

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 197 Tracking Devices or Applications

SPONSOR(S): Criminal Justice Subcommittee and Metz

TIED BILLS: None **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Economic Development & Tourism Subcommittee	11 Y, 0 N	Lukis	Duncan
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. Florida law does not currently prohibit a person from installing a tracking device or tracking application on another person's property without the other person's consent.

The bill creates the following definitions:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.
- "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.
- "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.
- "Person" means an individual and does not mean a business entity.

The bill creates a new section of statute making it a second degree misdemeanor for a person to install a tracking device or tracking application on another person's property without the other person's consent. This prohibition does not apply to:

- a law enforcement officer or law enforcement agency that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;
- a parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor child's property if:
 - the parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - the parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - the parent or legal guardian has sole custody of the minor child; or
 - the parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application;
- a caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult; or
- a person acting in good faith on behalf of a business entity for a legitimate business purpose.

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tracking Electronic Devices

Cellular Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local “base station”¹ to verify the strength of the phone’s connection to the provider network.² Cellular phones also communicate back and forth with base stations during phone calls.³ Providers divide their service area up among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.⁴ Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.⁵ The electronic record created by a cellular phone communicating with a base station is often referred to as “cell site location information” (hereinafter “CSLI”).⁶

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.⁷ The Federal Communications Commission (hereinafter “FCC”) developed the Enhanced 911 program (hereinafter “E911”) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.⁸ Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.⁹ In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.¹⁰ This is accomplished by “selective routing based on the geographical location from which the call originated,” and requiring providers to create automatic number identification and automatic location-identification features.¹¹

GPS Tracking

The Global Positioning System (hereinafter “GPS”) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.¹² The GPS system is operated by the United States Air Force,¹³ and is used for civilian applications as well as national security and military operations.¹⁴ GPS can be used for tracking and locating cellular phones that are equipped with hardware that can receive

¹ The “base station” is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as “cellular towers.” See IEEE Global History Network, *Base Stations*, http://www.ieeeahn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).

² *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).

³ *Id.* at 13.

⁴ *Id.* at 13.

⁵ *Id.* at 14.

⁶ *In re Application of U.S. for an Order Directing a Provider of Elec. Comm’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010).

⁷ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

⁸ Federal Commc’ns Comm’n, *Guide: 911 Wireless Services*, <http://www.fcc.gov/guides/wireless-911-services> (last visited Jan. 23, 2015).

⁹ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

¹⁰ Section 365.172(3)(h), F.S.

¹¹ *Id.*

¹² GPS.Gov, *Space Segment*, <http://www.gps.gov/systems/gps/space/> (last visited Jan. 23, 2015).

¹³ Schriever Air Force Base, *GPS*, <http://www.schriever.af.mil/GPS/> (last visited Jan. 23, 2015).

¹⁴ GPS.Gov, *GPS Applications*, <http://www.gps.gov/applications/> (last visited Jan. 23, 2015).

radio signals from GPS satellites.¹⁵ GPS technology can usually identify the location of a cellular phone within a distance of ten meters;¹⁶ however, more recent cellular phone models are the only models equipped with the proper hardware to utilize this technology.¹⁷

Tracking Software

Tracking software can be downloaded onto phones and other electronic devices and used to track the location of the device for mapping applications or other purposes.¹⁸ Some types of tracking software can monitor messages, emails, web sites that are visited, and contacts that are saved, in addition to tracking a device's location.¹⁹

Florida Law

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. However, many of the chapter's provisions only apply to law enforcement entities (e.g., s. 934.42, F.S., authorizes a law enforcement officer to apply to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device²⁰).

Section 934.03, F.S., which applies to all persons, and makes it a third degree felony²¹ for a person to intentionally use the contents of an electronic communication, knowing or having reason to know that the information was obtained through the unlawful interception of the electronic communication (i.e., without the consent of both parties). The term "electronic communication" is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce."²² However, the definition specifically excludes "any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object."²³

Florida law does not currently prohibit a private individual from installing a tracking device or tracking application on another person's property without the other person's consent.

Effect of Proposed Changes

The bill creates the following definitions:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.
- "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.
- "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.
- "Person" means an individual and does not include a business entity.

¹⁵ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

¹⁶ *Id.*

¹⁷ *Id.* at 22.

¹⁸ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

¹⁹ CBS DFW, *Stalkers Using Cell Phones to Track Victims*, <http://dfw.cbslocal.com/2015/01/14/stalkers-using-cell-phones-to-track-victims/> (last visited Jan. 26, 2015); Christine Pitawanich, *Virtually Invisible Cell Phone Apps Used to Track and Spy on Victims*, NBC News, Nov. 25, 2014, <http://kobi5.com/news/item/virtually-invisible-cell-phone-apps-used-to-track-and-spy-on-victims.html#.VMvymKNOncs> (last visited Jan. 26, 2015).

²⁰ Section 934.42, F.S., defines "tracking device" as an electronic or mechanical device which permits the tracking of the movement of a person or object.

²¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²² Section 934.02(12), F.S.

²³ *Id.*

The bill creates a new section of statute making it a second degree misdemeanor²⁴ for a person to install a tracking device or tracking application on another person's property without the other person's consent. This prohibition does not apply to:

- a law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;
- a parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor child's property if:
 - the parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - the parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - the parent or legal guardian has sole custody of the minor child; or
 - the parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application;
- a caregiver of an elderly person or disabled adult, as those terms are defined in s. 825.101, F.S., if the elderly person or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult; or
- a person acting in good faith on behalf of a business entity for a legitimate business purpose.

The bill specifies that a person's consent to be tracked is presumed to be revoked in the following circumstances:

- the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to ss. 741.30, 741.315, 784.046, or 784.0485, F.S.

B. SECTION DIRECTORY:

Section 1: Creates s. 934.425, F.S., relating to installation of tracking devices or tracking applications; exceptions; penalties.

Section 2: Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have an impact on state revenues.

2. Expenditures:

This bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

²⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill as favorable as a committee substitute. The amendment:

- corrected terminology;
- narrowed the definition of “tracking application” and “tracking device” to encompass applications and devices whose *primary* purpose was to track or identify its location;
- added the definitions of “person” and “business entity;”
- narrowed the prohibition against tracking a person’s location to only encompass the act of *installing* a tracking device or tracking application;
- removed the requirement for law enforcement officers to create a contemporaneous record of the use of the tracking device or application;
- modified the exception for law enforcement use to apply when a tracking device or tracking application is *lawfully* installed;
- added a new exception for installing a tracking device or application by a caregiver of an elderly person or disabled adult; and
- added a new exception for a person acting in good faith on behalf of a business entity.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.