

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Tracking Devices and Applications

SPONSOR(S): Overdorf

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

When used for its intended purpose, a consumer tracking device can help track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. Unfortunately, as affordable consumer tracking devices have grown in popularity, so too have concerns about the potential for nefarious uses of such technology. In recent years, there have been numerous reports of tracking devices being discovered surreptitiously slipped into clothing and purses or attached to the vehicle of another person. In addition to tracking devices, tracking applications can also 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, while others are developed and marketed as surveillance applications, commonly targeting potential customers interested in using the technology to track the movements and communications of a romantic partner.

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. Current law does not specifically prohibit the *placement*, rather than the installation, of a tracking device or application on another person's property without his or her consent or prohibit the unconsented to *use* of a tracking device or tracking application by a person other than the one responsible for installing the device or application.

HB 401 amends s. 934.425, F.S., to prohibit a person from knowingly:

- *Placing*, in addition to installing, 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 or place a tracking device or tracking application on another person's property themselves, but who nonetheless access and 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. Additionally, by prohibiting the placement, in addition to the installation, of a tracking device or application, the bill may clarify that a person may also commit a violation by simply dropping such a device into another person's property, such as a purse or coat pocket.

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 five years imprisonment and a \$5,000 fine.

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 misdemeanor 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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0401.CRJ

DATE: 12/1/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Location Tracking Technology

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
- User Segment: Receivers that process the navigation signals from the GPS satellites and calculate position and time.¹

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.² GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.³

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.⁴ 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 real-time 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.⁵ Wi-Fi positioning technology is particularly popular in providing location services in indoor spaces where GPS may not work as effectively.

Bluetooth Low Energy

¹ Catherine G. Manning, *What is GPS*, NASA, (Sept. 25, 2023) <https://www.nasa.gov/directorates/somd/space-communications-navigation-program/gps/> (last visited Dec. 1, 2023).

² *Id.*

³ *Satellite Navigation- Global Positioning System (GPS)*, Federal Aviation Administration, https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/navservices/gnss/gps (last visited Dec. 1, 2023)

⁴ *What is Wi-Fi Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/wifi> (last visited Dec. 1, 2023).

⁵ *Id.*

Bluetooth Low Energy (BLE) is a radio frequency technology for wireless communication that can be leveraged to detect and track the location of people, devices, and assets in indoor spaces. BLE uses small Bluetooth transmitters, called Beacons, to detect wireless devices such as BLE-enabled smart phones. Beacons broadcast signals at regular intervals that can be detected by other BLE-enabled devices. Location data from Beacons are collected by a BLE device and forwarded to an internal positioning system to determine the devices location. Like Wi-Fi, BLE primarily uses RSSI to detect the location of people, devices, and assets.⁶

Ultra-Wideband Technology

Ultra-Wideband (UWB) technology allows for information to be transmitted across a wide radio bandwidth. While similar to Wi-Fi and Bluetooth technology, UWB technology measures time of flight (ToF) as opposed to utilizing RSSI. Utilizing ToF, an electromagnetic impulse is sent from one device to another, measuring the time it takes from transmission to receipt of the impulse, and allowing for the determination of distance between devices. Measurements are then able to be correlated to determine a signal's angle of arrival, allowing UWB "tagged" objects to be located with accuracy down to the centimeter, which is far more precise than Bluetooth technology permits.⁷

Abuse of Location Tracking Technology

When used for its intended purpose, a consumer tracking device (typically a small coin-sized device equipped with a speaker, antenna, and battery) can help users track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. If the user's item goes missing, the tracking device pings nearby products also connected to the network in order to determine the devices location. The device then sends its current location back to the user, and in some cases, provides the user with directions to the device's location.⁸ These popular devices sell from around twenty five to thirty five dollars for one unit to around one hundred dollars for a four-pack of units.⁹

Unfortunately, as affordable consumer tracking devices have gained popularity, so too have concerns about the potential for nefarious uses of such tracking technology. In recent years, there have been numerous reports of consumer trackers being discovered surreptitiously slipped into clothing and purses or attached to the vehicle of another person.¹⁰ In response, the manufacturers of some tracking devices have made efforts to curb their misuse and make consumers aware if a device has gone out of range or if a device is away from its owner and nearby another networked device for an extended period of time.¹¹ Additionally, some companies have developed applications that can be used by consumers to scan for nearby tracking devices.¹² Other companies have specifically employed anti-stalking measures in the functionality of the tracking device itself, such as requiring a user to register using multi-factor authentication, provide government identification, and acknowledge that personal

⁶ Bluetooth RTLS, Location Tracking, & Positioning, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/bluetooth-low-energy> (last visited Dec. 1, 2023).

