

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 758

INTRODUCER: Judiciary Committee and Senator Martin

SUBJECT: Tracking Devices and Applications

DATE: February 7, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Parker</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 758 amends s. 934.425, F.S., to prohibit a person from knowingly:

- Placing a tracking device or tracking application on another person's property without that person's consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

The bill expands the scope of prohibited conduct to capture those persons who do not install a tracking device or tracking application on another person's property themselves, but who place or use such a device or application to determine the location or movement of another person or another person's property without that person's consent.

The bill increases the penalty for a violation of this section from a second degree misdemeanor to a third degree felony.¹

The bill expands the exceptions in s. 934.425, F.S., to include an exception for placement or use of a tracking device or tracking application by:

- Law enforcement officers, or any local, state, federal, or military law enforcement agency;
- A parent or legal guardian of a minor;

¹ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

- A caregiver of an elderly person or disabled adult; and
- An owner or lessee of a motor vehicle.

The bill amends s. 493.6118, F.S., to provide that use of a tracking device or tracking application is grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services (DACS) against any licensee, agency, or applicant regulated by ch. 493, F.S., or any unlicensed person engaged in activities regulated by ch. 493, F.S. Chapter 493, F.S., relating to private investigative, private security, and repossession services.

The bill may have a positive indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a violation from a second degree misdemeanor² to a third degree felony, which may result in longer jail sentences and new prison admissions.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Tracking devices and tracking applications can be used to follow the location or movement of another person, potentially without that person's knowledge or consent. Some applications have legitimate uses, but may be accessed by third parties without the user's consent. Other applications are developed and marketed as surveillance applications, commonly targeting potential customers interested in using the technology to track the movements and communication of another without consent.³

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. A violation of the prohibition is punishable as a second degree misdemeanor.⁴

Current law does not specifically prohibit the placement of a tracking device.

Global Positioning System

The Global Positioning System (GPS) is a space-based radio navigation system, owned by the United States Government and operated by the United States Space Force. GPS consists of three segments, including the:

- Space Segment: A constellation of 31 operational satellites that circle the Earth at an altitude of approximately 11,000 miles every 12 hours;
- Control Segment: Stations on Earth that monitor and maintain the GPS satellites; and

² A misdemeanor of the second degree is punishable by a definite term of imprisonment not exceeding 60 days, as provided in s. 775.082 or s. 775.083, F.S.

³ New York Times, *I Used Apple AirTags, Tiles and a GPS Tracker to Watch My Husband's Every Move*, Kashmir Hill, February 11, 2022, available at <https://www.nytimes.com/2022/02/11/technology/airtags-gps-surveillance.html> (last visited on December 28, 2023).

⁴ Section 934.425, F.S.

- User Segment: Receivers that process the navigation signals from the GPS satellites and calculate position and time.⁵

Each GPS satellite transmits its position and time at regular intervals and the signals are intercepted by GPS receivers. The receiver is then able to determine its position by calculating how long it took for the signal to reach the receiver. GPS currently provides two levels of services: standard positioning service and precise positioning service. Access to precise positioning service is restricted to the United States Armed Forces, Federal agencies, and select allied armed forces and governments. Standard positioning service is available to all users on a continuous basis, free of any direct charge to users.⁶

GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.⁷

Wi-Fi Positioning

Wi-Fi is a radio-frequency technology for wireless communication that is used by nearly all devices and network infrastructure, including smartphones, computers, Internet of Things devices, routers, and more, and can be used to transmit data between devices using radio waves.⁸ Wi-Fi can be leveraged to detect and track the location of people, devices, and assets, and can be easily activated for indoor positioning with existing Wi-Fi access points. The most commonly used Wi-Fi positioning techniques determine a device's location by using a measure called received signal strength indicator (RSSI). In RSSI applications, multiple existing Wi-Fi access points or Wi-Fi-enabled sensors deployed in a fixed position detect transmitting Wi-Fi devices and the received signal strength of a device's signal. The location data collected by the access points or sensors is sent to the central indoor positioning or realtime location system, which analyzes the data to estimate the position of the transmitting device. Alternatively, the signal strength of nearby access points can be used to determine a device's location.⁹ Wi-Fi positioning technology is particularly popular in providing location services in indoor spaces where GPS may not work as effectively.

