

I SEE YOU: EXAMINING GPS TECHNOLOGY UNDER
ALABAMA’S CRIMINAL CODE

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INTRODUCTION

“I checked your location, so I knew where you were.” When said by a close family member or friend, to a person who has consented to their location being monitored, these words may hardly elicit a reaction. In 2022, 69% of Gen Z and 77% of Millennials said that they use location-sharing features and technology to monitor the location of their loved ones.¹ This should come as no surprise because, as of 2022, Global Positioning System (GPS) technology is everywhere. It is in the phones we use, the watches we wear, the cars we drive, and much more.² Americans rely on over 900 million GPS receivers daily to simply conduct day-to-day activities and to promote a functioning economy.³ In fact, GPS is so important to everyday life that America’s military controls and protects it.⁴ Most Americans think of GPS as a way to check the weather or a way to navigate to their next destination. Yet a growing concern among many Americans is the way that GPS technology is being used by those with bad intentions—namely, those who use GPS technology to monitor the location of a non-consenting individual. After the release of Apple AirTags, numerous reports popped up about an unsuspecting victim being followed because a stranger dropped an AirTag in the victim’s purse or pocket.⁵ Some victims have even been killed through improper use of a GPS tracking device.⁶ As these situations become a growing reality, twenty-seven states have enacted laws specifically dealing with the improper use of GPS technology and tracking devices.⁷ Alabama is the most recent of these twenty-seven states, having enacted its own new law in 2023.⁸ This Article begins by exploring the

1. See Kalley Huang, *How the Find My App Became an Accidental Friendship Fixture*, N.Y. TIMES, <https://www.nytimes.com/2022/08/20/technology/find-my-app-friends.html> [https://perma.cc/84GF-YJEC] (Aug. 25, 2022).

2. See Diana Furchtgott-Roth, *America Needs GPS Backup*, FORBES (Mar. 10, 2022, 1:17 PM), <https://www.forbes.com/sites/dianafurchtgott-roth/2022/03/10/america-needs-gps-backup/> [https://perma.cc/6VXT-S7MX].

3. See *id.*

4. See U.S. Space Force, *Global Positioning System*, U.S. SPACE FORCE: FACT SHEETS (Mar. 22, 2017), <https://www.spaceforce.mil/About-Us/Fact-Sheets/Article/2197765/global-positioning-system/> [https://perma.cc/N3YL-JSSX].

5. See discussion *infra* Part I.B.

6. See *id.*

7. See discussion *infra* Part II.

8. H.R. 153, 2023 Leg., Reg. Sess. (Ala. 2023).

development of GPS and how it is used today, including its popularity for finding lost things, and the growing concern around the use of small GPS tracking devices. Part II examines how other states have addressed the improper use of GPS technology to monitor and track the location of a non-consenting individual. Part III explains why Alabama's existing criminal statutes were insufficient to protect against GPS technology and then explains how the new law fails to adequately balance competing interests. Part IV explains how Alabama can improve its new law with two simple fixes.

I. DEVELOPMENT AND USE OF GPS TECHNOLOGY

GPS technology controls every aspect of modern civilization. It operates traffic lights, communication systems, banking networks, financial markets, and more.⁹ It is also in cell phones, smart watches, and cars. It is no surprise then that personal tracking devices have emerged and taken over the market. In fact, the market size for such GPS technology is in the billions.¹⁰ However, these personal tracking devices present serious concerns to personal safety. But, to fully grasp how personal tracking devices are used and their implications, it is important to understand how GPS technology works, how personal tracking devices came to exist, and why they are so popular.

A. Development, History, and Workings

GPS is a space-based positioning, navigation, and timing system that emerged in the late 1960s and early 1970s.¹¹ GPS began in the Sputnik era when scientists were able to track the satellite with shifts in its radio signal known as the "Doppler effect."¹² In the mid-1960s, the United States Navy conducted satellite navigation experiments to track United States submarines carrying nuclear missiles.¹³ Through the orbit of six satellites, these submarines were able to observe the satellite changes in Doppler and pinpoint the submarine's location within minutes.¹⁴ By the early 1970s, the Department of Defense

9. See Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *GPS Applications*, GPS.GOV, <https://www.gps.gov/applications/> [https://perma.cc/A3AD-PUSC] (Nov. 25, 2014).

10. *Global Positioning Systems (GPS) Market*, STRAITS RSCH., <https://straitsresearch.com/report/positioning-system-market> [https://perma.cc/4DXM-YQ7K].

11. OFF. OF THE UNDER SEC'Y OF DEF. FOR ACQUISITION, TECH., & LOGISTICS, DEFENSE SCIENCE BOARD TASK FORCE ON THE FUTURE OF THE GLOBAL POSITIONING SYSTEM 25 (2005), <https://dsb.cto.mil/reports/2000s/ADA443573.pdf> [https://perma.cc/6SEU-G9QY].

12. Catherine G. Manning, *GPS*, NASA (Sept. 25, 2023), <https://www.nasa.gov/directorates/somd/space-communications-navigation-program/gps/#section-2> [https://perma.cc/X4KL-KN8L].

13. Jermaine Walker, *Global Positioning System History*, NASA (Oct. 27, 2012), <https://www.nasa.gov/general/global-positioning-system-history/#:~:text=GPS%20has%20its%20origins%20in,US%20submarines%20carrying%20nuclear%20missiles> [https://perma.cc/KM8X-4V5U].

14. *Id.*

(DOD) sought to create a robust, stable satellite navigation system.¹⁵ Through a merger of synergistic Navy and Air Force programs, GPS came to life,¹⁶ and in 1978, the DOD launched its first Navigation System with Timing and Ranging (NAVSTAR) satellite.¹⁷

In its early years, GPS was limited to use by the military.¹⁸ In 1983, President Ronald Reagan signed an executive order allowing civilian use of the DOD's GPS after Russian forces shot down Korean Air Lines Flight 007, which departed from Anchorage, Alaska, after it strayed into Soviet airspace.¹⁹ The idea was to help airplanes avoid hostile airspace, but private businesses and scientists soon realized that GPS could be beneficial in other industries.²⁰ Even after GPS became available to civilians, commercial GPS remained much less accurate than the GPS systems the military used due to "Selective Availability."²¹ Selective Availability (SA) was the United States government's intentional degradation of public GPS signals for the purpose of protecting national security.²² Selective Availability interrupted and slowed commercial GPS usage for approximately two decades, ending in May 2000 at the behest of President Bill Clinton.²³ In September 2007, the United States government announced that the future generation of GPS satellites would not have the SA feature, thus making President Clinton's decision permanent and eliminating a source of uncertainty in GPS performance worldwide.²⁴

Today, GPS is controlled by Space Delta 8 at Schriever Air Force Base in Colorado.²⁵ The GPS constellation consists of thirty-one operational GPS satellites that fly in medium Earth orbit at an altitude of approximately 12,550 miles, and each satellite circles the Earth twice per day.²⁶ The satellites in the GPS constellation are arranged in six equal orbital planes around the Earth, ensuring that, at any point on Earth, users can view at least four satellites at all

15. *Id.*

16. OFF. OF THE UNDER SEC'Y OF DEF. FOR ACQUISITION, TECH., & LOGISTICS, *supra* note 11, at 25.

17. Manning, *supra* note 12.

18. Claudette Roulo, *What on Earth is the Global Positioning System?*, U.S. DEP'T OF DEF. (Dec. 26, 2018), <https://www.defense.gov/News/Feature-Stories/story/Article/1674004/what-on-earth-is-the-global-positioning-system/> [https://perma.cc/88RM-YJSW].

