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Domestic Violence Review

Office of the State Courts Administrator
Office of Court Improvement

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Office of Court Improvement
Domestic Violence Staff
Rose Patterson, Chief of OCI
Selina Fleming
Austin Newberry
Kathleen Tailer, Esq.
Andrew Wentzell, Esq.

Questions or comments contact
Andrew Wentzell
Phone: 850-617-4005
Email: Wentzella@flcourts.org.

Helpful Web Resources
Family Courts
DV Benchbook
DV Strategic Plan
Petitioner Brochures
Respondent Brochures
DV Civil Injunction Survey Report
DV Resources for Court Staff
DV Case Management Guidelines
Best Practices: Child Support in DV cases
Dating Violence Checklist
Repeat Violence Checklist
Sexual Violence Checklist
DV Checklist
DV Court Action Plan
DV Assessment Final Report

Virtual Court Available for Continuing Education Credits

The Virtual Court program offers Florida domestic violence stakeholders an opportunity to learn about domestic violence proceedings and see the case through the judge's eyes. The program allows the user to act as judge in a domestic violence simulation. The case is fictitious, but the questions are real questions that judges must grapple with every day. Learn the laws that guide judges' actions during domestic violence proceedings with our engaging, interactive online program. The program can be accessed at: http://virtualcourt.flcourts.org.

The Virtual Court program is approved for up to 1.50 non-conference Domestic Violence CJE credit hours. Judges may apply for Continuing Judicial Education (CJE) credit by emailing a request to CJEMail@flcourts.org or writing to: Court Education Division, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, Florida 32399-1900 (Attention: CJE Credit). Judges who have completed the program but have not yet requested a certificate of completion may do so by sending an email request to vcsupport@flcourts.org.

The Florida Bar has approved 2.00 hours of general Continuing Legal Education (CLE) credit (including 1.50 hours of Marital and Family Law Certification credit) for the completion of this training module. Individuals are required to post their CLE activity on the Florida Bar website, www.floridabar.org, to receive credit. Please refer to course #57149.

Completion of the Domestic Violence Virtual Court training module can count as 2.0 hours of Domestic Violence Continuing Mediator Education (CME) credit. Individuals are required to keep the information pertaining to the completed virtual court course during the two-year cycle. Individuals will then report the information on the CME Reporting Form included in the renewal packet at the time of renewal, not when the credit is earned. The CME Reporting Form is also available on the Dispute Resolution Center's website.

Judges who have completed the program but have not yet requested a certificate of completion, may do so by sending an email request to vcsupport@flcourts.org.

News from the Office of Court Improvement

2010 Enhancing Judicial Studies Workshop

The Office of Court Improvement, in conjunction with the National Council of Juvenile and Family Court Judges and the Department of Children and Families/Domestic Violence Program, hosted a judicial workshop aimed at presenting Florida judges with current domestic violence practices and research. The workshop was held in St. Petersburg, Florida, on October 4-6, 2010, and was attended by judges from across Florida. The workshop covered a variety of issues, including firearms laws, batterer intervention programs, and cultural competence as it related to domestic violence cases.

Virtual Court Program News

The Office of Court Improvement is very pleased to report that the Eighth Circuit Family Law Advisory Group used the Virtual Court program as training for circuit staff. A group of approximately 25 people gathered in the courtroom and, using a large screen television, completed the virtual court program as a group. The training was paused at times to facilitate discussion of concepts and issues presented in the program. The circuit reported very positive responses to the training program.

Upcoming Projects and Events

- CASE MANAGER TRAINING MODULE The Office of Court Improvement is developing the module with the assistance of several case managers. The module will be accessible via the internet, and will provide case managers with an interactive program designed to decrease frustration, increase efficiency and ease the use of case management systems. The module will be full of valuable techniques and tactics vetted by a panel of case managers, judges, and OCI staff. This will be a huge endeavor, with the final goal to provide case managers with a high quality module. The training module is tentatively scheduled to be completed in June of 2011.

