

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 151 Installation of Tracking Devices or Tracking Applications

SPONSOR(S): Criminal Justice Subcommittee; Cortes, B.

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Economic Affairs Committee	16 Y, 0 N	Johnson	Pitts
3) Judiciary Committee	18 Y, 0 N	Keegan	Havlicak

SUMMARY ANALYSIS

Tracking devices and tracking applications can utilize cell phone signal technology, the Global Positioning System (hereinafter "GPS"), and tracking software downloaded onto electronic devices to secretly track the location of a person.

During the 2015 Legislative Session, CS/CS/HB 197 passed the House and Senate and was signed into law. That bill created s. 934.425, F.S., 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. The prohibition applies to a person engaged in private investigation, who installs a tracking device or tracking application on behalf of another person unless the activities would otherwise be exempt under an exception under s. 934.425, F.S.

This bill provides that a person engaged in private investigation, as defined in s. 493.6101, may install a tracking device in the following two circumstances:

- A person or business entity that is exempt under paragraphs (b), (c), and (e) may hire a private investigator to install a tracking device or tracking application consistent with the applicable exemption.
- A private investigator may install a tracking device or tracking application pursuant to a lawful court order.

The bill expands the exemption for persons and business entities that may install a tracking device or tracking application without being exposed to the second degree misdemeanor penalty for doing so. This may reduce the jail bed impact on local government expenditures.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 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

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.” TECHOPEDIA, *Base Station*, <https://www.techopedia.com/definition/5268/base-station-bs> (last visited Jan. 28, 2016).

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 *ECPA Reform*, *supra* note 2, at 13.

⁴ *ECPA Reform*, *supra* note 2, at 13.

⁵ *ECPA Reform*, *supra* note 2, at 14.

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

⁷ FEDERAL COMM’NS COMM’N, *Enhanced 9-1-1 Wireless Services*, <https://www.fcc.gov/general/enhanced-9-1-1-wireless-services> (last visited Jan. 28, 2016).

⁸ FEDERAL COMM’NS COMM’N, *Guide: 911 Wireless Services*, <https://www.fcc.gov/consumers/guides/911-wireless-services> (last visited Jan. 28, 2016).

⁹ *Enhanced 9-1-1 Wireless Services*, *supra* note 7.

¹⁰ s. 365.172(3)(h), F.S.

¹¹ *Id.*

¹² GPS.GOV, *Space Segment*, <http://www.gps.gov/systems/gps/space/> (last visited Jan. 28, 2016).

¹³ SCHRIEVER AIR FORCE BASE, *GPS*, <http://www.schriever.af.mil/GPS/> (last visited Jan. 28, 2016).

¹⁴ GPS.GOV, *GPS Applications*, <http://www.gps.gov/applications/> (last visited Jan. 28, 2016).

¹⁵ *ECPA Reform*, *supra* note 2, at 13-14.

¹⁶ *ECPA Reform*, *supra* note 2, at 13-14.

¹⁷ *ECPA Reform*, *supra* note 2, at 22.

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

During the 2015 Legislative Session, CS/CS/HB 197 passed House and Senate and was signed into law. That bill created s. 934.425, F.S., making it a second degree misdemeanor²¹ 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;
- 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.

Effect of the Bill

The bill provides that a person engaged in private investigation, as defined in s. 493.6101, may install a tracking device in the following two circumstances:

- A person or business entity that is exempt under paragraphs (b), (c), and (e) may hire a private investigator to install a tracking device or tracking application consistent with the applicable exemption.
- A private investigator may install a tracking device or tracking application pursuant to a lawful court order.

¹⁸ *ECPA Reform*, *supra* note 2, at 13-14.

¹⁹ CBS DFW, *Stalkers Using Cell Phones to Track Victims*, CBS LOCAL (Jan. 14, 2015), <http://dfw.cbslocal.com/2015/01/14/stalkers-using-cell-phones-to-track-victims/>; Crystal Price, *Oklahoma Attorney Raises Awareness about Stalking*, KOCO.COM OKLAHOMA CITY (Jan. 25, 2016), <http://www.koco.com/news/Oklahoma-attorney-raises-awareness-about-stalking/37616944>.

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

The bill reenacts s. 493.6118, F.S., (relating to grounds for disciplinary action against specified parties), to incorporate the amendments made by the bill to s. 934.425(4), F.S.

B. SECTION DIRECTORY:

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

Section 2. Reenacts s. 493.6118, F.S., relating to grounds for disciplinary action.

Section 3. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill expands the exemption for persons and business entities that may install a tracking device or tracking application without being exposed to the second degree misdemeanor penalty for doing so. This may reduce the jail bed impact on local government expenditures.

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, 2016, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Authorizes certain persons or business entities to hire a private investigator to install tracking devices or tracking applications when the person or business entity is lawfully permitted to do so.
- Permits a private investigator to install a tracking device or tracking application pursuant to a lawful court order.

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