

## 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	18 Y, 0 N	Butcher	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

A consumer tracking device is intended to help track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. As availability and use of affordable consumer tracking devices has increased, so too have concerns about the potential for nefarious uses of such technology. In recent years, there have been numerous reports of tracking devices having been planted into clothing and purses or attached to the vehicle of another person without their knowledge. In addition to tracking devices, tracking applications that are downloadable to mobile devices can also be used to follow the location or movement of another person, potentially without that person's knowledge or consent.

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*, as it does the installation of a tracking device or application on another person's property without his or her consent; or prohibit the unconsented *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.

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.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### Location Tracking Technology

Affordable consumer tracking products are derived from three methods of functionality, including:

- *The Global Positioning System (GPS)*: A space-based radio navigation system, owned by the United States Government and operated by the United States Space Force. 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.<sup>1</sup> GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.<sup>2</sup>
- *Wi-Fi Positioning*: 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.<sup>3</sup>
- *Bluetooth Low Energy (BLE)*: 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.<sup>4</sup>
- *Ultra-Wideband (UWB) Technology*: UWB 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.<sup>5</sup>

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<sup>1</sup> Catherine G. Manning, *What is GPS*, NASA, (Sept. 25, 2023) <https://www.nasa.gov/directorates/somd/space-communications-navigation-program/gps/> (last visited Jan. 4, 2024).

<sup>2</sup> *Satellite Navigation - Global Positioning System (GPS)*, Federal Aviation Administration, [Satellite Navigation - Global Positioning System \(GPS\) | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/air-traffic/technology/satellite-navigation-global-positioning-system-gps/) (last visited Jan. 4, 2024).

<sup>3</sup> *What is Wi-Fi Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/wifi/> (last visited Jan. 4, 2024).

<sup>4</sup> *Bluetooth RTLS, Location Tracking, & Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/bluetooth-low-energy/> (last visited Jan. 4, 2024).

<sup>5</sup> Robert Triggs, Calvin Wankhede, *What is UWB, and why is it in my phone? Ultra wideband technology, explained*, Android Authority, (Aug. 30, 2023), [What is UWB used for in phones? Ultra wideband technology, explained \(androidauthority.com\)](https://www.androidauthority.com/what-is-uwband-used-for-in-phones-ultra-wideband-technology-explained-3241267/) (last visited Jan. 4, 2024).

## Abuse of Location Tracking Technology

A consumer tracking device is intended to help users track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. In the case of a missing item, the device sends its current location back to the user, and in some cases, provides the user with directions to the device's location.<sup>6</sup> 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.<sup>7</sup>

As availability and use of affordable consumer tracking devices has increased, 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 having been planted into clothing and purses or attached to the vehicle of another person without their knowledge.<sup>8</sup> 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.<sup>9</sup>

Additionally, some companies have developed applications that can be used by consumers to scan for nearby tracking devices.<sup>10</sup> 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 information can and will be shared with law enforcement at the company's discretion to aid in the investigation and prosecution of suspected stalking.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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<sup>6</sup> 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 Jan. 4, 2024).

<sup>7</sup> 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 Jan. 4, 2024).

<sup>8</sup> 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/R/R47035/2> (last visited Jan. 4, 2024); 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 Jan. 4, 2024).

<sup>9</sup> 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 Jan. 4, 2024).

<sup>10</sup> *Id.*  
<sup>11</sup> 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 Jan. 4, 2024).

<sup>12</sup> 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 Jan. 4, 2024).

<sup>13</sup> 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 Jan. 4, 2024).

## *Unlawful Installation of a Tracking Device or Application*

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device<sup>14</sup> or tracking application<sup>15</sup> 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.;<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

A violation of the prohibition is punishable as a second degree misdemeanor.<sup>19</sup>

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<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> "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.

<sup>17</sup> S. 934.425(4)(a-e), F.S.

<sup>18</sup> S. 934.425(3)(a-b), F.S.

<sup>19</sup> 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.
- 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.<sup>20</sup>

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."<sup>21</sup> 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."<sup>22</sup>

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 aide in a criminal investigation.

### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>23</sup> are listed in a single offense severity ranking chart (OSRC),<sup>24</sup> 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.<sup>25,26</sup> 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.<sup>27,28</sup> The final score

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<sup>20</sup> S. 933.02, F.S.

<sup>21</sup> *Bordo, Inc. v. State*, 627 So. 2d 561, 563 (Fla. 4th DCA 1993).

<sup>22</sup> *Id.* at 564.

<sup>23</sup> 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.

<sup>24</sup> S. 921.0022, F.S.

<sup>25</sup> S. 921.0022(2), F.S.

<sup>26</sup> 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.

<sup>27</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>28</sup> 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.<sup>29</sup>

## 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.

The bill also 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.

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<sup>29</sup> 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 non-prison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### 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