- CHAPTER 39 VIDEO The Office of Court Improvement is in the process of developing a video that will discuss Chapter 39 injunctions. This video will be designed to inform judges, court staff, and other stakeholders of the availability of the Chapter 39 injunction, and will discuss common myths associated with the Chapter 39 injunction process. This video is tentatively scheduled for release in April, 2011.

- DV COORDINATORS MEETING The Office of Court Improvement will be hosting a Domestic Violence Coordinators Meeting in Tallahassee in late March, 2011. This meeting will discuss recent domestic violence issues and provide DV Coordinators an opportunity to develop techniques for case coordination. If you have a topic you would like to have discussed at the meeting, please email Andy Wentzell at wentzella@flcourts.org or Austin Newberry at newberrya@flcourts.org.

- CONTINUING JUDICIAL SKILLS WORKSHOP The Office of Court Improvement will be exploring the possibility of sending Florida judges to the National Council of Juvenile and Family Court Justices Enhancing Judicial Skills Workshop held in Chicago, IL, in June 2011. This opportunity will be available to those judges who successfully completed the Enhancing Judicial Skills Workshop, held October 4-6, 2010. Judges interested in attending should contact Andy Wentzell at wentzella@flcourts.org.

Cell Phone Tracking: The Use of GPS Technology in Stalking

By: Andrew Wentzell, Esq.

Petrified, she checked her purse, shoes and jacket pockets to see if he had planted a bug. “Oh my god, what is happening to me?” she thought. “To know

> somebody knows where you are every second of the day and how many seconds you are at each stoplight and to yet not know how they were able to figure it out—it's a frightening feeling," she told the court. "You are always constantly being watched and under surveillance. It gave me stomach aches, it made me not sleep really well. It's not a comfortable feeling."[1]

The account above came from a woman whose estranged husband stalked her using Global Positioning System (GPS) technology. She did not realize he was using GPS and never saw him following her – but he knew exactly where she went, and would often ask very specific questions about her daily activities.

A nationwide study published in 2009 found that an estimated 5.9 million U.S. residents age 18 or older experienced behaviors consistent with either stalking or harassment during the 12 months examined.[2] Further, stalkers made one or more threats to the victim in 43% of the cases studied, and in 21% of the cases, attacked or injured the victim.[3] Finally, in 10% of the cases studied, stalkers used GPS technology to monitor their victims.[4]

This GPS technology has provided batterers a very effective means of stalking their victims. As technology advances, the size of GPS devices is shrunk, making them easier to hide in vehicles or in purses. The ubiquity of GPS-equipped cell phones has further advanced the ease in which batterers stalk their victims, making stalking by use of GPS technology a very real threat to victims of domestic violence. This article examines Florida's stalking laws, how a potential batterer might use a cell phone to stalk his or her victim, and discusses what Florida courts can do to protect victims of domestic violence throughout the domestic violence injunction process.

Florida Laws

Florida Statute §741.28(2) details what acts may be considered "domestic violence." The list includes stalking and aggravated stalking, which are discussed in detail in §784.048. Stalking is defined as, "any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree…"[5] The severity of the offense escalates to aggravated stalking when the person also threatens harm or does actual harm to the victim or to any of a set of people related to or dependant on the victim, or when the person is restrained from contact by a valid protective order.[6] Further, the Florida statutes define "harass" as, "to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose."[7]

Thus, by using the cell phone GPS to track the victim, the batterer is focusing his conduct on the victim in a manner likely to terrify and emotionally batter her[8]; by such harassment, the batterer may be stalking the victim and engaging in domestic violence.

How Cell Phone Tracking Works

Tracking a victim by cell phone GPS is frighteningly easy and inexpensive.[9] In some cases, the perpetrator does not need access to the phone to be able to begin tracking the phone. If the perpetrator does need access to the phone, most often the process can be completed in 5 minutes or less. Once the phone is prepared, the perpetrator can get updates via text message or by logging onto a website. As one writer notes, "In fact, if the victim is mobile, 'a GPS receiver may calculate [his or her] speed and

direction of travel, and may also be able to provide an estimated time of arrival to specific destinations.'… Using GPS technology, batterers can literally hunt down their victims."[10]

There are two general means of enabling GPS tracking on a cell phone – using the cell phone provider's software to track the phone or using third party software to track the phone.

