

8.34 NON-CONSENSUAL [INSTALLATION] [USE] OF A TRACKING [DEVICE] [APPLICATION]

§ 934.425(2) and (5), Fla. Stat.

To prove the crime of Non-Consensual [Installation] [Use] of a Tracking [Device] [Application], the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

- 1. (Defendant) knowingly**
 - a. installed or placed a tracking [device] [application] on (victim's) property.**
 - b. used a tracking [device] [application] to determine the location or movement of (victim's) [person] [or] [property].**
- 2. (Defendant) did so without (victim's) consent.**

Give as applicable. § 934.425, Fla. Stat.

“Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

“Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual.

Inference. Give if applicable.

You may infer (victim's) consent was revoked if:

(Victim) and (defendant) were lawfully married but a petition for dissolution of marriage was filed.

Either (victim) or (defendant) filed an injunction for protection against the other person pursuant to § [741.30] [741.315] [784.046] [784.0435], Florida Statutes.

§ 934.425(5), Fla. Stat. Give if applicable.

If you find (defendant) guilty of Non-Consensual [Installation] [Use] of a Tracking [Device] [Application], you must further determine whether the State proved beyond a reasonable doubt that [he] [she] committed the crime to commit or to facilitate the commission of a[n] (insert the name(s) of the dangerous crime(s) listed in § 907.041(5)(a), Fla. Stat.).

A[n] (insert the name(s) of the dangerous crime(s)) is defined as follows: (insert the elements of the dangerous crime(s)).

Lesser Included Offense

**NON-CONSENSUAL [INSTALLATION] [USE] OF A TRACKING [DEVICE]
[APPLICATION] — 934.425(2)**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The victim in elements #1 and #2 does not have to be one person but cannot be a business entity, which is defined in §934.425(1)(a), Fla. Stat., as any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

§ 934.425(4), Fla. Stat., contains circumstances under which this crime does not apply. The courts may determine those circumstances should be treated as affirmative defenses. If so, trial judges will need to determine which party has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on February 21, 2025, and amended on March 20, 2026.