

You can read the Lawyers.com News Blog at <http://blogs.lawyers.com>

When Is It Okay To Use GPS Trackers?

February 7, 2012 By [Aaron Kase](#)



An emotionally distant husband, stepping out mysteriously in the evenings. A delivery truck driver taking hours longer than expected to complete his routes. A teenager coming home glassy-eyed and loopy while her grades fall precipitously.

Each cause for suspicion, for the jilted spouse, skeptical boss or worried parents. With the advent of inexpensive GPS technology, we now possess the tools to track our wayward lovers, employees and children—but **how far can we go without violating the privacy of our target** and ending up in legal hot water?

- **Tracking a vehicle you own yourself is usually but not always legal**
- **Phone tracking for public employees is fair game**
- **New technology means law is still unsettled as to what constitutes normal expectations of privacy**

Expectation of Privacy

The [Supreme Court](#) ruled [two weeks ago](#) that law enforcement agencies need a warrant to implant a GPS device on someone's car. But that ruling doesn't affect the ability of a private citizen to track someone else's movements, says [Evan Brown](#), a technology attorney with Hinshaw & Culbertson LLP in Chicago.



"The private use of tracking devices presents issues that do not arise in the context of the Fourth Amendment analysis for law enforcement," Brown explains. Instead, judgment about what is acceptable and what is not relies on state laws.

Whereas the Supreme Court ruling focused on an unreasonable intrusion into a man's property by police who placed a tracker on his car, cases of private tracking hinge on a person's expectation of privacy.

In [a ruling in Minnesota last fall](#), a man was exonerated from charges that he illegally placed a GPS device on the car of his estranged wife, because he was considered a co-owner of the car.

Attorney Evan Brown

"In the Minnesota case, the court dove into the nuances of the state's motor vehicle code to find that the guy who placed the tracking device could properly do so because he fit the definition of an 'owner' of the car," Brown says. "What's written between the lines is that the wife should not have expected any privacy in the location of the car because she was lawfully divulging that information to another person (her husband) who had the right to know due to his ownership interest."

State by State

Other states have been confronting GPS cases as they come forward:

- In a [similar case in New Jersey](#), judges found that a wife did not invade her husband's privacy when she stuck a GPS in his glove box, since he was driving around on public roads where he had diminished expectation of privacy.
- A surprise ruling in New York allowed the state to [track an employee's private vehicle](#), the justification being that he had already been disciplined for lying on his time sheets and should have known that his employers would be taking other means to keep tabs on him.
- Most use of GPS trackers without consent [is illegal in Texas and California](#).
- Because laws vary by state, there's no way to make a blanket pronouncement about the legality of tracking devices. It's probably okay under most circumstances if you own the vehicle you want to track (except in Texas and California, as noted), but would-be amateur detectives would be advised to tread lightly and [consult a lawyer](#) first if there are any doubts about specific state laws.

Another large caveat is to not let legal tracking become the precursor to an illegal action, like confrontation and assault of a spouse's new lover. Police and courts are not likely to be lenient.

Mobile to Mobile



The privacy question also encroaches on grounds the Supreme Court declined to consider—whether mobile devices like phones can be used to track a person without their consent.

In one interesting case, reporters used the Freedom of Information Act [to obtain phone records](#) for Boston housing director Michael McLaughlin, and found he only showed up to work half the time he was supposed to, and only spent 15 full days at work all year.

“In McLaughlin's case, the employer did not install a GPS device, but the press were able to obtain phone records that showed his location. This underscores the pervasiveness of tracking that is sometimes done unwittingly,” Brown says. “For years we have been hearing about how employees should not expect anything they do on their work-issued computers or on the company network to be private. That idea of no-privacy expands into the field — smartphones with location services enabled can be a rich source of information about what that employee is doing, and the employee may not even be aware that he or she is generating that information.”

“It's likely states will recognize the privacy interest here and impose some limitations on the warrantless use of tracking devices,” the attorney notes.

Vast Amount of Data

Another question posed by tracking technology is whether information gathered illegally can still be used in divorce or employment hearings. A 2005 case in Florida where a woman [illegally placed spyware](#) on her husband's computer and discovered an affair suggests the answer is no. “The court would not let the evidence in, and the appellate court agreed that the evidence was properly excluded,” Brown says. “There is no reason to think that a court would not similarly exclude GPS location information if it is gathered in violation of a law prohibiting it.”

Since tracking technology is relatively new, courts will take time to sort out all the legal issues that pop up while the usage becomes more and more widespread. Experts say some [100,000 GPS trackers are sold each year](#),

with numbers likely to increase. Certainly with the widespread popularity of smartphones that already track our whereabouts on an ongoing basis, the notion of privacy and what our expectations should be is entering uncharted territory.

“It is not likely that the Jones [Supreme Court] case will directly affect the legal issues with private monitoring,” Brown says. “But what Jones will do is crystallize our society’s norms when it comes to what is reasonable in terms of tracking. The technology is extremely revealing. And the ease with which vast amounts of data about a person’s comings-and-goings, not to mention the fact that monitoring is cheap, is unprecedented.”

Tagged as: [Evan Brown](#), [Fourth Amendment](#), [GPS trackers](#), [smartphones](#), [Supreme Court](#)

Disclaimer: The information provided on Lawyers.com is not legal advice, Lawyers.com is not a lawyer referral service, and no attorney-client or confidential relationship is or should be formed by use of the site. The attorney listings on Lawyers.com are paid attorney advertisements and do not in any way constitute a referral or endorsement by Lawyers.com or any approved or authorized lawyer referral service. Your access of/to and use of this site is subject to additional [Terms and Conditions](#).