Cell Provider Tracking Programs

Cell phone providers offer extra programs and features to their plans, designed to allow the consumer to select desired options and pick a plan that meets his or her needs. One of the programs offered is a GPS tracking program. AT&T calls their program "Family Map"[11]; Verizon, "Family Locator"[12]; and Sprint, also "Family Locator."[13] The other cell phone providers have similar programs; however, AT&T, Verizon and Sprint will be examined in this article due to their position in the cell phone industry.

The programs are all fairly similar. They are marketed as means of keeping track of children – making sure they arrive at school, making sure they don't go outside of a defined area, and checking that they arrived and departed from specified locations. Interestingly, for the Sprint "Family Locator," the phones which can be added do not even have to be phones on the account of the person getting the service. To locate a phone not on the account, the only intermediate step is that the account holder for the phone intended to be locate-able must log into his or her Sprint account and give permission.[14] The price of the program is between 5 and 10 dollars per month, and can be used on between 2 and 4 cell phones.

Each cell phone provider specifies that the programs will only work on phones that have GPS capabilities. In AT&T's case, 47 phones have GPS capabilities[15] (out of 58 phones available)[16]; Sprint's Family Locator is available on all 50 phones that Sprint sells;[17] while Verizon's Family Locator will work for all of their 47 phones.[18]

Signing up for one of the programs is as simple as entering the account number on the website and designating which phone(s) a person would like to be locate-able. The Verizon program incorporates an additional step in the process – the phone that is to be locate-able must have an application installed to make the phone locate-able.[19] The process is a simple five-step one, and can be completed in a short period of time. Once inside any of the Family programs, the person can set alarms for certain times (to verify a child is at school on time, for example), or can set alarms for specific areas or boundaries (to notify the person watching if a child goes beyond a designated area). Additionally, the person can manually locate the enabled phone at any time, either by logging onto the website from a computer, or by using an application that can be installed on his cell phone.

The Sprint and AT&T programs do have a safe guard in place; any Sprint or AT&T phone that is locate-able will receive notifications that the phone is able to be located. The account holder can specify whether the notifications come every time the phone is located, or whether the phone receives a notification periodically – Sprint's notifications come about once every two months,[20] while AT&T's notifications are sent approximately once every month.[21] Verizon's Family Locator also has two notification options the account owner can choose between: whether the phone is notified every time the location is requested or whether it is never notified.[22]

If the person intent on stalking the victim is a family member, using a cell provider's GPS locator program is incredibly easy. The stalker can have the locator program working in a matter of minutes.

Further, if the family has cell phones through Verizon, the victim may not receive any notification that she is being stalked at all. And while the other two services provide periodic notifications, this may not deter a stalker from using the service. Florida ascribes to the concept that domestic violence is motivated by the abuser's desire for power and control over the victim.[23] Stalking can be simply another weapon in the batterer's arsenal to control every aspect of the victim's life, including her freedom of movement. While a notification may provide the victim warning that she is being tracked via GPS, such a warning may only reinforce the control and power the stalker is exerting over her, and exacerbate her feelings of isolation and fear.

Third Party Tracking Programs

There are innumerous third party programs that advertise as perfect tools for tracking children or spouses.[24] These programs do the same thing as the cell provider programs, except these are designed to be undetectable by the victim.[25] The two programs examined for the purposes of this article were AccuTracking[26] and Mobile Spy.[27] These programs both promise to help a person track their children, other family members, or vehicles. AccuTracking's prices range from between $5.99 and $9.99 per month, though paying quarterly or yearly reduces the price of the program.[28] Mobile Spy's prices are structured in quarterly, semi-annual, or annual payments ranging from $49.97 per quarter to $99.97 per year.[29] These prices are for one locate-able phone.

