



UTAH PRIVATE INVESTIGATOR LAWFUL USE OF GPS TRACKING DEVICES

Utah Code 76-9-408 - Unlawful installation of a tracking device.

In its 2019 General Session, the Utah Legislature enacted law that prohibits persons from placing tracking devices on motor vehicles without the consent of the vehicle owner or lessee¹. To comply with permitted exemptions to the law, a licensed private investigator must:

1. Have a legitimate business purpose for placing the tracking device (*see U.C.A. 76-9-408(3)(a)(i)*);
2. Verify that persons associated with the vehicle are not protected by a court-issued protective order (*see U.C.A. 76-9-408(3)(a)(ii)*); *and*,
3. Not disclose any tracking information to anyone except as permitted by law (*see U.C.A. 76-9-408(8)*).

Although the law is specific to placement of tracking devices on vehicles, a key element to the permitted exemptions is the absence of court-issued protective orders that protect the

1. The full text of U.C.A. 76-9-408 "Unlawful installation of a tracking device," is included on the next page and may be viewed at https://le.utah.gov/xcode/Title76/Chapter9/76-9-S408.html?v=C76-9-S408_2019051420190514.

owners/lessees and operators of vehicles and their co-residents and immediate family members (inclusively the "Operators"). Investigators are required to confirm with a state entity or law enforcement agency that the Operators are not protected persons under a court-issued order (*see U.C.A. 76-9-408(6)*). **If any Operators are under the protection of a court-issued order, for any reason or any matter, a tracking device may not be placed on the vehicle** (*consider using the "Vehicle+Person+Relationship Test" below*).

VEHICLE + PERSON + RELATIONSHIP TEST

Before placing a GPS tracking device consider the following circumstances:

1. Are any of the owners, lessees or operators of the vehicle protected persons by a court-issued order?
2. Are any of the co-residents of the owners, lessees or operators of the vehicle protected persons?
3. Are any immediate family member of the owners, lessees or operators of the vehicle protected persons?

If the answer is "yes" to any of these questions the law prohibits placement of a GPS tracking device on the vehicle.

Suggestions to Meet Compliance with the Law

The Private Investigators Association of Utah (the “PIAU”) encourages all investigators to develop and implement best practice models that apply to all aspects of their professional practice. Compliance with laws and regulations protects the investigator, their clients and the profession. And while the PIAU does not proffer legal advice on this, or any other matter, we feel these suggestions may help investigators to comply with U.C.A 76-9-408:

1. **Read, understand and apply the plain text of the law.** Avoid “over-thinking” or “reading between the lines.” Know that attempts to find “loopholes” to meet a specific situation may expose an investigator and their client to potential criminal prosecution and civil liability. Always consult with competent legal counsel when unsure about any law.
2. **Make certain there is a legitimate, reasonable and permissible purpose for both the investigation and tracking device use.** Remember that just because someone asks for an investigation (or because tracking devices makes things

easier) it doesn’t necessarily mean there is a good reason to conduct an investigation or to use a tracking device.

3. **Make reasonable and diligent inquiries.** Determine who the owners/lessees and operators of the vehicle may be and discover their co-residents and immediate family members.
4. **Take reasonable steps to confirm protective orders.** Inquire about the existence of protective orders with an appropriate state entity or law enforcement agency.
5. **Document all of your compliance efforts in your case file.**
6. **Only place a tracking device when it is reasonably necessary and compliance is met.** As with any aspect of any investigation, investigators should only place a tracking device when they are sure they are in full compliance with the law.

Understanding and complying with the law is each investigators’ personal responsibility and ethical obligation to themselves, their clients, and to the investigation profession.

76-9-408 Unlawful installation of a tracking device. Effective 5/14/2019

(1) As used in this section:

(a) “Motor vehicle” means the same as that term is defined in Subsection 41-12a-103(4).

(b) “Private investigator” means an individual who is:

(i) licensed as a private investigator under Title 53, Chapter 9, Private Investigator Regulation Act; and

(ii) acting in the capacity of a private investigator.

(c) “Protective order” means a protective order, stalking injunction, or restraining order issued by a court of any jurisdiction.

(d)(i) “Tracking device” means a device used for the primary purpose of revealing the device’s location or movement by the transmission or recording of an electronic signal.

(ii) “Tracking device” does not include location technology installed on a vehicle by the vehicle manufacturer or a commercial vehicle dealer that transmits electronic signals for the purpose of data collection, if the data collection is anonymized.

(2) Except as provided in Subsection (3), a person is guilty of unlawful installation of a tracking device if the person knowingly installs, or directs another to install, a tracking device on a motor vehicle owned or leased by another person, without the permission of the owner or lessee of the vehicle.

(3) A person is not guilty of unlawful installation of a tracking device if the person:

(a)(i) is a licensed private investigator installing the tracking device for a legitimate business purpose; and

(ii) installs the tracking device on a motor vehicle that is not:

(A) owned or leased by an individual under the protection of a protective order; or

(B) operated by an individual under the protection of a protective order who resides with, or is an immediate family

member of, the owner or lessee of the motor vehicle; or

(b) installs the tracking device pursuant to a court order.

(4) Unlawful installation of a tracking device is a class A misdemeanor.

(5) This section does not apply to a peace officer, acting in the peace officer’s official capacity, who installs a tracking device on a motor vehicle in the course of a criminal investigation or pursuant to a court order.

(6) Before installing a tracking device on a motor vehicle under Subsection (3), a private investigator shall request confirmation from a state entity with access to updated protective order records, that:

(a) the owner or lessee of the vehicle is not under the protection of a protective order; and

(b) an individual who resides with, or is an immediate family member of, the owner or lessee of the motor vehicle is not under the protection of a protective order.

(7) On request from a licensed private investigator, a state entity, including a law enforcement agency, with access to protective order records shall confirm or deny the existence of a protective order, disclosing only whether an individual named by the private investigator is under the protection of a protective order issued in any jurisdiction.

(8) A private investigator may not disclose the information obtained under Subsection (7) to any person, except as permitted by law.

(9) On request from the Bureau of Criminal Identification, a private investigator who installs a tracking device on a motor vehicle shall disclose the purpose of the tracking device to the Bureau of Criminal Identification.

Enacted by Chapter 372, 2019 General Session