19. See Joshua Brustein, *GPS as We Know It Happened Because of Ronald Reagan*, BLOOMBERG NEWS (Dec. 4, 2014, 6:59 AM), <https://www.bloomberg.com/news/articles/2014-12-04/gps-as-we-know-it-happened-because-of-ronald-reagan>.

20. *See id.*

21. *Id.*; see also Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *Selective Availability*, GPS.GOV, <https://www.gps.gov/systems/gps/modernization/sa/> [https://perma.cc/4GUW-GYFZ] (May 24, 2021).

22. Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *supra* note 21.

23. *Id.*

24. *Id.*

25. U.S. Space Force, *supra* note 4.

26. Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *Space Segment*, GPS.GOV, <https://www.gps.gov/systems/gps/space/> [https://perma.cc/3QEB-9SVR] (June 28, 2022).

times.²⁷ The GPS satellites broadcast radio signals that provide their locations, status, and precise times from onboard atomic clocks and travel through space at the speed of light.²⁸ Once a GPS device receives the radio signals from the satellites, it notes their exact time of arrival and uses these to calculate its distance from each satellite in view.²⁹ Using its distance from at least four satellite devices, a GPS device can use geometry to determine its location on Earth in three dimensions.³⁰

GPS signals are accurate and quick. Using GPS, time can be figured to within a millionth of a second, velocity can be figured to within a fraction of a mile per hour, and location can be figured to within 100 feet.³¹ GPS provides navigation and location services through continuous real-time information that is available twenty-four hours per day, seven days per week, and 365 days per year.³² This means that anything (and anyone) with a GPS device can be located at any time.

B. *The Rise of Personal GPS Tracking Devices*

Modern use of GPS technology has far exceeded its original purpose. According to the Official United States Government Information page about GPS, “GPS is an essential element of the global information infrastructure.”³³ Americans rely on over 900 million GPS receivers daily to boost productivity across the economy, including farming, construction, mining, surveying, and package delivery.³⁴ Major communications networks, banking systems, financial markets, and power grids all depend on GPS for time synchronization, and some services cannot operate without it.³⁵ In 2021, the GPS tracking device market size—the number of sales³⁶—was \$2.15 billion³⁷ and is expected to

27. *See id.*

28. Roulo, *supra* note 18.

29. *See id.*

30. *Id.*

31. U.S. Space Force, *supra* note 4. *But see* Hilary Costa et al., *GPS*, NAT'L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/gps> [<https://perma.cc/W4ZG-WDSV>] (Oct. 19, 2023) (explaining that some GPS receivers are so accurate that they can establish location within one centimeter or 0.4 inches).

32. U.S. Space Force, *supra* note 4.

33. *See* Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *supra* note 9.

34. *See id.*; *see also* Furchtgott-Roth, *America Needs GPS Backup*, *supra* note 2.

35. *See* Nat'l Coordination Off. for Space-Based Positioning, Navigation, & Timing, *supra* note 9.

36. *See* Steven Melendez, *What Is the Definition of Market Size?*, CHRON., <https://smallbusiness.chron.com/definition-market-size-65724.html> [<https://perma.cc/2ZHD-MASU>] (Jan. 22, 2019).

37. *See GPS Tracking Device Market*, EMERGEN RSCH. (July 2022), <https://www.emergenresearch.com/industry-report/gps-tracking-device-market#:~:text=The%20installed%20base%20of%20Global,the%20most%20used%20navigation%20app> [<https://perma.cc/CF6V-YST5>].

reach \$4.93 billion by 2028.³⁸ Thus, GPS technology serves a vital role for society to function.

Just as GPS is heavily relied upon on a macro-level, it is equally relied upon on a micro-level. GPS technology is now in most personal items, including cars, cellphones, computers, and wristwatches.³⁹ More than 80% of Americans use a smartphone with location-based service capabilities, and 90% of smartphone owners use their phones for location-based activities and services,⁴⁰ such as to receive traffic updates and weather reports, to quickly find the nearest store or service provider, and to navigate or find transportation.⁴¹

However, consumers are using GPS for more than just navigation and weather updates as many companies have started to successfully create and market personal tracking devices⁴² to help users keep up with personal items, such as keys or a wallet; personal property, such as a car; a family pet, like a dog or cat; and even to track a child or a spouse.⁴³ Three of the most popular personal tracking devices include Jiobit by Life360 (Jiobit), AirTags by Apple (AirTag),⁴⁴ and devices by LandAirSea.⁴⁵ Some personal tracking devices operate through built-in GPS technology, such as Jiobit and LandAirSea's 54

38. See Divyanshi Tewari et al., *GPS Tracking Device Market Outlook—2028*, ALLIED MKT. RSCH. (June 2021), <https://www.alliedmarketresearch.com/gps-tracking-device-market-A11685> [<https://perma.cc/7DCG-2ZEN>].

39. See *id.*

40. See Stephen Wm. Smith, *The Cell Phone Donut Hole in the Tracking Device Statute*, 14 FED. CTS. L. REV. 1, 2 (2021); see also Federica Laricchia, *Smartphone Penetration Rate in Selected Countries 2022*, STATISTA (May 4, 2023), <https://www.statista.com/statistics/539395/smartphone-penetration-worldwide-by-country/> [<https://perma.cc/8H46-LMN9>] (stating that as of December 2022, 82.2% of Americans use smartphones); Monica Anderson, *More Americans Using Smartphones for Getting Directions, Streaming TV*, PEW RSCH. CTR. (Jan. 29, 2016), <https://www.pewresearch.org/fact-tank/2016/01/29/us-smartphone-use/> [<https://perma.cc/CH3V-8HW5>] (showing that as of 2015, 90% of smartphone owners use their phones for location-based activities).

41. See Max Freedman, *Location-Based Services: Definition and Examples*, BUS. NEWS DAILY, <https://www.businessnewsdaily.com/5386-location-based-services.html> [<https://perma.cc/M62E-UF39>] (Oct. 27, 2023).

42. I use the term “personal tracking device” to mean a device that is used by a consumer on an individual level for personal use. The phrase is not intended to mean only devices that are used to track and monitor the location of other individuals.

43. See *Tile*, TILE BY LIFE360, <https://www.tile.com/> [<https://perma.cc/LJ6D-LF87>] (noting reviews from customers that the tile tracker helps find keys, wallets, phones, and more); see *LandAirSea 54*, LANDAIRSEA, <https://landairsea.com/products/landairsea-54> [<https://perma.cc/J5BJ-R4HN>] (explaining that the LandAirSea 54 has a real-time GPS tracker for fleets, vehicles, boats, ATV's, assets, and family tracking); see also Jiobit, www.jiobit.com [<https://perma.cc/ADB5-AD5C>] (describing the Jiobit as having the ability to see kids' locations in real time and know where furry buddies are and who they are with, no matter the distance).

44. As of December 2022, Apple has sold over \$1 billion worth of AirTags. See Caleb Naysmith, *Apple AirTags and Bluetooth Trackers Are Officially a Billion-Dollar Industry—Here's What to Know, Trends, and the Best Ways to Invest*, BENZINGA (Dec. 28, 2022, 12:59 PM), <https://www.benzinga.com/news/22/12/30215433/apple-airtags-and-bluetooth-trackers-are-officially-a-billion-dollar-industry-heres-what-to-know-tre> [<https://perma.cc/89GV-V45H>].