The third party tracking programs do not work on every phone; however, the programs do work on a large majority of new and recent cell phones. AccuTracking will work on over 80 cell phones,[30] while Mobile Spy will work on over 250 phones.[31]

The programs are slightly more complicated to acquire and use. For both services, the person desiring to track a phone must purchase an account with the company. Once an account is set up online, the person must download the tracking program onto the phone intended to be locate-able. There is a brief setup with the phone, setting preferences and other options.[32] Once the program is installed on the phone, the phone is locate-able. AccuTracking allows the account user to track the location, speed, heading, and altitude of the phone; set an area boundary with notice if the phone passes the barrier; and track the daily mileage, stops, time and speed statistics of the phone's movement.[33] Mobile Spy promises even more. Mobile Spy allows the account user to log every incoming and outgoing telephone number (along with duration and time stamp), every text message, every memo, every calendar event, every website the phone's web browser visits, and every photo and video taken.[34]

Further, both companies promise that the programs would be very difficult to detect once installed. There would be no messages or notifications that the program was installed, that it was making the phone locate-able, or that it was in the process of being located.[35] AccuTracking did include a notification to the account user that the phone's list of installed programs would include the tracking program, and that the phone might flash a satellite signal when the phone is being located.[36] The account user could access the phone's data either by logging onto a website or by using a program installed on their cell phone.

These programs are designed for stealthy observance and tracking of a cell phone by the account user. A stalker could very easily misuse these programs. Once the program is installed on the target phone, the set up process seems to be very simple for both programs. Unlike the cell provider programs, these programs do not need to be on the same account, and unlike Sprint's different account option, no

permissions are necessary to install the program onto the victim's phone. The only requirement is physical access to the phone for the period of time required to install the program and set it up. But much like the cell provider programs, these programs provide the stalker with another tool to control the victim and know where she is at all times.

Detection and Repair of a Track-able Phone

There are a few ways for a victim to detect or become aware that a phone is locate-able. The phone may abruptly have a shorter battery life than usual; the phone may emit strange noises or flashes when not being actively used; or the phone getting warmer than usual or becoming warm to the touch when not being actively used.

If the victim has a newer model phone, the victim may be able to search the list of installed programs or applications, and might be able to identify unknown software and remove it. Additionally, some forms of anti-virus or anti-spam software are available for cell phones, and may be able to spot tracking software if the software behaves like virus or spam programs. Two common protection programs are Kapersky Mobile Security 9[37] and S Mobile.[38] These programs typically cost between $20.00 and $50.00 per year, per phone, and include features such as anti-virus protection, anti-spam protection, and phone locks (password protections for the phone). However, these programs are not designed to target tracking software, so they are not guaranteed to detect the software.

The only certain method for a victim to repair her phone and remove the tracking software is to perform a "factory reset." This reset, a built-in feature of every phone, deletes all installed information from the phone and sets the phone's settings, memory, and attached storage to its original factory settings. Any information on the phone must be backed up before the factory reset is performed or the data will be lost.

What the Courts Can Do

When Reviewing the Petition

Section 741.30(6)(b)1, Florida Statutes, indicates that the court may review alleged harassment or stalking when considering whether the petitioner has a reasonable cause to believe he or she is in imminent danger of becoming a victim. When the court is reviewing the petition, it should do so with an eye to any activity that may involve GPS tracking. Some warning signs of cell phone GPS tracking include:

- The respondent suspiciously shows up at the petitioner's location, when the petitioner did not see anyone following her;
- The respondent asks very specific questions about the petitioner's activities;
- The respondent knows when the petitioner is at certain places without being present; or
- The petitioner has noticed strange or unauthorized activity on her cell phone.

Where such activity is present, the court should include such in its evaluation of the danger the respondent poses to the petitioner.

