

NOTES

I SPY WITH MY LITTLE—GPS TRACKING DEVICE: WHY GEORGIA SHOULD LOOK TO THE UNITED KINGDOM’S DOMESTIC VIOLENCE LAWS TO DETER INNOVATIVE ABUSES OF TECHNOLOGY

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TABLE OF CONTENTS

I.INTRODUCTION	491
II.BACKGROUND	492
A. <i>American Notions of Privacy</i>	493
B. <i>How States Have Dealt with the Use of GPS Tracking Devices</i>	495
C. <i>Notions of Privacy in Georgia</i>	496
D. <i>Notions of Privacy in the United Kingdom</i>	498
III.ANALYSIS.....	499
A. <i>Excessive Specific Intent Required in Georgia Privacy and Domestic Abuse Laws</i>	499
B. <i>British Statutes and Extended Judicial Deference</i>	501
C. <i>Broader Legislative Action in the United Kingdom</i>	502
IV.CONCLUSION.....	502

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I. INTRODUCTION

The advent of new technology presents unfamiliar and increasingly complex challenges to the law. Legislative bodies are unfortunately tasked with keeping up with the blaze of new technology and in some instances struggle to match the pace of technology.¹ Understandably, some uses of technology slip through the cracks, and the law must play catch up.² Although these gaps in the law are often identified and handled by judges amidst ongoing litigation, other legal professionals are advocating for an emphasis on the proactive revision of the law through innovation.³ However, because judges are sometimes just as uncertain as litigants about how new technology affects gaps in the law, a disparate divide exists between ever-advancing technology and our legal system's delayed response.⁴

Complexity increases when a legislative gap occurs in a dynamic legal field, such as family law. Although family law is well-established in some places, such as Georgia and the United Kingdom, legislatures have dealt with advances in technology differently. Consequently, this has led to abuses of technology that have gone unpunished.⁵ Unfortunately, when legislation is outdated, the public bears the true burden of experiencing harm that was entirely preventable.⁶

This Note will identify and discuss innovative abuses of technology that challenge established notions of privacy.⁷ In most cases, Georgia's legislature, the Georgia Assembly, passes new laws to curb innovative abuses of technology. However, despite their thorough efforts, there is still an

¹ Julia Griffith, *A Losing Game: The Law Is Struggling to Keep Up with Technology*, SUFFOLK

J. HIGH TECH. L. (Apr. 12, 2019), <https://sites.suffolk.edu/jhtl/2019/04/12/a-losing-game-the-law-is-struggling-to-keep-up-with-technology/>.

² *Id.*

³ See THE GROWING GAP BETWEEN EMERGING TECHNOLOGIES AND LEGAL-ETHICAL OVERSIGHT: THE PACING PROBLEM 19-20 (Gary E. Marchant et al. eds., 2011).

⁴ See *id.* at 27-28.

⁵ See generally Nellie Bowles, *Thermostats, Locks and Lights: Digital Tools of Domestic Abuse*, N.Y. TIMES (June 23, 2018),

<https://www.nytimes.com/2018/06/23/technology/smart-home-devices-domestic-abuse.html> (discussing ways domestic abusers use smart-home technology to harass, monitor, and control their victims).

⁶ This can include cyber-surveillance, electronic surveillance, cyberstalking, GPS monitoring, and non-consensual image sharing. See *Abuse Using Technology: Ways Abusers Use Technology*, WOMENSLAW.ORG, <https://www.womenslaw.org/about-abuse/abuse-using-technology/all> (last visited Oct. 9, 2021) (describing several ways technology can be used to facilitate abuse).

⁷ Emily A. Vogels et al., *Tech Causes More Problems than It Solves*, PEW RSCH. CTR. (June 30, 2020), <https://www.pewresearch.org/internet/2020/06/30/tech-causes-more-problems-than-it-solves/>.

apparent gap in Georgia law as the judiciary's call for change falls on deaf ears. For example, Cobb County Superior Court Judge Robert Leonard recently experienced this conundrum when he recognized a gap in legislative guidance that restricted his ability to justly decide a complex divorce case.⁸

In its evaluation, the Note will engage with notions of privacy novel to the United States, the United Kingdom, and the State of Georgia. It will then discuss fundamental differences between domestic violence laws, like stalking and invasion of privacy, found in the State of Georgia and the United Kingdom. Next, this Note will analyze how the United Kingdom responded to innovative abuses of technology, many of which the State of Georgia has failed to address. Finally, this Note will recommend that the State of Georgia implement either more periodic updates from the legislature, liberalization of the judicial branch, or broader, more sweeping pieces of legislation to effectively combat future abuses of new technology.