45. See *The Right LandAirSea Device for You*, LANDAIRSEA, <https://landairsea.com/products> [<https://perma.cc/MH2P-V84H>].

ShareSpot (ShareSpot).⁴⁶ As explained on Jiobit's website, "Jiobit has its own secure connection to the internet and GPS. This means it doesn't need to be tethered to any hub or other device. Jiobit can always send its accurate, real-time location."⁴⁷ Other personal tracking devices operate by using Bluetooth technology that allows the device to piggyback off of another device's GPS capability. For example, an AirTag does not use the GPS satellites to determine its location, but instead uses Apple's network of around 1.8 billion iPhones, iPads, Apple Watches, and Macs, all of which do use GPS, to send a Bluetooth signal to the nearest Apple device and use that device's GPS technology to then provide an approximate location.⁴⁸ For a user of a personal tracking device to see the device's location, the user simply must download the coordinate app from the app store and register the device. After this, the user (or installer) of the device can check the app and, if the device is working properly, can see the device's (and the item, pet, or person's) real time location.

These personal tracking devices are designed to be durable and discrete in use. First, personal tracking devices are durable and long-lasting. Many are waterproof (or, at least, water resistant) and some are dustproof, like LandAirSea's personal tracking devices. Further, some personal tracking devices have a battery life that allows the device to remain in operation without a battery charge or change for several months or a year.⁴⁹ Second, personal tracking devices are often small. For example, an Apple AirTag is 31.9 millimeters in diameter and 8.0 millimeters in thickness,⁵⁰ which is roughly the size of a half-dollar coin,⁵¹ and according to its website, a personal tracking device by Jiobit is "about the size of an Oreo cookie, and weighs less than four

46. See *LandAirSea 54*, *supra* note 43; *Jiobit Smart Tag*, JIOBIT BY LIFE360, <https://www.jiobit.com/product> [<https://perma.cc/698H-8J5F>].

47. See *How Jiobit Works*, JIOBIT BY LIFE360, [https://www.jiobit.com/how-jiobit-works-search?utm_source=google&utm_medium=cpc&utm_campaign=CID_1738022875--Google%7CCnv%7CSearch%7CBranded&utm_term=jiobit%20kids_-p&utm_content=GID_149658504128--AID_642558232460--jiobit%20-%20kid_-TID_kwd-966634159372&gclid=EAIaIQobChMIkc_f8r2z_AIVq\\$LMCh0F2gY6EAAAYASABEgl9__D_BwE](https://www.jiobit.com/how-jiobit-works-search?utm_source=google&utm_medium=cpc&utm_campaign=CID_1738022875--Google%7CCnv%7CSearch%7CBranded&utm_term=jiobit%20kids_-p&utm_content=GID_149658504128--AID_642558232460--jiobit%20-%20kid_-TID_kwd-966634159372&gclid=EAIaIQobChMIkc_f8r2z_AIVq$LMCh0F2gY6EAAAYASABEgl9__D_BwE) [<https://perma.cc/9EMD-EB48>] ("AirTags are made for keys. Jiobit is made for kids. Jiobit has its own secure connection to the internet and GPS. This means it doesn't need to be tethered to any hub or other device. *Jiobit can always send its accurate, real-time location.*") (emphasis added).

48. See Cathy Habas, *What Are Apple AirTags and How Do They Work?*, SAFEWISE (Jan. 5, 2024), <https://www.safewise.com/apple-airtag-faqs/> [<https://perma.cc/4ZMZ-ZG2Q>]; see also *Airtag*, APPLE, <https://www.apple.com/airtag/> [<https://perma.cc/QNX3-R5WK>].

49. *LandAirSea 54*, *supra* note 43 (explaining that the battery life of a device on three seconds to three-minute updates is one to three weeks, while the battery life of a device on low power mode is six months); see also *AirTag*, *supra* note 48 ("AirTag is designed to keep going more than a year on a standard battery you can easily replace.").

50. See *AirTag—Technical Specifications*, APPLE (Sept. 27, 2022), https://support.apple.com/kb/SP840?locale=en_US [<https://perma.cc/9DM6-VADN>].

51. See *Coin Specifications*, U.S. MINT, <https://www.usmint.gov/learn/coin-and-medal-programs/coin-specifications> [<https://perma.cc/G4UF-DYP9>] (Apr. 28, 2022) (identifying the size of a half-dollar coin as 30.61 millimeters in diameter and 2.15 millimeters in thickness).

quarter coins.”⁵² The small size of these devices means that they can easily be slipped into a person’s bag or purse and remain undetected. Further, some personal tracking devices, like the ShareSpot, have a built-in magnet mount, which makes it easy to attach the device to the bottom of a vehicle of an unsuspecting person.⁵³

Even more alarming, however, are the encouraging words used by the companies to take advantage of such a discrete design. On LandAirSea’s website page for the ShareSpot, the company writes, “Featuring a compact . . . design with a built-in super-strength magnet, the GPS tracker is small enough to attach to vehicles or tuck into pockets, purses, bags, and backpacks.”⁵⁴ And companies that manufacture these devices are not the only ones to promote their usefulness. A quick search of the internet reveals an article by the Rolling Stone Magazine titled “RS Recommends: The Best Tracking Devices for Locating Your Gear, Luggage and Pets.”⁵⁵ Additionally, Forbes Magazine published an article in early 2024 titled “Best Car GPS Trackers for 2024,” which says, “These small wireless devices provide an extra peace of mind for those looking to monitor vehicle use and movement.”⁵⁶ When read with good intentions, these words appear harmless, but when read from a different lens, they are certainly frightening because personal tracking devices can be and have been used for an improper purpose, such as tracking and monitoring the location of an unsuspecting, non-consenting person.

Indeed, improper use of GPS and a personal tracking device is a common stalking tactic. According to a study conducted by the CDC in 2017, 16.7% of female stalking victims (approximately 6,505,000 victims) and 20.5% of male stalking victims (approximately 3,890,000 victims) experienced stalking by the use of unwanted monitoring and tracking of location using GPS technology or equipment.⁵⁷ In 2012, a survey of 750 domestic abuse agencies found that 72%

52. *Jiobit Press Kit*, JIOBIT BY LIFE360, <https://www.jiobit.com/press-kit#:~:text=The%20smallest%20and%20lightest%20solution,for%20smaller%20pets%2C%20like%20cats.> [<https://perma.cc/Y9UL-EHGR>]; see *Never Lose Your Pet Again*, JIOBIT BY LIFE360, <https://www.jiobit.com/product-pets> [<https://perma.cc/4G4L-WAR7>] (“Jiobit is the smallest, long-lasting, real-time location tracker. It is so small, we had to take a bite of this cookie just to prove it. And it’s so light, we almost ate the tracker. Please don’t eat your Jiobit.”).

53. *LandAirSea 54*, *supra* note 43 (describing the “Built-in Magnet Mount” included with the product).

54. See *LandAirSea 54 with ShareSpot (TM) Location Sharing and Tracking System*, LANDAIRSEA, <https://shop.landairsea.com/products/landairsea-54> [<https://perma.cc/QX5K-XYKT>].

55. See Joshua Kanter, *RS Recommends: The Best Tracking Devices for Locating Your Gear, Luggage and Pets*, ROLLINGSTONE (May 22, 2022), <https://www.rollingstone.com/product-recommendations/electronics/best-personal-tracker-devices-1297892/> [<https://perma.cc/H3PM-ZQKW>].