Department of Agricultural and Consumer Services

The Department of Agricultural and Consumer Services (DACS) is a cabinet-level agency with the elected Commissioner of Agriculture as the agency head. The department has broad duties,

⁵ NASA, *GPS-What is GPS*, Catherine G. Manning, September 25, 2023, available at <https://www.nasa.gov/directorates/somd/space-communicationsnavigation-program/gps/> (last visited on December 28, 2023).

⁶ *Id.*

⁷ Federal Aviation Administration, *Satellite Navigation- Global Positioning System (GPS)*, available at https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/navservices/gnss/gps, (last visited on December 28, 2023).

⁸ Inpixon Indoor Intelligence, *Wi-Fi RTLS, Location Tracking and Positioning, What is Wi-Fi Positioning*, available at <https://www.inpixon.com/technology/standards/wifi> (last visited on December 28, 2023).

⁹ *Id.*

including safeguarding the public from unsafe or defective products and deceptive business practices, providing environmental protection, and supporting Florida's agricultural economy.¹⁰

Division of Licensing

The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. Chapter 493, F.S., regulates the licensing of private security, investigative, and recovery industries.¹¹ As of April 30, 2023, the division has a total of 2,890,879 issued licenses amongst 26 different types, including: 797 recovery agents, 7,317 private investigators, 149,061 security officers, and 2,677,967 concealed weapon or firearms.¹²

Grounds for Disciplinary Action against Licensee, Agencies, or Applicants

Section 493.6118, F.S., allows the DACS to pursue disciplinary administrative action against a current ch. 493, F.S., licensee, agency, or applicant, or any unlicensed person engaged in activities regulated under ch. 493, F.S., based on a finding that he or she has committed any of the acts prohibited in s. 493.6118, F.S., including the installation of a tracking device or tracking application in violation of s. 934.425, F.S.¹³

Unlawful Installation of a Tracking Device or Application

Section 934.425, F.S., provides that it is a second degree misdemeanor¹⁴ to knowingly install a tracking device¹⁵ or tracking application¹⁶ on another person's property without the other person's consent.

A person's consent to be tracked is presumed to be revoked if:

- 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;¹⁷ or
- The consenting person or the person to whom consent was given files an injunction for protection against the other person.¹⁸

The prohibition against installing a tracking device or tracking application does not apply to:

¹⁰ Florida Department of Agricultural and Consumer Services, *About Us*, at <https://www.fdacs.gov/About-Us> (last visited January 5, 2024).

¹¹ Section 493.6100, F.S.

¹² Office of Program Policy Analysis and Government Accountability, *Department of Agriculture and Consumer Services Licensing* at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101> (last visited January 5, 2024).

¹³ Section 493.6118(1)(y), F.S.

¹⁴ Section 934.425(5), F.S.

¹⁵ Section 934.425(1)(c), F.S., provides that a "tracking device" means any device whose primary purpose is to track or identify the location or movement of the individual.

¹⁶ Section 934.425(1)(b), F.S., provides that a "tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.

¹⁷ Section 934.425(3)(a), F.S.

¹⁸ Section 934.425(3)(b), F.S., references the following injunctions for protection: s. 741.30, F.S., relating to domestic violence; s. 741.315, F.S., relating to foreign protection orders; s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence; s. 784.048, F.S., relating to stalking.

- A law enforcement officer, 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;¹⁹
- A parent or legal guardian of a minor child who 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;²⁰
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;²¹
 - The parent or legal guardian has sole custody of the minor child;²² 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.²³
- A caregiver of an elderly person²⁴ or disabled adult,²⁵ 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;²⁶
- A person acting in good faith on behalf of a business entity for a legitimate business purpose;²⁷ 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:²⁸
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;²⁹
 - The new owner or lessor of the vehicle consents in writing for the tracking device or tracking application to remain installed;³⁰ 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.³¹

¹⁹ Section 934.425(4)(a), F.S.