II. BACKGROUND

Divorce can be messy, and Melissa Atkins of Cobb County, Georgia discovered firsthand just how chaotic it can be. In 2013, Melissa worked for Robert Lewis, who was married to Michele Lewis.⁹ Michele suspected her husband was having an affair with Melissa during the course of Melissa's employment.¹⁰ Michele hired a private investigation company, Truth Fact Protect Company ("TFP"), to track Melissa's location using a discrete GPS-locator placed underneath Melissa's car.¹¹ Upon discovery of the GPS-tracking device, Melissa sought counsel and sued TFP for invasion of privacy, trespass to personal property, and intentional infliction of emotional distress.¹² However, in Melissa's civil lawsuit against TFP, Cobb County Superior Court Judge Leonard ultimately found there was no law explicitly prohibiting private investigators "from using a GPS device to track people without their knowledge."¹³ In his decision, Judge Leonard acknowledged that although the policy stemming from his decision was morally reprehensible, TFP's actions were technically legal because there was no legislative guidance to prohibit

⁸ R. Robin McDonald, *Cobb Jury OKs Secret GPS Tracking by Private Eyes*, LAW.COM DAILY REP., (Feb. 22, 2017, 6:29 PM), <https://www.law.com/dailyreportonline/almID/1202779716192/Cobb-Jury-OKs-Secret-GPS-Tracking-by-Private-Eyes/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Atkins v. TFP Co.*, No. 15-1-5289-53, 2016 WL 8614183, at *2 (Ga. Super. Sept. 29, 2016).

¹³ *Id.*

the activity.¹⁴ Ultimately, Judge Leonard concluded that his decision “represents a classic situation where our jurisprudence and legislation have not kept up with rapidly changing technology that is widely available and cheaply obtained.”¹⁵ He further recommended that the Georgia Assembly take up the issue in order to give Georgia courts the ability to protect Georgians’ privacy and avoid abuse of such technicalities.¹⁶

While it may be of some comfort to Melissa that Judge Leonard thought TFP’s behavior was morally reprehensible, this does not explain whether the Georgia Assembly agrees with Judge Leonard’s assessment. Presumably, if the Georgia Assembly agreed this behavior was indeed one that needed prohibiting by enacting necessary legislation, it would have already done so. However, to Judge Leonard’s assured dismay, the Georgia Assembly has been silent on this matter. Nevertheless, despite the continued silence in Georgia, the United Kingdom deems the act of attaching a GPS-tracking device to another person’s vehicle a prosecutable offense.¹⁷ These varied responses to innovative abuses of technology may indicate fundamental differences between British and American notions of privacy. These opposing results require reflection on notions of privacy within the United States and Georgia juxtaposed to those within the United Kingdom in order to determine whether the act of tracking someone using a GPS device warrants prohibitive legislation.

A. *American Notions of Privacy*

While a right to privacy is not explicitly stated in the United States Constitution, the Fourth Amendment’s guarantee to a person’s right “to be secure in their persons, houses, papers, and effects” points to the notion that privacy is an integral part of the American ethos.¹⁸ However, this phrase is

¹⁴ *Id.* at *2-3

¹⁵ *Id.* at *1.

¹⁶ McDonald, *supra* note 8.

¹⁷ See, e.g., Kate Lyons, *Stalking Using Bugging Devices and Spyware to Monitor Victims*, THE GUARDIAN (Feb. 13, 2018, 1:00 AM), <https://www.theguardian.com/uk-news/2018/feb/13/stalkers-using-bugging-devices-and-spyware-to-monitor-victims> (describing how innovative uses of technology can be used in domestic disputes); Ewan Palmer, *'Obsessive' Man Used GPS Device to Track Ex-girlfriend in 'Sinister' Stalking Campaign, Police Say*, NEWSWEEK (Jan. 29, 2020, 10:32 AM), <https://www.newsweek.com/obsessive-man-used-gps-device-track-ex-girlfriend-sinister-stalking-campaign-police-say-1484652> (discussing how the use of GPS-tracking devices against another individual is against the law).