56. See Rik Paul & Chris Chin, *Best Car GPS Trackers of 2024*, FORBES HOME, <https://www.forbes.com/wheels/accessories/best-gps-trackers-for-cars/> [<https://perma.cc/V9UQ-5DM9>] (Jan. 5, 2024, 7:06 PM).

57. SHARON G. SMITH ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON STALKING—UPDATED RELEASE 5 (2022), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsstalkingreport.pdf>.

of abusers track their victims via GPS.⁵⁸ In recent months, dozens of women have come forward claiming that strangers have slipped AirTags into their coat pockets and purses, including a Sports Illustrated model, and two women have filed suit against Apple after experiencing unwanted tracking and stalking via an AirTag from an ex-boyfriend and ex-husband.⁵⁹

Personal tracking devices have even enabled murders and senseless killings. In 2011, Dmitry Smirnov glued a personal tracking device on his ex-girlfriend's car and followed her location for several days before fatally shooting her twelve times outside of her workplace.⁶⁰ In June 2022, a woman allegedly used an AirTag to track her boyfriend, and after a dispute, killed him.⁶¹ In response to the fear of unwanted tracking, Apple released an update which notifies an Apple user if their Apple device detects an unknown AirTag traveling with them.⁶² However, this update only works if the AirTag is present for an extended period of time.⁶³ This means an AirTag may be present for several days or weeks before an Apple device alerts to its presence. Additionally, because this update relies on a secondary Apple device to alert to the AirTag's presence, its functionality extends only to Apple users. This means that people who use an Android or other non-Apple device will never be alerted to an unwanted AirTag's presence.

Personal tracking devices are more popular and more widely available now than ever. Most personal tracking devices cost less than \$30 (an AirTag is \$29, and the ShareSpot is \$29.95), making it affordable for most average Americans.⁶⁴ With the rise of personal tracking devices and their large

58. See Brenda Baddam, *Technology and Its Danger to Domestic Violence Victims: How Did He Find Me?*, 28 ALB. L.J. SCI. & TECH. 73, 95–98 (2017).

59. See Ryan Mac & Kashmir Hill, *Are Apple AirTags Being Used to Track People and Steal Cars?*, N.Y. TIMES (Dec. 30, 2021), <https://www.nytimes.com/2021/12/30/technology/apple-airtags-tracking-stalking.html>; see also Andrew Court, *Model Stalked in NYC After Stranger Slips AirTag into Her Coat Pocket*, NY POST, <https://nypost.com/2022/01/07/sports-illustrated-model-is-latest-victim-of-airtag-stalker/> (Jan. 7, 2022, 6:00 PM); see also Yaron Steinbuch, *Texas Woman's TikTok Goes Viral After She Finds Tracking Device in Her Purse*, NY POST, <https://nypost.com/2021/06/07/woman-goes-viral-after-finding-tracking-device-in-her-purse/> (June 7, 2021, 10:27 AM); see also Robert Burnson, *Apple Sued by Women Over 'Dangerous' AirTag Stalking by Exes*, BLOOMBERG (Dec. 5, 2022, 9:48 PM), <https://www.bloomberg.com/news/articles/2022-12-06/apple-sued-by-women-over-dangerous-airtag-stalking-by-exes?leadSource=uverify%20wall>.

60. Baddam, *supra* note 58, at 95–98; see also Dmitry Smirnov Pleads Guilty, Gets Life in Stalking Murder of Ex-Girlfriend *Jitka Vesel*, HUFFPOST, http://www.huffingtonpost.com/2011/07/23/dmitry-smirnov-pleads-gui_n_907839.html [<https://perma.cc/5D52-PUFE>] (Sept. 22, 2011).

61. See Scott Gleeson, *Woman Used an AirTag to Track Boyfriend, Then Ran Over and Killed Him, Police Say*, USA TODAY (June 15, 2022, 10:12 AM), <https://www.usatoday.com/story/news/nation/2022/06/15/woman-airtag-track-boyfriend-death/7632348001/> [<https://perma.cc/K42V-HP2G>].

62. See Kate O'Flaherty, *Apple AirTags Get Important Anti-Stalking Upgrade*, FORBES (Dec. 22, 2022, 10:06 AM), <https://www.forbes.com/sites/kateoflahertyuk/2022/12/22/apple-airtags-get-important-anti-stalking-upgrade/?sh=4f0b5af08eb4> [<https://perma.cc/F5N4-9JQ4>]; see also *AirTag*, APPLE, <https://www.apple.com/airtag/> [<https://perma.cc/9PEY-LQJC>]; see also *What to Do if You Get an Alert that an AirTag, Find My Network Accessory, or Set of AirPods is with You*, APPLE (Apr. 6, 2023), <https://support.apple.com/en-us/HT212227> [<https://perma.cc/KV85-4XJ6>].

63. See Mac & Hill, *supra* note 59; see also Burnson, *supra* note 59.

64. See *Buy AirTag*, APPLE, https://www.apple.com/shop/buy-airtag/airtag/1-pack?afid=p238%7CsIeo71L3P-dc_mt看id_1870765e38482_pcid_516270124920_pgrid_121793979512_pntwk_g_pchan_

popularity, the law should offer protection against the improper use of personal tracking devices. This is especially true for people who are considered at risk for stalking behaviors and tactics, such as victims of domestic violence or those who have just left a relationship. However, the law should also offer protection for those who just want privacy.

II. HOW STATES ADDRESS IMPROPER LOCATION MONITORING

With the rise of personal tracking devices and GPS technology, many states have taken action to protect their citizens. Twenty-six states and the District of Columbia have enacted laws prohibiting the improper use of GPS technology to monitor another's location.⁶⁵ There are generally three different approaches taken by states to prohibit this conduct. The first approach prohibits the use of GPS technology through existing stalking statutes.⁶⁶ The second approach prohibits the installation of GPS devices only when a device is placed on a motor vehicle of a non-consenting individual.⁶⁷ The third approach is a strict prohibition on the use of electronic tracking devices and GPS technology to determine the location or movement of a non-consenting person.⁶⁸

A. Stalking Statutes

Eleven states prohibit the act of improper location monitoring via use of GPS technology through their stalking statutes.⁶⁹ Under this approach, the use of GPS technology is inherent in the crime of stalking. For example, New York states that a person has committed stalking in the fourth degree when that person “intentionally . . . causes material harm [to a person], where such conduct consists of following”⁷⁰ The statute continues and explains that “‘following’ . . . include[s] the unauthorized tracking of such person’s movements or location through the use of a global positioning system or other

online_pexid__&cid=aos-us-kwgo-pla-btb—slid—product-MX532AM%2FA [https://perma.cc/27NE-R5DT]; see also *LandAirSea 54 with ShareSpot (TM) Location Sharing and Tracking System*, *supra* note 54.

65. See *Private Use of Location Tracking Devices: State Statutes*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/technology-and-communication/private-use-of-location-tracking-devices-state-statutes> [https://perma.cc/LH8D-SDFM] (Sept. 13, 2022).