⁷ Robert Triggs, Calvin Wankhede, What is UWB, and why is it in my phone? Ultra wideband technology, explained, Android Authority, (Aug. 30, 2023), <https://www.androidauthority.com/what-is-uw-1151744/> (last visited Dec. 1, 2023).

⁸ Samantha Cole, *Police Records Show Women Are Being Stalked With Apple AirTags Across the Country*, Motherboard Tech by VICE, (Apr. 6, 2022) <https://www.vice.com/en/article/y3vj3y/apple-airtags-police-reports-stalking-harassment> (last visited Dec. 1, 2023).

⁹ Kevin Webb and Annabelle Williams, *Apple's AirTag is designed to compete with Tile's family of Bluetooth trackers-here's how they stack up*, Business Insider, (Aug. 24, 2022) <https://www.businessinsider.com/guides/tech/apple-airtags-vs-tile-tracker-bluetooth> (last visited Dec. 1, 2023).

¹⁰ Emily J. Hanson and Kristin Finklea, *Stalking Concerns Raised by Bluetooth Tracking Technologies: In Brief, Congressional Research Service*, (Feb. 15, 2022), <https://crsreports.congress.gov/product/pdf> (last visited Dec. 1, 2023); Lisa Zobel, Mark Muldofsky, Nicole Mastrangelo, Deborah Kim, Anneke Ball, Rachel Wenzlaff, and Ivan Pereira, *Apple AirTags causing major security concerns over reports of stalking*, ABC News, (Jan. 20, 2023) <https://abcnews.go.com/US/apple-airtags-causing-major-security-concerns-reports-stalking/story?id=96531871> (last visited Dec. 1, 2023).

¹¹ For example, iPhone owners should receive a push alert whenever an unknown AirTag is nearby for an extended period of time and away from its owner. Reece Rogers, *Are you Being Tracked by an AirTag? Here's How to Check*, Wired, (Aug. 11, 2023) <https://www.wired.com/story/how-to-find-airtags/> (last visited Dec. 1, 2023).

¹² *Id.*

information can and will be shared with law enforcement at the company's discretion to aid in the investigation and prosecution of suspected stalking.¹³

In addition to tracking devices, tracking applications can also be used to follow the location or movement of another person, potentially without that person's knowledge or consent. Some applications, such as Find My iPhone and other applications developed to help parents keep tabs on minor children, have legitimate uses but may be accessed by third parties without the consent of the user. Other applications are developed and marketed as surveillance applications, commonly targeting potential customers interested in the using the technology to track the movements and communications of a romantic partner.¹⁴ Some tech platforms have responded to the proliferation of these applications by banning companies from advertising applications on their platforms with the express purpose of tracking and monitoring another person or their activities without their authorization.¹⁵

Cyberstalking

Section 784.048, F.S., prohibits a person from willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person. Under s. 784.048(1)(d), F.S., "cyberstalking" means to engage in the following conduct when such conduct causes substantial emotional distress to the person targeted and serves no legitimate purpose:

- To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or
- To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission.

Generally, a person who commits a cyberstalking violation commits a first degree misdemeanor.¹⁶ However, such a violation is enhanced to aggravated stalking, a third degree felony,¹⁷ if any of the following circumstances are present:

- The offender makes a credible threat¹⁸ to the targeted person;
- The violation occurred after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or any other court-imposed prohibition of conduct toward the targeted person or his or her property was ordered; or
- The offender was previously sentenced for a violation of s. 794.011, F.S., relating to sexual battery, s. 800.04, F.S., relating to lewd or lascivious offenses, or s. 847.0135(5), F.S., prohibited computer transmissions to persons less than 16 years old, and prohibited from contacting the targeted person.

Unlawful Installation of a Tracking Device or Application

¹³ Sarah Perez, *Tile takes extreme steps to limit stalkers and thieves from using its Bluetooth trackers*, TechCrunch (Feb. 16, 2023), <https://techcrunch.com/2023/02/16/tile-takes-extreme-steps-to-limit-stalkers-and-thieves-from-using-its-bluetooth-trackers/> (last visited Dec. 1, 2023).

¹⁴ Jennifer Valentino-DeVries, *Hundreds of Apps Can Empower Stalkers to Track Their Victims*, The New York Times, (May 19, 2018) <https://www.nytimes.com/2018/05/19/technology/phone-apps-stalking.html> (last visited Dec. 1, 2023).