¹⁸ U.S. CONST. amend. IV.

typically construed to pertain to unlawful searches and seizures by government entities.¹⁹

With advances in technology, notions of privacy continue to conflict with innovative methods of technology abuse.²⁰ For example, it was considered legal for law enforcement to use GPS to track suspects without a warrant until the Supreme Court's 2012 decision *United States v. Jones*.²¹ In *Jones*, the Court concluded that law enforcement unlawfully trespassed onto Jones's personal property by installing a GPS tracking device on his vehicle.²² Justices Sotomayor and Alito's reasoning, however, focused on the breach of a citizen's "reasonable expectations of privacy," which was the traditional form of analysis when determining search and seizure violations.²³ Although the *Jones* holding, in its entirety, is not applicable to non-law enforcement uses of GPS tracking devices, this reasonable expectation of privacy analysis could be useful in interpreting whether a private citizen, such as Michele's private investigator, can attach a GPS tracking device on another citizen's car without the owner's consent.

The Supreme Court also provided some context as to a general right to privacy in the 1965 decision *Griswold v. Connecticut*.²⁴ In this decision, Justice William O. Douglas specified that there were inherent rights to privacy emanating from the "penumbras" of the Bill of Rights.²⁵ While this decision supported a right to privacy in the marital context, the *Griswold* decision's establishment of a fundamental right to privacy has been extended to decisions

¹⁹ Barry Friedman & Orin Kerr, *Common Interpretation: The Fourth Amendment*, NAT'L CONST. CTR., <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-iv/interps/121> (last visited Jan. 29, 2022).

²⁰ Vogels et al., *supra* note 7.

²¹ *United States v. Jones*, 565 U.S. 400 (2012) (requiring a warrant for the use of a GPS device by law enforcement on someone suspected of a crime).

²² *Id.* at 410.

²³ *Id.* at 417 (Sotomayor, J., concurring); *Id.* at 419 (Alito, J., concurring). *See also* *United States v. Maynard*, 615 F.3d 544, 562 (D.C. Cir. 2010) ("A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups – and not just one such fact about a person, but all such facts.").

²⁴ 85 U.S. 1678 (1965). *See also* Nicandro Iannacci, *Recalling the Supreme Court's Historic Statement on Contraception and Privacy*, NAT'L CONST. CTR. (June 7, 2019), <https://constitutioncenter.org/blog/contraception-marriage-and-the-right-to-privacy> (discussing *Griswold v. Connecticut*).

²⁵ *See* *Griswold v. Connecticut*, 85 U.S. 1678 (1965) (explaining how the First, Third, Fourth, and Ninth Amendments guarantee certain privacy rights for individuals who are married, and the Connecticut statute violated the implicit constitutional rights found in the penumbras).

of a different nature.²⁶ Since federal statutory guidance on this subject does not currently exist, it is up to individual states to regulate whether the nonconsensual use of a GPS tracking device is legal.

B. How States Have Dealt with the Use of GPS Tracking Devices

The lack of federal guidance from either Congress or the Supreme Court provides states with discretion to prohibit the use of GPS to track private citizens. Interestingly, numerous states have already made efforts to curb this behavior by updating their stalking or invasion of privacy laws to reflect prohibited uses of technology.²⁷ While some have gone further than others, the vast majority of states have recognized the rise in abuses of technology and have responded to these abuses with new or amended legislation.²⁸

For example, in 2014, New York prohibited the use of GPS devices to track another person. However, New York only considered this offense a fourth-degree stalking penalty, which is punishable only as a misdemeanor with a small fine and potential short-term incarceration.²⁹ While some New York attorneys believe this statutory language lacks comprehensiveness because of its limited scope, other critics worry this update does not protect against potential domestic violence.³⁰ Although other states, such as California, have updated their statutes with stronger language than New York's, the offense still lacks teeth because it is classified as merely a misdemeanor.³¹ The State of Delaware, however, takes this offense more seriously by allowing trial courts to decide whether the particular behavior of the person installing the GPS device warrants a felony charge.³² These states and many others illustrate how the federal government relies on state legislatures to update their laws to be effective deterrents of certain behaviors.

Of course, there are exceptions to these policies. For example, many states, such as Delaware, Michigan, New Hampshire, North Carolina, and Tennessee, allow parents to track their children using electronic tracking devices.³³ Other states, like Illinois, Rhode Island, and Virginia, allow

²⁶ *Id.*; see also *Roe v. Wade*, 410 U.S. 113 (1973) (establishing a woman's right to an abortion under the Fourteenth Amendment's Due Process Clause); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (affirming the decision in *Roe v. Wade*).

²⁷ *Abuse Using Technology: Ways Abusers Use Technology*, *supra* note 6.