66. *Id.*

67. *Id.*

68. *Id.*

69. ALASKA STAT. § 11.41.270(H) (2011) (Alaska); ARIZ. REV. STAT. ANN. § 13-2923 (2016) (Arizona); CONN. GEN. STAT. ANN. § 53a-181f (West 2021) (Connecticut); 720 ILL. COMP. STAT. ANN. 5/12-7.3 (West 2022) (Illinois); MD. CODE ANN., CRIM. LAW § 3-802 (West 2022) (Maryland); N.Y. PENAL LAW § 120.45 (McKinney 2014); N.C. GEN. STAT. § 14-196.3 (2023) (North Carolina); N.D. CENT. CODE § 12.1-17-07.1 (2019) (North Dakota); OKLA. STAT. ANN. tit. 21, § 1173 (West 2022) (Oklahoma); WASH. REV. CODE ANN. § 9A.46.110 (West 2023) (Washington); WYO. STAT. ANN. § 6-2-506 (2022) (Wyoming); D.C. CODE § 22-3132 (2009) (District of Columbia).

70. § 120.45.

device.”⁷¹ Alaska provides that a person commits the crime of stalking in the second degree if “the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury” and explains that “course of conduct” includes “following or monitoring that person with a global positioning device or similar technological means.”⁷²

However, use of stalking statutes to prohibit improper location monitoring leaves some holes. First, language used in a classic stalking statute is not flexible enough to properly criminalize improper location monitoring. Ten of the eleven states who prohibit improper location monitoring through a stalking statute criminalize the conduct only where the victim suffers a harm, such as significant emotional distress or extreme fear for their life or the life of a friend or family member. For example, Connecticut’s stalking statute finds that a person is guilty of electronic stalking only when such person uses a personal tracking device or other GPS technology and the conduct “[p]laces [the victim] in reasonable fear of the death of or serious bodily injury to [that person, their family, or significant other] . . . or causes . . . substantial emotional distress.”⁷³ This is problematic because victims often do not know that they are being followed, which means there often is no harm. Additionally, even those who suffer no material harm sufficient to reach the level of stalking still have a strong interest in not having their location monitored by an unwanted person.

Moreover, some states will not criminalize the conduct unless the perpetrator has made a threat before engaging in improper location monitoring. Illinois finds stalking only when a person places a personal tracking device on another’s property and “transmits a threat of immediate or future bodily harm.”⁷⁴ This too is problematic because a victim might be followed or monitored for months, but if they have not received a threat, then no crime is committed.

B. *Motor Vehicles Only*

The second approach punishes improper location monitoring only when a tracking device is placed in or on a motor vehicle. Nine states have adopted this approach and enacted statutes accordingly.⁷⁵ For example, Title 11, section

71. *Id.*

72. § 11-41-270(H).

73. § 53a-181f.

74. 720 ILL. COMP. STAT. ANN. 5/12-7.3 (West 2022) (Illinois).

75. See *Private Use of Location Tracking Devices: State Statutes*, *supra* note 65; DEL. CODE ANN. tit 11, § 1335(8) (West 2017) (Delaware); 720 ILL. COMP. STAT. 5/12-7.3 (West 2022) (Illinois) (notably, Illinois prohibits improper location monitoring via a stalking statute and a trespass statute); MICH. COMP. LAWS § 750.5391 (2010) (Michigan); OR. REV. STAT. ANN. § 163.715 (West 2018) (Oregon); 11 R.I. GEN. LAWS § 11-69-1 (West 2016) (Rhode Island); TENN. CODE ANN. § 39-13-606 (West 2016) (Tennessee); TEX. PENAL CODE ANN. § 16.06 (West 2009) (Texas); UTAH CODE ANN. § 76-9-408 (West 2019) (Utah); WIS. STAT. ANN. § 940.315 (West 2015) (Wisconsin).

1335(8) of the Delaware Code reads: “[Delaware law prohibits individuals from] [k]nowingly install[ing] an electronic or mechanical location tracking device *in or on* a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle.”⁷⁶ The Texas Penal Code makes it illegal for any individual to place a “tracking device *on* a motor vehicle”⁷⁷

Taken at face value, this approach seems appealing and workable. After all, motor vehicles, such as cars, trucks, and motorcycles, are perhaps the most obvious and common ways to monitor another person’s location. But there are two major issues with this approach. First, as seen above, there is a disparity in the language. Some states, like Delaware, prohibit placing a GPS tracking device “in or on” a motor vehicle.⁷⁸ This means that the entire car, interior and exterior alike, is protected. Other states, like Texas, prohibit placing a GPS tracking device only “on” a motor vehicle.⁷⁹ Arguably, this leaves the interior of the vehicle unprotected from GPS tracking devices and undermines the statute’s intent.

An even larger issue is that this approach criminalizes improper location monitoring only when a GPS tracking device is placed on a motor vehicle. But, as discussed in Part I.B, personal tracking devices have been dropped into victims’ coats and purses.⁸⁰ Thus, the narrow scope of the statute’s application leaves a loophole and incentivizes perpetrators to use other means to accomplish improper location monitoring. Additionally, this leaves children especially exposed because children under the age of sixteen often do not have a car, but they do have a backpack. Under this approach, the backpack would remain unprotected so that a perpetrator could lawfully place a GPS tracking device in a backpack and obtain the same information, if not more, as if the device were attached to a motor vehicle. This loophole undermines the intent to prohibit improper location monitoring in the first place.

C. Complete Prohibitions

Finally, seven states have adopted a third approach.⁸¹ This third approach includes enacting broad-sweeping legislation that strictly prohibits the use of GPS technology to track another person. This means that these statutes view electronic tracking devices as a separate and distinct legal issue from that of

76. tit 11, § 1335(8) (emphasis added).

77. § 16.06 (emphasis added).

78. tit 11, § 1335(8).

79. § 16.06.

80. See discussion *supra* Part I.B.

81. See *Private Use of Location Tracking Devices: State Statutes*, *supra* note 65; CAL. PENAL CODE § 637.7 (West 2024) (California); FLA. STAT. § 934.425 (West 2015) (Florida); HAW. REV. STAT. ANN. §§ 803–41, 42 (West 2014) (Hawaii); LA. STAT. ANN. § 14:323 (West 2015) (Louisiana); MINN. STAT. ANN. § 626A.35 (West 2023) (Minnesota); N.H. REV. STAT. ANN. § 644-A:4 (2015) (New Hampshire); VA. CODE ANN. § 18.2-60.5 (West 2022) (Virginia).

“traditional” stalking. This also means that GPS tracking devices are prohibited in all contexts, not just when attached to a motor vehicle.

These statutes strictly prohibit the use of a GPS electronic tracking device when it is used to determine the location or movement of a person without that person’s consent.⁸² For example, Florida’s statute provides, “a person may not knowingly install a tracking device or tracking application on another person’s property without the other person’s consent.”⁸³ The law then continues by providing situations in which the law does not apply.⁸⁴ For example, under Florida law, the statute does not apply to a parent who is using a tracking device to track their minor child.⁸⁵ Additionally, Louisiana law holds that “[n]o person shall use a tracking device to determine the location or movement of another person without the consent of that person.”⁸⁶ The law then explains that consent is presumed to be revoked if the parties were married but one party has filed for divorce or when one party has filed for a protection order against the other.⁸⁷

As explained above, a complete prohibition is the strongest approach because it does not require the victim of improper location monitoring to suffer a harm nor does it apply only to motor vehicles. Beyond this, Florida and Louisiana both made their statutes ironclad by placing consent in the hands of the person being tracked. This is an important distinction from other statutes because there are many different interests at play, and the only person who should be able to consent is the person being tracked. Additionally, Florida and Louisiana adequately balance other interests, such as a property owner’s interest in monitoring their property and a parent’s interest in monitoring their minor child, by explicitly providing these exceptions in the language of the statute.

