate their legal matter.

Please see the obverse for more details about the services professional private investigators provide.

(1) Source: The Bible, Old Testament, Numbers 13:1-33.



Common Private Investigator Services

Domestic violence protection	DNA recovery and testing
Targeted protection investigations	Public and court records searches
Background investigations	Fingerprinting
Preemployment investigations	Forensic investigations
Fraud detection and mitigation	Identity theft investigations
Child custody and welfare inquiries	Loss prevention and mitigation
Forensic data recovery and examination	Malpractice investigations
Criminal investigations	Premarital inquiries
Insurance investigations	Sexual harassment investigations
Accident reconstruction	Theft and recovery investigations
Corporate investigations	Undercover operations
Arson investigations	Trade secret violations
Surveillance and counter-surveillance	Intellectual property investigations
Missing and exploited persons locates	Eavesdropping detection
Asset search and recovery	Wrongful death investigations
Process service	Subrogation services

Private Investigators Association of Utah, Inc.

Recommended compromise language to H.B. 223 (redline and redtext)

76-9-408. Unlawful installation of a tracking device.

(1) As used in this section:

(a) "Motor vehicle" means the same as that term is defined in Subsection 31 41-12a-103(4).

(b) "Private investigator" means an individual who is:

(i) licensed as a private investigator under Title 53, Chapter 9, Private Investigator Regulation Act; and

(ii) acting in the capacity of a private investigator.

(c) "Tracking device" means a device that reveals the device's location or movement by the transmission of an electronic signal.

(d) "Restraining order" or "protective order" means any order protective order, child protective order, ex parte protective order, or ex parte child protective order issued by any civil, criminal, or administrative proceeding, in any federal, state, or local court or agency.

(e) "Legal proceeding" means any civil, criminal, administrative, or arbitral proceeding, in any federal, state, or local court or agency, or before any self-regulatory body, including investigation in anticipation of litigation, and the execution or enforcement of judgments and orders.

(2) Except as provided in Subsection (3), a person is guilty of unlawful installation of a tracking device if the person knowingly installs, or directs another to install, a tracking device on a motor vehicle owned or leased by another person.

(3) A person is not guilty of unlawful installation of a tracking device if the person installs the tracking device on a motor vehicle:

(a) (i) with the **written** consent of the owner or lessee of the motor vehicle; or

(b) if the person is a private investigator,

~~(i) with the written consent of the owner or lessee of the motor vehicle; or~~

(i) with the written consent of the owner or lessee of the motor vehicle; or

(ii) for use in connection with any legal proceeding except where there is any restraining or protective order issued protecting the person subject to the investigation.

(c) ~~(b)~~ under the direction of an individual whom the person reasonably believes to be a peace officer authorized to install the tracking device in the course of a criminal investigation or pursuant to a court order; or

(d) ~~(e)~~ pursuant to a court order.

(4) Unlawful installation of a tracking device is a class A misdemeanor.

(5) This section does not apply to a peace officer, acting in the peace officer's official capacity, who installs a tracking device on a motor vehicle in the course of a criminal investigation or pursuant to a court order.

(6) (a) This section authorizes the Utah Department of Public Safety or any other law enforcement agency in the state of Utah to provide to a private investigator verification of the existence of any known order issued to protect the person subject to the investigation.

(b) The agency shall release to the private investigator only the name of the protected person or persons, the court name and case number, and the date of issuance of the order.

(c) The private investigator shall not divulge this information to any other person except as permitted by law.