²⁸ Pam Greenberg, *Private Use of Mobile Tracking Devices*, 24 LEGISBRIEF 43 (2016), <https://www.ncsl.org/research/telecommunications-and-information-technology/private-use-of-mobile-tracking-devices.aspx>.

²⁹ David Levine, *Breaking Down the GPS Stalking Law*, SUPER LAWS. (May 4, 2021), <https://www.superlawyers.com/new-york-metro/article/breaking-down-the-gps-stalking-law/9d55921a-fc1a-49f5-b319-604d699b1a7d.html>.

³⁰ *Id.*

³¹ CAL. PENAL CODE § 637.7 (West 1999).

³² DEL. CODE ANN. tit. 11, § 1335 (2017).

³³ Greenberg, *supra* note 28.

employers to use tracking devices to track their employees while they are working.³⁴ Some even carve out special exceptions for private investigators.³⁵ In these states, Judge Leonard likely would maintain his decision in *Atkins* because there would be specific guidance from the legislature.³⁶ However, this is unlikely because notions of privacy are rooted deeply in Georgia case law.

C. *Notions of Privacy in Georgia*

The Georgia Constitution implicitly grants Georgia citizens a right to privacy by stating that “[n]o person shall be deprived of life, liberty, or property except by due process of law.”³⁷ Moreover, Georgia was one of the first states to recognize a right to privacy in the Georgia Supreme Court case *Pavesich v. New England Life Ins. Co.*³⁸ Following *Pavesich*, the Georgia Assembly created legislation securing the right to privacy and enumerated certain types of right to privacy violations.³⁹ Fortunately, these violations have been updated, and Georgia has introduced new legislation to grapple with the advancement of technology.⁴⁰

While Georgia’s history with privacy laws is lengthy and the Georgia Assembly actively addresses new technology, the Georgia legislature is not infallible. For example, in 2019, the Georgia Supreme Court case *Department of Labor v. McConnell*⁴¹ concluded that the State of Georgia does not have an obligation to protect personal information.⁴² Ironically, this decision was

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Atkins v. TFP Co.*, No. 15-1-5289-53, 2016 WL 8614183, at *1 (Ga. Super. Sep. 29, 2016).

³⁷ Ga. Const. art. I, § II, para I. *See also* Amy Keeney & David Katz, *Georgia (US) – Sectoral Privacy Overview*, ONE TRUST DATA GUIDANCE (July 2021), <https://www.dataguidance.com/notes/georgia-us-sectoral-privacy-overview> (last visited Jan. 29, 2022).

³⁸ *Pavesich v. New England Life Ins. Co.*, 50 S.E. 68 (Ga. 1905) (creating common law cause of action for invasions of privacy when New England Life Insurance Company used a picture of Pavesich in an advertisement without the consent of Pavesich).

³⁹ *See* Anita L. Allen, *The Natural Law Origins of the American Right to Privacy: Natural Law, Slavery, and the Right to Privacy Tort*, 81 *FORDHAM L. REV.* 1187 (2012); Michael B. Kent Jr., *Pavesich, Property and Privacy: The Common Origins of Property Rights and Privacy Rights*, 2 *J. MARSHALL L.J.* 1 (2009).

⁴⁰ Jason Swindle, *Georgia’s Tough Privacy Laws*, SWINDLE L. GRP., P.C. (Jan. 21, 2020), <https://www.swindlelaw.com/2020/01/georgias-tough-privacy-laws/> (listing some Georgia legislation that has been passed to combat new technologies: O.C.G.A. 16-9-93(b) (Computer Trespass), O.C.G.A. 16-9-93(c) (Computer Invasion of Privacy), O.C.G.A. 16-11-62 (Unlawful Eavesdropping or Surveillance)).

⁴¹ 305 Ga. 812 (2019).

⁴² Kevin Townsend, *Georgia Supreme Court Rules That State Has No Obligation to Protect Personal Information*, SECURITY WK. (May 25, 2019),

nearly published on the one year anniversary of the European Union's General Data Protection Regulation (GDPR), which aimed to deter the spread of personal information to unintended parties.⁴³ Ultimately, the Georgia Supreme Court decided that the current laws do not require a duty of care from the entity storing personal data, unlike the GDPR. This is not uncommon, since most states have not enacted legislation to protect personal data.⁴⁴ However, it does suggest protecting Georgians' privacy may not be a priority for the Georgia Assembly.