III. ALABAMA’S APPROACH

Alabama is the most recent state to enact legislation prohibiting improper location monitoring through GPS technology. In March 2023, Representative Allen Treadway, a retired police officer, introduced Alabama House Bill 153 (HB153), and Governor Kay Ivey signed the bill into law on June 6, 2023.⁸⁸ The

82. See *Private Use of Location Tracking Devices: State Statutes*, *supra* note 65.

83. § 934.425(2).

84. *Id.* § 934.425(4)(a)–(e).

85. *Id.* § 934.425(4)(b).

86. § 14:323(A).

87. § 934.425(c)(3)(a)–(b).

88. H.R. 153, 2023 Leg., Reg. Sess. (Ala. 2023); see also Carol Robinson, *Alabama Lawmaker Allen Treadway Retiring After 31 Years with Birmingham Police*, AL.COM, <https://www.al.com/news/birmingham/2020/09/alabama-lawmaker-allen-treadaway-retiring-after-31-years-with-birmingham-police.html> [<https://perma.cc/R6ZH-3PH6>] (Sept. 29, 2020, 2:47 P.M.) (explaining that Treadway was a police officer with the Birmingham Police Department for thirty-one years and retired as assistant chief).

law took effect on September 1, 2023.⁸⁹ HB153 amended Alabama’s criminal code by adding two statutes that criminalize the use of personal tracking devices and GPS technology to engage in improper location monitoring.⁹⁰ In doing so, Alabama joined seven states, namely, California, Florida, Hawaii, Louisiana, Minnesota, New Hampshire, and Virginia, and adopted the third approach described in Part II.C.⁹¹ But before this amendment, Alabama’s criminal code offered its citizens no protection against unwanted location monitoring.

A. Alabama’s Previous Lack of Protection

Until 2023, Alabama’s criminal code was silent on the use of personal tracking devices and GPS technology. There was no criminal liability for a person who used a tracking device to monitor the location of an unsuspecting, and likely non-consenting, individual. This was true even though Alabama had existing statutes criminalizing surveillance and stalking.

Alabama’s statute prohibiting criminal surveillance, section 13A-11-32, states that a person commits the crime of criminal surveillance “if he intentionally engages in surveillance while trespassing in a private place.”⁹² Section 13A-11-30 explains that a private place is “[a] place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.”⁹³ However, the statute further provides that something is not a private place for criminal surveillance if “the public or a substantial group of the public has access.”⁹⁴ Thus, it is not a person’s expectation of privacy that determines if something is a private place and protected by the criminal surveillance statute, but rather, if it is accessible to the public. This means that a GPS tracking device may be impermissibly, yet lawfully, attached to an item that a person has an

89. H.R. 153, 2023 Leg., Reg. Sess. (Ala. 2023) (stating that “[t]his act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law”).

90. *Id.* (adding the definition of “electronic tracking device” and defining it to include “[a]n electronic or mechanical device that permits the tracking of the movement of a person or object”); ALA. CODE §§ 13A-6-95, 96 (West 2023); *see also* ALA. CODE § 13A-6-92 (West 2023).

91. *See* discussion *supra* Part II.C.

92. ALA. CODE § 13A-11-32 (1975). The commentary further explains that “[c]riminal surveillance occurs when there is a trespass on private property, but not if there is mere observation from a public street.”). *Id.* cmt. Thus, surveillance from a public place is not criminal. Alabama case law is consistent with this. *See* *Ages Grp., L.P. v. Raytheon Aircraft Co.*, 22 F. Supp. 2d 1310, 1321 (M.D. Ala. 1998) (explaining that video surveillance of a *private place* conducted from a car on a *public street* was not criminal surveillance under § 13A-11-32 because there was no trespass) (emphasis added).

93. ALA. CODE § 13A-11-30 (1975). Additionally, the Alabama Court of Criminal Appeals described a private place as anywhere a person enjoys “a legitimate expectation of privacy.” *J.F.C. v. Daphne*, 844 So. 2d 608, 610 (Ala. Crim. App. 2001) (affirming a conviction for criminal surveillance when the defendant stood outside and peered through a window because he was attempting to “see into the area where the resident enjoyed a legitimate expectation of privacy”).

94. § 13A-11-30. As the commentary to section 13A-11-32 explains, “[a] private hotel room would be included while the hotel lobby would not.” § 13A-11-32 cmt.

expectation of privacy in as long as that item is accessible to the public.⁹⁵ Because of this, Alabama's criminal surveillance statute did not protect people against the use of personal tracking devices for improper location monitoring.

Alabama's classic stalking statutes also did not offer protection because both statutes require that the perpetrator make a threat or that the victim suffer a material harm.⁹⁶ Victims of unwanted location monitoring often do not know they are being monitored or followed. Perpetrators of improper location monitoring are motivated to use a personal tracking device because of its covert nature. If a victim does not know that they are being monitored and followed, then it is unlikely that they suffered material harm to their mental or emotional health. Even if they later find the personal tracking device and remove it, proving the harm is incredibly difficult. This makes it so that Alabama's classic stalking statutes provide little to no protection against unwanted location monitoring.

Before September 2023, Alabama's criminal code did not offer protection for victims of unwanted location monitoring. While some may argue that Alabama's statutes prohibiting criminal surveillance or stalking were sufficient, neither of these statutes were directly on point. Thus, because these statutes left a gap, Alabama did not fully criminalize the improper use of GPS technology to monitor another's location.

B. *Alabama's 2023 Amended Criminal Code*

In March 2023, Representative Allen Treadway introduced Alabama House Bill No. 153 (HB153), which criminalized improper location monitoring.⁹⁷ HB153 accomplished two things.⁹⁸ First, it added sections 13A-6-95 and 13A-

95. Take, for example, a locked car parked in a public parking lot. The car's owner has an expectation that the car will be safe from casual or hostile intrusion. But the public nature of the parking lot means that the car is not in a private place. The exterior of the car is exposed to the public and travels openly on the public domain. Moreover, anyone can walk up to the car and touch the car's exterior. This makes it so that the car, or at least the exterior, is a place that "a substantial group of the public" has access to, which excludes it from the scope of section 13A-11-32. *Id.* Thus, anyone could attach a GPS tracking device to the car and be perfectly within the bounds of the law. For this reason, Alabama's criminal surveillance statute did not protect against the use of GPS tracking devices.

96. Section 13A-6-90, or stalking in the first degree, criminalizes "[a] person who intentionally and repeatedly follows or harasses another person and who makes a credible threat . . . with the intent to place that person in reasonable fear of death or serious bodily harm." ALA. CODE § 13A-6-90(a) (1975). While the improper use of a personal tracking device is likely sufficient to satisfy repeated following under the statute, the use of the device alone is not itself stalking in the first degree because the user of the device must also make a threat for the purpose of causing fear in their victim. Moreover, section 13A-6-90.1, or stalking in the second degree, exists only where the repeated following causes the victim of unwanted tracking mental or emotional harm or fear. *See id.* § 13A-6-90.1(a).