¹⁵ Zack Whittaker, *'Stalkerware' phone spying apps have escaped Google's ad ban*, TechCrunch, (Aug. 11, 2023) <https://techcrunch.com/2020/08/11/stalkerware-apps-google-ads/> (last visited Dec. 1, 2023).

¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁸ A "credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section. S. 784.048(1)(c), F.S.

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device¹⁹ or tracking application²⁰ on another person's property without the other person's consent.

Section 934.425, F.S., specifies that the 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 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;
 - 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.;²¹ 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.²²

Additionally, s. 934.425, F.S., specifies that 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; or
- The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to 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, or s. 784.0485, F.S., relating to stalking.²³

A violation of the prohibition is punishable as a second degree misdemeanor.²⁴

¹⁹ A "tracking device" means any device whose primary purpose is to track or identify the location or movement of an individual. S. 934.425(1)(c), F.S.

²⁰ A "tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. S. 934.425(1)(b), F.S.

²¹ "Private investigation" means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters: crime or wrong done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for such investigation; to identify habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or groups of persons; the credibility of witnesses or other persons; the whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or the business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof. S. 493.6101(17), F.S.

²² S. 934.425(4)(a-e), F.S.

²³ S. 934.425(3)(a-b), F.S.

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.

Current law does not specifically prohibit the *placement*, rather than the installation, of a tracking device or application on another person's property without his or her consent or prohibit the unconsented to use of a tracking device or tracking application by a person other than the one responsible for installing the device or application.

Grounds for Issuance of a Search Warrant

Under s. 933.02, F.S., a search warrant may be issued upon the following grounds:

- When the property shall have been stolen or embezzled in violation of law;
- When any property shall have been used:
 - As a means to commit any crime;
 - In connection with gambling, gambling implements and appliances; or
 - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature;
- When any property constitutes evidence relevant to proving that a felony has been committed;
- When property is being held or possessed:
 - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
 - In violation of the fish and game laws;
 - In violation of the laws relative to food and drug; or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.; or
- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.²⁵

Summarizing the distinction between misdemeanor and felony crimes in relation to obtaining property via a search warrant, the Fourth District Court of Appeal has said, "property used to commit any crime—whether felony or misdemeanor—may be seized under a warrant; while property merely constituting relevant evidence of a crime may be seized only if the suspected crime is a felony."²⁶ Regarding a misdemeanor crime, "property seized can be retained only if it constitutes property actually used to commit the misdemeanors alleged as the basis for the warrant."²⁷

Under current law, because a violation of s. 934.425, F.S., for the unlawful installation of a tracking device or application is a second degree misdemeanor, evidence such as subscriber information or application, location, or download data may fall outside the scope of property for which a law enforcement officer may obtain a search warrant and thus is unavailable to aid in a criminal investigation.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²⁸ are listed in a single offense severity ranking chart (OSRC),²⁹ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{30,31} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{32,33} The final score

²⁵ S. 933.02, F.S.

²⁶ *Bordo, Inc. v. State*, 627 So. 2d 561, 563 (Fla. 4th DCA 1993).

²⁷ *Id.* at 564.

²⁸ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

²⁹ S. 921.0022, F.S.

³⁰ S. 921.0022(2), F.S.

³¹ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

³² Ss. 921.0022 and 921.0024, F.S.

³³ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.³⁴

Effect of Proposed Changes

HB 401 amends s. 934.425, F.S., to prohibit a person from knowingly:

- *Placing*, in addition to installing, 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 by capturing the unlawful *placement* of a tracking device or tracking application on another person's property, rather than just the installation of a tracking device or tracking application on another person's property. The change may clarify that in order to commit a violation a person need not be required to affix a tracking device or application to a piece of property, but also commits a violation by simply dropping such a device into another person's property, such as a purse or coat pocket.

Additionally the bill expands the scope of prohibited conduct by also capturing those persons who do not install or place a tracking device or tracking application on another person's property themselves, but who nonetheless access and 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 s. 934.425, F.S., from a second degree misdemeanor to a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. However, the bill does not rank the offense on the OSRC, and as such, under s. 921.0023, F.S., the offense defaults to a level 1 offense.

Additionally, because the bill increases the penalty for a violation from a second degree misdemeanor to a third degree felony, a law enforcement officer may be able to obtain a search warrant under s. 933.02, F.S., for property constituting evidence relevant to proving that a felony has been committed. As such, law enforcement may be able to obtain a search warrant to access evidence such as subscriber information and application, location, and download data from a tracking device, which may be essential to properly investigating unlawful tracking violations.

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

B. SECTION DIRECTORY:

Section 1: Amends 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, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

³⁴ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES