

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 197	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Metz and others	113 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 282	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 197 passed the House on April 16, 2015, and subsequently passed the Senate on April 24, 2015.

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 prohibits a person from installing a tracking device or tracking application on another person's property without the other person's consent. A violation of this prohibition is a second degree misdemeanor. 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;
- A person who is not engaged in private investigation, and is acting in good faith on behalf of a business entity for a legitimate business purpose; or
- An owner or lessee of a motor vehicle, in specified circumstances.

The bill provides for administrative disciplinary action against persons engaged in private investigation, security, or repossession, who install tracking devices or tracking applications in violation of the provisions of the bill.

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 was approved by the Governor on June 11, 2015, ch. 2015-137, L.O.F., and will become effective on October 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

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 radio signals from GPS satellites.¹⁵ GPS technology can usually identify the location of a cellular phone

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 April 30, 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 Comm’n Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited April 27, 2015).

⁸ Federal Comm’n Comm’n, *Guide: 911 Wireless Services*, <http://www.fcc.gov/guides/wireless-911-services> (last visited April 27, 2015).

⁹ Federal Comm’n Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited April 27, 2015).

¹⁰ s. 365.172(3)(h), F.S.

¹¹ *Id.*

¹² GPS.Gov, *Space Segment*, <http://www.gps.gov/systems/gps/space/> (last visited April 27, 2015).

¹³ Schriever Air Force Base, *GPS*, <http://www.schriever.af.mil/GPS/> (last visited April 27, 2015).

¹⁴ GPS.Gov, *GPS Applications*, <http://www.gps.gov/applications/> (last visited April 27, 2015).

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.).

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, websites 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 device).²⁰

Section 934.03, F.S., which applies to all persons, 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.

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 April 27, 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 April 27, 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. ss. 775.082 and 775.083, F.S.

²² s. 934.02(12), F.S.

²³ *Id.*

Effect of the Bill

The bill creates a new 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;
- A person acting in good faith on behalf of a business entity for a legitimate business purpose, except for persons engaged in private investigation, as defined in s. 493.6101, F.S.; or
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner or lessor of the vehicle consents in writing for the tracking device or tracking application to remain installed; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

The bill permits the Department of Agriculture and Consumer Services to take disciplinary action against persons engaged in private investigation, security, or repossession services, who install a tracking device or tracking application in violation of the provisions of the bill.

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.

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.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

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.