97. H.R. 153, 2023 Leg., Reg. Sess. (Ala. 2023).

98. *Id.*

6-96 to the Code of Alabama.⁹⁹ Second, it amended section 13A-6-92 to provide two new definitions.¹⁰⁰ These changes took effect September 1, 2023.¹⁰¹

Alabama Code sections 13A-6-95 and 96 criminalize electronic stalking in the first and second degree respectively.¹⁰² Section 13A-6-96 states that a person commits the crime of electronic stalking in the second degree when “[that person], *without the consent of the owner* or except as otherwise authorized by law, places *any electronic tracking device* on the property of another person.”¹⁰³ As defined by section 13A-6-92, electronic tracking device means “[a]n electronic or mechanical device that permits the tracking of the movement of a person or object.”¹⁰⁴ Under section 13A-6-96, electronic stalking in the second degree is a Class A misdemeanor.¹⁰⁵

Section 13A-6-95 contains identical language to state the crime of electronic stalking in the first degree, and elevates the crime to a Class C felony when the electronic tracking device is placed “with the intent to surveil, stalk, or harass, or for any other unlawful purpose.”¹⁰⁶ Moreover, section 13A-6-95 again elevates the crime to a Class B felony when the electronic tracking device is placed “[in violation of] an existing domestic violence protection order, elder abuse protection order, temporary restraining order, or any other court order.”¹⁰⁷

With the adoption of sections 13A-6-95 and 13A-6-96, Alabama joined seven other states in enacting a complete prohibition on the use of personal tracking devices and GPS technology to engage in improper location monitoring. Importantly, Alabama has distinguished between conduct alone and conduct accompanied by intent.¹⁰⁸ Under the new law, Alabama separates electronic stalking into first degree and second degree, which provides different sentencing ranges and punishments if warranted.¹⁰⁹ For example, suppose Joan places a tracking device on all of her family members’ cars, including her adult daughter Ann’s car, to be looked at only in case of an emergency.¹¹⁰ Even

99. *Id.* at 3.

100. *Id.* at 1–2.

101. *Id.* at 5.

102. ALA. CODE §§ 13A-6-95, 96 (2023).

103. ALA. CODE § 13A-6-96(a) (1975) (emphasis added).

104. *Id.* § 13A-6-92(3).

105. *Id.* § 13A-6-96(b); *see also id.* §§ 13A-5-7(a)(1), 12(a)(1) (1975) (explaining that a Class A misdemeanor carries a maximum term of one year in jail and a maximum fine of \$6,000).

106. *Id.* § 13A-6-95(a)–(b)(1); *see also id.* §§ 13A-5-6(a)(3), 11 (explaining that a Class C felony carries a maximum term of ten years in jail and maximum fine of \$15,000).

107. *Id.* § 13A-6-95(b)(2); *see also id.* §§ 13A-5-6(a)(2), 11 (1975) (explaining that a Class B felony carries a maximum term of twenty years in jail and maximum fine of \$30,000).

108. *Compare id.* § 13A-6-95(a) (defining electronic stalking in the first degree as requiring the element of intent), *with id.* § 13A-6-96(a) (defining electronic stalking in the second degree without the element of intent).

109. *See supra* notes 102–07 and accompanying text.

110. This assumes that Ann is the only titled and legal owner of her car.

though Joan had no intent under section 13A-6-95, Joan has violated section 13A-6-96 and committed a Class A misdemeanor. In this case, Alabama criminalizes Joan's conduct itself. Suppose also that Paul and Gina dated once, but had a tumultuous breakup, so that Gina sought and received a protection-from-abuse order against Paul. After this, Paul placed a tracking device on Gina's car and has surveilled her location on his phone for two months. Paul has violated section 13A-6-95 and committed a Class B felony. In this case, Alabama has criminalized Paul's conduct *and* his intent—to stalk, surveil, or harass Gina. Given the differences in these two hypotheticals, it is obvious that Joan and Paul should be treated differently. Alabama law accordingly accomplishes this.

Nonetheless, there are issues with the new law. Notably, both section 13A-6-95 and section 13A-6-96 provide two exemptions, that is, installation of a tracking device is not a crime if either: (1) the owner of the property to which the tracking device is placed gives consent, or (2) the tracking device is installed as authorized by law.¹¹¹ However, it is confusing that section 13A-6-95 provides for an exemption at all. Section 13A-6-95 provides that installation of an electronic tracking device with the intent to stalk, surveil, harass, or for any other unlawful purpose, is a Class C felony and elevates to a Class B felony if the tracking device is installed in violation of an existing court order.¹¹² The exemptions here then make little sense. First, no property owner would consent to the installation of a tracking device on their property if the installer's purpose was to harass or stalk them. Second, an owner's consent would allow a perpetrator to lawfully install a tracking device in violation of an established court order. Finally, there is no lawful authorization that would allow a person to install a tracking device for the purposes of stalking or harassment, and there is no lawful authorization that would allow a person to install a tracking device in violation of an established court order.

Additionally, both the owner-consent and the lawful-authorization exemptions are ambiguous. First, both sections 13A-6-95 and 96 exempt the conduct where it is "authorized by law."¹¹³ However, there is no list of what this includes or any other indication to set forth circumstances that would be "authorized by law." Second, as explained above, both sections 13A-6-95 and 96 exempt placing a tracking device on another person's property when the *owner* of that property consents.¹¹⁴ HB153 amended section 13A-6-92 to add the definition of owner as "[a]n individual, other than the defendant, who has possession of or any other interest in the property involved and without whose consent the defendant has no authority to exert control over the property."¹¹⁵

111. ALA. CODE §§ 13A-6-95, 96 (West 2023).

112. *Id.* § 13A-6-95(a)–(b).

113. *Id.* §§ 13A-6-95(a), 96(a).

114. *Id.*

115. *Id.* § 13A-6-92(5) (1975).

Importantly, this is the same definition of owner as used in section 13A-8-(1)(9) for offenses involving theft.¹¹⁶ The Alabama legislature adopted this language for offenses involving theft based in part on section 223.2(2) of the Model Penal Code.¹¹⁷ In cases of theft, where ownership of property is often in dispute, this definition of owner is easily applied.

However, in cases of improper location monitoring, application of this definition of owner is more convoluted. This is because the definition provided by section 13A-6-92 does not account for the possibility of multiple parties, all who are considered owners by definition, yet who have divergent interests. For example, consider Mary and Roy, a legally married couple who bought a car for Mary to drive and titled the car in both of their names. In this case, both Mary and Roy are owners under section 13A-6-92. Even if Mary files for divorce against Roy, the result is unchanged—both Mary and Roy are still owners of the car. This means that Roy, as an owner, may place a tracking device on the car, even if Mary does not consent, and even if his intent is to surveil or stalk Mary, and be perfectly within the bounds of the law under sections 13A-6-95 and 13A-6-96. In fact, this was exactly the case in *People v. Agnelli*.¹¹⁸ In *Agnelli*, a California appellate court struck down California's statute as unconstitutionally vague as applied to a registered co-owner of a vehicle who placed a tracking device on his estranged wife's car because "[t]he plain language of the statute does not expressly indicate, in this situation, whether consent of all registered owners of the vehicle is required."¹¹⁹ The same is true of sections 13A-6-95 and 13A-6-96. While both provide that an owner may give consent to the placement of an electronic tracking device, neither account for the possibility of multiple owners, or what happens if one owner consents while the other refuses.

It is well accepted that property owners have an interest in their property and should be able to use, monitor, and surveil it freely, if they choose to do so, and even if another owner does not consent. However, in direct conflict with this is the equally high interest of people to have privacy, and to not be tracked or located, unless they consent. Sections 13A-6-95 and 96 do not adequately balance these competing interests and focus instead only on the former and not the latter.

116. *Id.* § 13A-8-1(9).

117. MODEL PENAL CODE § 223.2(2) (AM. L. INST. 1980). As explained by the Alabama Court of Criminal Appeals, the Alabama legislature intended to adopt the Model Penal Code's rationale in defining theft as "the exertion of control unauthorized, or unconsented to, by the *owner* of the property." *McCord v. State*, 501 So. 2d 520, 527 (Ala. Crim. App. 1986).

118. *People v. Agnelli*, 283 Cal. Rptr. 3d 777, 779 (Cal. App. Dep't Super. Ct. 2021).

119. *Id.* at 781 (emphasis added). In *Agnelli*, the defendant was charged for using an electronic tracking device after he placed a tracking device on his estranged wife's car. *Id.* at 779. However, he was a registered co-owner of the vehicle, and the statute prohibiting electronic tracking expressly provided, "[t]his section shall not apply when the registered owner, lessor, or lessee of a vehicle has consented to the use of the electronic tracking device with respect to that vehicle." CAL. PENAL CODE § 637.7(b) (West 2024), *invalidated by* *People v. Agnelli*, 283 Cal. Rptr. 3d 777, 782 (Cal. App. Dep't Super. Ct. 2021).

IV. FOLLOWING THE LEADERS

With the introduction of section 13A-6-95 and 13A-6-96, Alabama joined seven other states in enacting a complete prohibition on the use of personal tracking devices and GPS technology to engage in improper location monitoring. However, as explained in Part III, Alabama's law contains weak spots and does not adequately balance competing interests. Accordingly, Alabama should follow other states like Florida and Louisiana, who also have a complete prohibition on the use of tracking devices, and place consent in the hands of the person being tracked. Additionally, Alabama should expand the law to list situations in which consent is presumed to be revoked and explain those situations in which the law authorizes such conduct.

A. Reworking Consent

Currently, both sections 13A-6-95 and 13A-6-96 exempt placing a tracking device on another person's property when the owner of that property consents.¹²⁰ But this is problematic for two reasons. First, as previously explained, section 13A-6-95 should not contain any exemption, for any reason.¹²¹ Second, allowing a property owner to give consent does not account for the possibility of multiple owners with divergent interests and does not adequately balance all competing interests.¹²² Accordingly, sections 13A-6-95 and 13A-6-96 should be amended by the Alabama legislature as follows.

Section 13A-6-95 should be amended to remove all exemptions. This means that section 13A-6-95 would read, "a person who places any electronic tracking device on the property of another person with the intent to surveil, stalk, or harass, or for any other unlawful purpose, is guilty of the crime of electronic stalking in the first degree." In doing so, this preserves Alabama's intent to criminalize the conduct and the intent and closes all possible loopholes and unintended consequences.

Section 13A-6-96 should be amended to remove property owner consent. Instead, Alabama should adopt the approach of Florida and Louisiana and provide that only the person being tracked or monitored may give consent to the installation of GPS tracking device. Section 13A-6-96 should instead read, "a person who places any electronic tracking device on the property of another person, without the consent of that person, is guilty of electronic stalking in the second degree." This remedies the issue of multiple owners with divergent interests and refocuses on the ultimate issue: the victims of unwanted tracking and improper location monitoring.

120. ALA. CODE §§ 13A-6-95(a), 96(a) (West 2023).

121. *See supra* text accompanying notes 110–11.

122. *See supra* text accompanying notes 112–17.

However, consent does not remain forever and may be validly revoked. To this end, Alabama must recognize that, in some situations, the law should presume that consent is automatically revoked. This is the approach taken by Louisiana. Thus, Alabama should amend section 13A-6-96 to provide that consent is presumed revoked and the installation or continuation of a GPS tracking device is no longer lawful upon certain acts occurring. Such acts should include: (1) when the parties were lawfully married to each other and one party files for divorce from the other, (2) when the parties were lawfully married or otherwise in a romantic relationship and one party is granted a domestic abuse protection order, temporary restraining order, or other lawful court order that restricts the parties' access to one another, and (3) when the parties are parent and child and the child has become a legal adult over the age of nineteen (19).

By placing consent with the person being tracked and providing a presumption of revocation of consent, the law will appropriately serve the interest that individuals have in their privacy and protect their right to remain free from unwanted location monitoring.

B. *Lawful Exemptions*

With the proposed amendments above, Alabama law will address and serve people's privacy interests. Yet, to fully remedy the issue, Alabama will need to balance these interests against the competing interests of property owners, legal parents, and more.¹²³ This is best accomplished by specifically enumerating these exemptions in the language of the statute itself, as seen in the approach of Louisiana, Florida, and Virginia.¹²⁴ Thus, section 13A-6-96 should be amended to provide for a subpart specifically enumerating situations to which the law does not apply. Such situations include when a GPS tracking device is installed:

“(1) by a law enforcement officer, judicial officer, probation officer, parole officer, or any other person, acting on behalf of the Court and in the lawful performance of their official duties and in accordance with state and Federal law; (2) by the parent or legal guardian of a minor child when tracking the minor child if, (a) the parents or legal guardians of the minor child are married and either parent installs the tracking device, or (b) the parent or legal guardian of the minor child is the sole surviving parent or legal guardian of the minor child, or (c) the parent or legal guardian has sole legal and physical custody of the minor child, or (d) the parent or legal guardians are divorced, separated, or otherwise living apart, and both consent to the installation of the tracking device; (3) a legal guardian, conservator, caretaker, or other authorized representative of a disabled or elderly person if that person's treating physician certifies that the installation of a tracking device is necessary to ensure the

123. I note here that these exemptions will only apply in § 13A-6-96 for reasons already explained.

124. See LA. STAT. ANN. § 14:323(C) (2015); FLA. STAT. ANN. § 934.425(4)(b) (West 2015); VA. CODE ANN. § 18.2-60.5(B)(1)–(6) (West 2022).

safety of the disabled or elderly person; (4) by the lessor of a motor vehicle during the period of the lease; (5) by the owner of fleet vehicles when tracking such vehicles; (6) by an employer who provides employees motor vehicles to conduct business and job-related functions; (7) by a private investigator licensed under Ala. Code § 34-25B-3, who is regulated in accordance with the Code of Alabama, and who is acting in the normal course of business and with the consent of the owner of the property upon which the electronic tracking device is installed and place, unless the private investigator is working on behalf of a client who the private investigator knows or should reasonably know seeks the private investigator's services to aid in the commission of a crime otherwise defined in Title 13A of the Code of Alabama.”

By explicitly listing these exemptions, Alabama would adequately balance the competing interests of law enforcement, parents and guardians, property owners, and employers, against the competing interest of personal privacy. Additionally, these exemptions also cure the vague language in section 13A-6-96, which reads “or except as otherwise authorized by law.”¹²⁵ These exemptions allow the law to function properly and still serve its intended purpose.

CONCLUSION

As GPS technology and personal tracking devices continue to grow and consume the market, the law must adapt to protect individuals from unwanted and improper location monitoring. Alabama's newest criminal statutes, 13A-6-95 and 13A-6-96, are a step in the right direction toward protecting those privacy interests. However, the statutes both contain flaws that make them counter-productive, vague, and unworkable. By placing consent in the hands of the person being tracked and providing a list of specific exemptions, the law becomes workable, efficient, and protects all relevant parties' interests. Alabama should amend both electronic stalking statutes to incorporate these changes.

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125. ALA. CODE § 13A-6-96 (West 2023).

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