At the Injunction Hearing

The court can engage in a number of practices aimed at determining whether there has been any stalking by use of GPS technology. These practices include, but are not limited to, the following:

- Asking whether the petitioner has a cell phone.
- Asking whether the petitioner and respondent share a cell phone account.
- Asking whether the petitioner has had any suspicions that the respondent is following or keep track of her daily movements or activities.
- Asking whether the petitioner's cell phone has had any recent unusual unauthorized activity.
- Asking whether the respondent has had any unsupervised access to the cell phone.
- Referring to the domestic violence injunction checklist (found in the 2008 Domestic Violence Benchbook).
- Eliciting testimony from both parties about any alleged stalking or cell phone GPS tracking.
- Detailing to the parties the factors the court may consider when determining whether the petitioner is in imminent danger of becoming a victim of domestic violence. It may be the case that parties are unaware that the court may consider stalking or tracking with cell phone GPS in a domestic violence hearing.

If the Injunction is Granted

The final order of injunction lists several things that the court must include, and leaves space for optional, additional provisions. The court may include in the contact portion of the injunction a provision barring the respondent from monitoring the petitioner's activities or movements. Further, the court may bar the respondent from using or engaging the services of any company that might allow him to track the respondent's movements or location.

Conclusion

The most important thing the court can do is be aware of the possibility of cell phone GPS tracking. As technology advances, so do opportunities to abuse that technology. AT&T's Family Map has a tagline that reads, "You can't always be there, but with AT&T Family Map, knowledge is the next best thing."[39] While that may be comforting to parents, to a stalker or the victim of stalking, those words inspire different feelings altogether. It reminds both parties that while the stalker may not be physically present, he will always know where the victim is – a frightening reminder of the victim's situation and the control exerted by the stalker.

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[1] Michel Rosenwald. *Every Step You Take… Every Move You Make… My GPS Unit Will Be Watching You*. Popular Science (October 13, 2004) at 4.
[2] Katrina Baum, Shannan Catalano, Michael Rand, Kristina Rose. *Stalking Victimization in the United States*. Bureau of Justice Statistics Special Report (Jan. 2009) at 2.
[3] *Id* at 8 (table 12).
[4] *Id* at 5.
[5] F.S.A. §784.048(2) (2010).
[6] F.S.A. §784.048(3) & (4) (2010).
[7] F.S.A. §784.048(1)(a) (2010).
[8] While men and women may be victims of domestic violence, and may be perpetrators of domestic violence, for the purposes of this article the victim will be referred to in the feminine and the abuser in the masculine, as the English language does not have gender-neutral pronouns.