Interestingly, during the 2009-2010 legislative session, the Georgia House of Representatives introduced a bill that, if passed, would have protected Melissa Atkins from being tracked by TFP.⁴⁵ House Bill 16 ("HB 16") aimed "to prohibit the tracking of the location or movement of another person without such other person's consent."⁴⁶ While it was under consideration, State Representative Kevin Levitas described the bill's necessity, stating, "I think the legislation's good so any John Doe person can't walk into a store, buy a GPS and throw it on someone's car, just because they want to know where someone is."⁴⁷ Of course, the bill included some exemptions, like for parents tracking their child or businesses tracking their fleet of vehicles, which is similar to how most states have dealt with the use of GPS tracking technology.⁴⁸ Although the majority of other states in the U.S. successfully passed anti-tracking device legislation, this bill unfortunately never made it through the State Senate.⁴⁹

While the State of Georgia has a rich history of protecting its citizens' right to privacy, the recent missteps in *Department of Labor v. McConnell* and HB 16's failure do not bode well for the future of Georgian's right to privacy.

<https://www.securityweek.com/georgia-supreme-court-rules-state-has-no-obligation-protect-personal-information>.

⁴³ *Id.*

⁴⁴ Taylor Kay Lively, *US State Privacy Legislation Tracker*, IAPP, <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/> (last visited Jan. 29, 2022).

⁴⁵ H.R. 16, 150th Gen. Assemb., Reg. Sess. (Ga. 2010).

⁴⁶ *Id.*

⁴⁷ Julian Sanchez, *Georgia Mulls Ban on Covert GPS Trackers*, ARSTECHNICA (Feb. 9, 2009, 9:15 PM), <https://arstechnica.com/tech-policy/2009/02/georgia-mulls-ban-on-covert-gps-trackers/>.

⁴⁸ *Id.*

⁴⁹ See *HB 16: Status History*, GEORGIA GENERAL ASSEMBLY, <https://www.legis.ga.gov/legislation/25877> (last visited Jan. 29, 2022).

D. Notions of Privacy in the United Kingdom

The United Kingdom similarly promotes an individual's right to privacy. In 1998, the United Kingdom passed the Human Rights Act.⁵⁰ This legislation essentially codifies certain principles found in the European Convention on Human Rights.⁵¹ Specifically, the Human Rights Act gives British citizens the right to family and private life, which also has been construed in recent years to include protections against unauthorized surveillance.⁵² Not only is the use of GPS-tracking devices an issue when considered through the lens of human rights, the United Kingdom prohibits this behavior through different legislation regarding data privacy. In 1998, the United Kingdom passed the Data Protection Act, which prevents someone from tracking another person without their consent.⁵³ This has been used more in preventing companies from tracking their employees without their consent, but this legislation indicates the United Kingdom's commitment to protecting the privacy of British citizens.⁵⁴

More recently, the United Kingdom adopted the European Union's General Data Protection Regulation in the form of the Data Protection Act of 2018, which further protects an individual's privacy in a consumer setting.⁵⁵ The updated legislation "aims to modernize data protection laws to ensure they are effective in the years to come."⁵⁶ Although both of these acts offer guidance as to British notions of privacy, only the Human Rights Act is applicable to the behavior found in *Atkins*. In contrast to Georgia's recent stalling of protections of privacy, the United Kingdom's proactive legislative efforts demonstrate a commitment to the protection of a British right to privacy.

⁵⁰ *Your Right to Respect of Private and Family Life*, CITIZENS ADVICE, <https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/what-rights-are-protected-under-the-human-rights-act/your-right-to-respect-for-private-and-family-life/> (last visited Oct. 9, 2021).

⁵¹ *Id.*

⁵² *Id.*

⁵³ See LIBR. OF CONG., ONLINE PRIVACY LAW 200-18 (2012), <https://tile.loc.gov/storage-services/service/l/lglrd/2015296882/2015296882.pdf> (summarizing legal framework for online privacy in the United Kingdom).

⁵⁴ *Id.* The Data Protection Act also created the Information Commissioner's Office to "include monitoring practices of the online media and service providers, imposing sanctions, educating the public as well as assisting data subjects enforcing their rights provided for under the DPA." *Id.* at 209-10.

⁵⁵ VANESSA KIRCH, SOCIAL NETWORKS – THE MODERN-DAY FAMILY: LAW AND POLICY OF REGULATION 114 (2021).

