

Legal Obligations to Consider Before Installing a GPS Tracking Application

Article By:

Jeffrey D. Koelzer

Many families use GPS tracking applications every day for a number of reasons, from keeping track of kids on their way home from school to notifying each other when they expect to arrive somewhere, without the need for dangerous texting while driving. But as GPS tracking has become less of a spy-movie tactic and more of a familiar everyday convenience, users may be tempted to secretly install a GPS tracking application on a family member's phone and give themselves permission to track its location. This is not a good idea.

Under Michigan law, it is a misdemeanor "punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00 " to either *install* a "tracking device" on a motor vehicle without the owner's consent or to *use* such a device to "track the location" of a motor vehicle without consent of the vehicle owner or operator. See MCL § 539I(1)(a), (b). "Tracking device" means "any electronic device that is designed or intended to be used to track the location of a motor vehicle regardless of whether that information is recorded." MCL § 539I(5)(f). While Michigan courts have not addressed whether a smartphone is a "tracking device" within the meaning of the statute, it seems clear given the broad language of the statute ("electronic device ... used to track the location") that cell phones are covered.

This means that if you are using an app to track someone's cell phone and that person travels in a car with their cellphone, you have then used a "tracking device" to "track the location" of a motor vehicle, which is illegal without permission of the vehicle owner or operator. Consequently, GPS tracking applications should only be used with permission of the person being tracked, and if that person travels in cars owned or operated by others, you should have permission of the owner or operator too.

There are several exceptions to the criminal statute, however. Notably, the prohibition does not apply to "[t]he installation or use of any tracking device by the parent or guardian of a minor on any vehicle owned or leased by that parent or guardian or the minor and operated by the minor." MCL § 750.539I(2)(f). This means parents can use a GPS device to keep track of their minor children while they are driving the parents' car, even without the child's permission. There is also an exception for police officers who are lawfully performing their duties as police officers, and for licensed private investigators who are gathering information to be used in court and for certain other limited purposes. MCL § 750.539I(2)(g), (j).

So, feel free to continue using GPS tracking apps with others who have given you permission, and with your minor children driving a car that you own or lease. But don't play detective. You shouldn't track your spouse or your adult children without their permission. If you believe you need GPS tracking to assist you with a court case, consider consulting with a licensed private investigator or an attorney.

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