[9] For an example of the ease in which a stalker might use cell phone GPS, see Ben Goldacre. *"How I Stalked My Girlfriend."* The Guardian (Feb. 1 2006).
[10] Laura Silverstein. *The Double-Edged Sword: An Examination of the Global Positioning System, Enhanced 911, and the Internet and Their Relationships to the Lives of Domestic Violence Victims and Their Abusers.* 13 Buffalo Women's Law Journal 97 (2004-2005) at 104-105.
[11] AT&T Family Map *available at* https://familymap.wireless.att.com/finder-att-family/welcome.htm (last visited 9/27/2010).
[12] Verizon Family Locator *available at* *http://products.verizonwireless.com/index.aspx?id=fnd_familylocator_features (last visited 9/27/2010).*
[13] Sprint Family Locator *available at* https://sfl.sprintpcs.com/finder-sprint-family/welcome.htm (last visited 9/27/2010).
[14] *See* https://sfl.sprintpcs.com/finder-sprint-family/helpContent.htm?topic=2 (last visited 9/27/2010).
[15] *See* https://familymap.wireless.att.com/finder-att-family/supportedPhones.htm (last visited 9/27/2010).
[16] *See* http://www.wireless.att.com/cell-phone-service/cell-phones/cell-phones.jsp?wtSlotClick=1-003ZVV-0-1&WT.svl=title for the full selection of phones (last visited 9/27/2010).
[17] *See* https://sfl.sprintpcs.com/finder-sprint-family/howWorks.htm and http://shop.sprint.com/NASApp/onlinestore/en/Action/DisplayPhones?audience=INDIVIDUAL&id12=Shop_StartPhones_Button_AllPhones (last visited 9/27/2010).
[18] *See* http://products.verizonwireless.com/index.aspx?id=fnd_familylocator_get# and https://store.verizonwireless.com/app_clients/wls/default.aspx?programcode=defaultnew#/page|100 (last visited 9/27/2010).
[19] *See* http://products.verizonwireless.com/index.aspx?id=fnd_familylocator_setup (last visited 9/28/2010).
[20] *See* https://sfl.sprintpcs.com/finder-sprint-family/help.htm (last visited 9/28/2010).
[21]*See* https://familymap.wireless.att.com/finder-att-family/help.htm (last visited 9/28/2010).
[22] *See* http://support.vzw.com/faqs/Features%20and%20Optional%20Services/family_locator.html (last visited 9/28/2010).
[23] Fla. Admin. Code r. 65H-2.005 (2007). The Intervention programs allowed must be based on the concepts espoused in the Duluth Model – that domestic violence is a learned behavior that is used to exert control over the victim.
[24] *See* http://www.flexispy.com/ (last visited 9/28/2010), as an example.
[25] *See* http://support.accutracking.com/kb/article/000040 and http://www.mobile-spy.com/howitworks.html (last visited 9/28/2010).
[26] *See* http://www.accutracking.com/ (last visited 9/28/2010).
[27] *See* http://www.mobile-spy.com/index.html (last visited 9/28/2010).
[28] *See* https://secure.accutracking.com/pricing.html (last visited 9/28/2010).
[29] *See* http://www.mobile-spy.com/purchase.html (last visited 9/28/2010).
[30] *See* http://support.accutracking.com/kb/article/00003 (last visited 9/28/2010).
[31] *See* http://www.mobile-spy.com/compatibility.html (last visited 9/28/2010).
[32] *See* https://secure.accutracking.com/faqs.html and http://www.mobile-spy.com/howitworks.html (last visited 9/28/2010) for more details on the installation process.
[33] *See* https://secure.accutracking.com/features.html (last visited 9/28/2010).
[34] *See* http://www.mobile-spy.com/spy_features.html (last visited 9/28/2010).
[35] *See* http://support.accutracking.com/kb/article/000040 and http://www.mobile-spy.com/howitworks.html (last visited 9/28/2010) for more information.
[36] *See* http://support.accutracking.com/kb/article/000040 (last visited 9/28/2010).
[37] *See* http://usa.kaspersky.com/products-services/home-computer-security/mobile-security (last visited 10/22/10).
[38] *See* http://www.smobilesystems.com/online-store/ (last visited 10/22/10).
[39] *See* https://familymap.wireless.att.com/finder-att-family/flashDemo.htm (last visited 9/28/2010).

Caselaw Corner

Department of Children and Families v. D.B.D., ___ So. 3d ___, 2010 WL 3324720 (Fla. 4th DCA 2010) CHAPTER 39 INJUNCTION DISMISSED/DUE PROCESS The mother, a DCF attorney involved in a heated divorce, was denied both an injunction on behalf of her children and a motion to suspend visitation by a family law judge. DCF then filed a §39.504 injunction that was heard before a different judge who was not familiar with the family. The father received notice 2 hours before the hearing but was not allowed to appear by phone and was unable to attend. In addition to the mother, two lawyers and three DCF representatives were present. None of the attorneys made the judge aware of the ongoing proceedings in family court, mentioned the mother's August 21 emergency motion to suspend visitation, or brought up the mother's previous attempt to secure an injunction on behalf of the children. The DCF attorney also convinced the judge to enter an injunction that remained in effect until further order of the court, without holding any further hearing. However, §39.504(2) provides that if a judge issues an immediate injunction, the court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it. The family court judge ordered the transfer of the injunction case to the family court because of the longstanding dissolution case pending there and held a hearing, after which she dismissed the injunction entered against the father. At the hearing, which was required by due process, DCF failed to justify the continuation of the injunction and the court dismissed the injunction. The appellate court affirmed. August 25, 2010. http://www.4dca.org/opinions/Aug%202010/08-25-10/4D09-4862.op.pdf

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People wishing to contribute to future editions of the "Domestic Violence Review" should contact Andrew Wentzell at Wentzella@flcourts.org.