⁵⁶ *Id.*

III. ANALYSIS

A. *Excessive Specific Intent Required in Georgia Privacy and Domestic Abuse Laws*

When Judge Leonard analyzed the facts in *Atkins*, he noted that Georgia's invasion of privacy statute could not apply because Georgia case law requires a plaintiff to prove intent to frighten or torment to bring a successful invasion of privacy action.⁵⁷ In Georgia, there are currently four plausible causes of action when claiming invasion of privacy: (1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation of the plaintiff's name or likeness for the defendant's advantage.⁵⁸ The behavior presented in *Atkins* would typically fall into the first category. However, Georgia case law further requires claims in the first category to consist of an "intrusion upon physical solitude or seclusion analogous to a trespass in plaintiff's home or other quarters."⁵⁹ The intrusion is considered unreasonable when "such is conducted in a vicious or malicious manner not reasonably limited and designated to obtain information needed for the defense of a lawsuit or deliberately calculated to frighten or torment the plaintiff."⁶⁰ Here, there was no evidence that TFP intended to frighten or torment Melissa Atkins through their surveillance.⁶¹ Ms. Atkins also submitted to the court a trespass claim, which the court rejected outright.⁶² As Judge Leonard reluctantly ruled, the act of tracking a person's vehicle by GPS is not covered by any of the existing categories of prohibited conduct, and thus effectively falls through the cracks of Georgia's civil litigation system.⁶³

Unfortunately, since Melissa Atkins only pursued civil remedies, it is less clear whether attaching a GPS tracking device constitutes a criminal

⁵⁷ *Atkins v. TFP Co.*, No. 15-1-5289-53, 2016 WL 8614183, at *1 (Ga. Super. Sep. 29, 2016) (citing *Anderson v. Mergenhagen*, 283 Ga. App. 546 (2007)).

⁵⁸ *Id.* at *3 (citing *Yarbray v. Southern Bell Tel. & Tel. Co.*, 261 Ga. 703, 704-05 (1991)).

⁵⁹ *Anderson v. Mergenhagen*, 283 Ga. App. 546, 550 (2007).

⁶⁰ *Ellenberg v. Pinkerton's, Inc.*, 130 Ga. App. 254, 257 (1973); *Summers v. Bailey*, 55 F.3d 1564, 1566 (11th Cir. 1995) (requiring intent for an invasion of privacy claim to be successful when "surveillance of an individual on public thoroughfares, where such surveillance aims to frighten or torment a person, is an unreasonable intrusion upon a person's privacy.")

⁶¹ *Atkins*, 2016 WL 8614183, at *3.

⁶² *Id.* at *5. *But see* *U.S. v. Jones*, 565 U.S. 400 (2012) (explaining an additional form of analysis to the reasonable-expectation-of-privacy analysis, Justice Scalia introduces the trespass test, which states that law enforcement cannot attach a GPS device to potential perpetrator's vehicle to track their location without a warrant).

⁶³ *Atkins*, 2016 WL 8614183, at *3.

infraction.⁶⁴ If she had pressed criminal charges, however, the two potential charges – unlawful eavesdropping or surveillance⁶⁵ and stalking⁶⁶ – most likely would have failed as well. Georgia's unlawful eavesdropping or surveillance statute does not criminalize the behavior found in *Atkins* because merely tracking Ms. Atkins does not intercept communication, which is required by the statute.⁶⁷ Additionally, Georgia's stalking statute requires the alleged stalker to act “for the purpose of harassing or intimidating the other person.”⁶⁸ TFP simply tracked Ms. Atkins in order to gain information as to where she would take her car. Tracking another person via GPS is unlikely to constitute stalking because it lacks the required *mens rea* of intending to harass or intimidate.

Moreover, *Atkins* demonstrates how specific intent statutes can be narrowly interpreted and applied. The narrow application seen in *Atkins* warrants further analysis of whether a specific intent element is necessary. First, it is important to understand that the purpose of specific intent is to impose additional requirements in order to find one culpable of certain prohibited acts or behaviors. Statutes that require specific intent attempt to segregate a prohibited act from a permissible act by measuring the intended “social harm” associated with the act.⁶⁹ For example, the offenses of manslaughter and first-degree murder are treated differently under the law even though both acts produce the same result – another person being killed.⁷⁰

Accordingly, these specific intent statutes are necessary when gauging the amount of social harm, which is why legislatures consider a range of contexts and assign varying levels of culpability.⁷¹ However, some argue there are a handful of offenses that should not require a specific intent in order for one to be found culpable. For example, some stalking statutes, like Georgia's, require proof that the stalker intended to invoke fear in the person being stalked. However, this reasoning may not “capture community concerns regarding intrusive or harassing behavior.”⁷²

Another statute lacking teeth due to unneeded specificity is Georgia's unlawful eavesdropping or surveillance statute.⁷³ At a glance, it seems this statute would prohibit the monitoring of another individual by GPS, but the

⁶⁴ *Id.*

⁶⁵ O.C.G.A. § 16-11-62 (West 2021).