²⁰ Section 934.425(4)(b)1., F.S.

²¹ Section 934.425(4)(b)2., F.S.

²² Section 934.425(4)(b)3., F.S.

²³ Section 934.425(4)(b)4., F.S.

²⁴ Section 825.101(4), F.S., defines "Elderly person" to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

²⁵ Section 825.101(3), F.S., defines "disabled adult" to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

²⁶ Section 934.425(4)(c), F.S.

²⁷ Section 934.425(4)(d), F.S., This paragraph does not apply to a person engaged in private investigation, as defined in s. 493.6101, F.S., on behalf of another person unless such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator.

²⁸ Section 934.425(4)(e), F.S.

²⁹ Section 934.425(4)(e)1., F.S.

³⁰ Section 934.425(4)(e)2., F.S.

³¹ Section 934.425(4)(e)3., F.S.

III. Effect of Proposed Changes:

The bill amends s. 934.425, F.S., to prohibit a person from knowingly:

- Placing a tracking device or tracking application on another person's property without that person's consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

The bill expands the scope of prohibited conduct to capture those persons who do not install a tracking device or tracking application on another person's property themselves, but who place or use such a device or application to determine the location or movement of another person or another person's property without that person's consent. By prohibiting the placement, in addition to the installation, of a tracking device or application, the bill clarifies that a person may commit a violation by simply placing such a device on or into another person's property.

The bill increases the penalty for a violation of s. 934.425, F.S., from a second degree misdemeanor to a third degree felony, punishable by up to 5 years imprisonment and a \$5,000 fine. However, the bill does not rank the offense on the Offense Severity Ranking Chart, and as such, under s. 921.0023, F.S., the offense defaults to a level 1 offense.

The bill expands the exceptions in s. 934.425, F.S., to include an exception for placement of a tracking device or tracking application by:

- Law enforcement officers, or any local, state, federal, or military law enforcement agency;
- A parent or legal guardian of a minor;
- A caregiver of an elderly person or disabled adult; and
- An owner or lessee of a motor vehicle. The bill adds a requirement that a seller of an automobile disclose to the buyer the existence of a tracking device and how to remove it.

The bill amends s. 493.6118, F.S., to provide that use of a tracking device or tracking application is grounds for which disciplinary action may be taken by the DACS against any licensee, agency, or applicant regulated by ch. 493, F.S., or any unlicensed person engaged in activities regulated by ch. 493, F.S. Chapter 493, F.S., relating to private investigative, private security, and repossession services.

The bill has an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact. It is unlikely that the bill will lead to a substantial increase in judicial workload; however, increasing the penalty for violations of s. 934.425, F.S., from a misdemeanor to a felony will shift workload from the county courts to the circuit courts.

The precise fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the effect on judicial workload. However, this legislation is anticipated to have a minimal fiscal impact on expenditures of the State Courts System, if any.

As to the potential shift of workload from the county courts to the circuit courts. Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system.

The number of case filings using the case weighting system is used to determine the need for additional judicial resources each year. Any judicial workload changes from county to circuit jurisdiction in the future as a result of this bill will be reflected in the Supreme Court's annual opinion, *In re: Certification of Need for Additional Judges*.³²

The bill may have an indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a

³² Office of the State Courts Administrator *2024 Judicial Impact Statement* (November 30, 2023), at 1 (on file with the Senate Committee on Criminal Justice).

violation from a second degree misdemeanor to a third degree felony, which may result in longer jail sentences and new prison admissions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.425 and 493.6118.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 29, 2024:

The committee substitute clarified the statutory exceptions by adding “use” to the exceptions to conform to the addition of “use” to the offense. The committee substitute also added a requirement that a seller of an automobile disclose to a buyer the existence of a tracking device and how to remove the device.

- B. **Amendments:**

None.