⁶⁶ O.C.G.A. § 16-5-90 (West 2021).

⁶⁷ O.C.G.A. § 16-11-62 (West 2021).

⁶⁸ O.C.G.A. § 16-5-90 (West 2021).

⁶⁹ Eric A. Johnson, *Understanding General and Specific Intent: Eight Things I know For Sure*, 13 OHIO STATE J. CRIM. L. 521, 524 (2016) (surveying the efficacy and purpose of general and specific intent offenses).

⁷⁰ *Id.* at 525.

⁷¹ *Id.* at 536.

⁷² Susan M. Dennison & Donald M. Thomson, *Identifying Stalking: The Relevance of Intent in Commonsense Reasoning*, 26 L. & HUM. BEHAV. 543, 543 (2002).

⁷³ O.C.G.A. § 16-11-62 (West 2021).

statute instead limits prohibited behavior to observing another's "private conversation" or "activities of another."⁷⁴ Further, this statute was last updated in 2019, which indicates the legislature's willingness to adapt this statute to new technologies that bring additional privacy concerns.⁷⁵ In other words, Georgia's attempt at prohibiting abuses of technology allows for some offensive behaviors to slip through the cracks because of excessively specific statutory language.

Moreover, in analyzing Georgia's invasion of privacy and stalking statutes, both include specific *mens rea* requirements, which limit their implementation by courts.⁷⁶ This criticism is not limited to Georgia, as many social reform advocates argue for more general statutory language so courts can apply these statutes more liberally.⁷⁷ The United Kingdom, for example, has received similar criticism from the European Union for the legislation's enumeration of what constitutes stalking.⁷⁸

B. *British Statutes and Extended Judicial Deference*

Interestingly, British courts seem more willing go beyond the specified language in their statutes to prohibit the use of GPS tracking devices.⁷⁹ However, this could be due, in part, to social pressures from "increased awareness" of innovative methods of domestic abuse.⁸⁰ In the United Kingdom, stalking laws are composed of a general definition followed by a list of behaviors that would constitute stalking.⁸¹ Similar to American stalking laws, critics argue the need to amend British stalking laws to exclude a specific intent by the alleged stalker.⁸² Additionally, critics in Northern Ireland argue that stalking reform requires future legislation to avoid requiring

⁷⁴ *Id.*

⁷⁵ S.B. 59, 155th Gen. Assemb., Reg. Sess. (Ga. 2019) (expanding the requisite consent to all parties of a conversation when recording or attempting to record communications with included parties).

⁷⁶ *Id.* See O.C.G.A. § 16-11-62 (West 2021); O.C.G.A. § 16-5-90 (West 2021).

⁷⁷ See e.g., Suzan van der Aa, *New Trends in the Criminalization of Stalking in the EU Member States*, 24 EUR. J. CRIM. POL'Y & RSCH. 315 (2017) (arguing for a more general, umbrella protection against stalking in Europe).

⁷⁸ *Id.*; see also Killean R. Stannard et al., *Review of the Need for Stalking Legislation in Northern Ireland*, QUEEN'S UNIV. BELFAST (2016), https://pureadmin.qub.ac.uk/ws/portalfiles/portal/123538801/Review_of_the_Need_for_Stalking_Legislation_in_Northern_Ireland.pdf (criticizing the narrow definition of stalking).

⁷⁹ Kate Lyons, *Stalking Using Bugging Devices and Spyware to Monitor Victims*, THE GUARDIAN (Feb. 13, 2018, 1:00 AM), <https://www.theguardian.com/uk-news/2018/feb/13/stalkers-using-bugging-devices-and-spyware-to-monitor-victims>.

⁸⁰ Stannard et al., *supra* note 78, at 2.

⁸¹ Protection from Harassment Act, 1997, §§ 2(A) & 4(A) (Eng.).

⁸² Stannard et al., *supra* note 78, at 24-25.

specific intent and the focus should be on legislation for more malleable interpretation to be applicable with “future methods of stalking.”⁸³

C. *Broader Legislative Action in the United Kingdom*

While British laws draw similar criticism, Parliament has recently made efforts to create more effective pathways to justice for domestic abuse victims.⁸⁴ Instead of modifying old law, the United Kingdom’s Domestic Abuse Bill aims to prohibit wider abuses of technology, in addition to other “grey area[s] of the law.”⁸⁵ The Domestic Abuse Bill seeks to “introduce the first legal definition of domestic violence in the UK, recognizing children as domestic abuse victims, as well as including non-physical behavior such as coercive and controlling behavior.”⁸⁶ Moreover, the new “landmark” Domestic Abuse Bill will specifically prohibit uses of “modern technology to track and spy on a partner or ex-partner.”⁸⁷ While this bill has been described as a “once-in-a-generation opportunity” by former Prime Minister Theresa May, critics of the bill point out its imperfections.⁸⁸ For example, the most notable omission is the lack of protections afforded to migrant women, which indicates the work to be done in protecting those of domestic abuse.⁸⁹ Although the new legislation has its imperfections, the UK’s Domestic Abuse Bill appears to do more gap-filling than others, as it considers modern abuses of technology and thoroughly addresses them with effective legal recourse.

IV. CONCLUSION

In sum, similar to Justice Scalia’s reasoning in *Jones*, prohibiting someone from using a GPS tracking device to locate another person aligns with American notions of privacy.⁹⁰ However, functionally, the U.S. federal government relies on individual states to make these specific adaptations to

⁸³ *Id.* (alluding to the increased ability and new methods of stalking with more developed abuses of technology).

⁸⁴ Tahira Mohamedbhai, *United Kingdom Domestic Violence Bill Approved by House of Commons*, JURIST (July 8, 2020, 3:01 PM), <https://www.jurist.org/news/2020/07/united-kingdom-domestic-violence-bill-approved-by-the-house-of-commons/>.

⁸⁵ Helen Lock, *The UK’s Groundbreaking Domestic Abuse Bill Has Finally Passed. Here’s What You Need to Know.*, GLOB. CITIZEN (July 8, 2020), <https://www.globalcitizen.org/en/content/domestic-abuse-bill-uk-passed-need-to-know/>.

⁸⁶ Mohamedbhai, *supra* note 84.

⁸⁷ Lock, *supra* note 85.

⁸⁸ Jessie Williams, *Britain’s Domestic Abuse Bill Still Leaves Migrants at Risk*, FOREIGN POL’Y: ARGUMENT (Aug. 26, 2020, 4:48 PM), <https://foreignpolicy.com/2020/08/26/britain-domestic-abuse-bill-still-leave-women-migrants-risk-hostile-environment-boris-johnson/>.

⁸⁹ *Id.*

⁹⁰ *United States v. Jones*, 565 U.S. 400, 412 (2012).

their legislation. The majority of other jurisdictions in the U.S. have passed legislation that bans private citizens from being able to spy on other citizens using GPS-tracking devices, but Georgia failed to act accordingly when HB 16 of the 2009-2010 Georgia Assembly did not pass. Other jurisdictions outside the U.S. with similar notions of privacy, like the United Kingdom, have not only amended existing legislation, but they have also passed broader legislation that aims to deter abuses of technology, like the Domestic Abuse Bill of 2020. Moreover, Georgia's silence on the use of GPS-tracking devices between private citizens will likely become more apparent as the use of GPS-locating devices enter the mainstream, as evidenced by Apple's introduction of the AirTag.⁹¹ The advancement of technology will only further complicate the use of GPS-tracking devices and build onto the continuously accumulating mound of litigation surrounding the use of GPS-tracking devices.⁹²

Therefore, the Georgia Assembly has a few options to effectively protect its citizens from abuses of technology. First, the Georgia Assembly can adopt sweeping legislation, like the United Kingdom's Domestic Abuse Bill, which would provide the most protection for its citizens. However, this may not be popular among lawmakers because of a lack of funding, particularly after the COVID-19 pandemic that forced Georgia to reduce their spending by 14%.⁹³ It could also adopt simpler legislation, like reviving HB 16 of the 2009-2010 Legislative Session.⁹⁴ This may require less overhaul of

⁹¹ *But see* Violet Blue, *Apple AirTag Has Built-in Anti-Stalking Tech* POPULAR SCI. (Apr. 24, 2021), <https://www.popsoci.com/story/technology/apple-airtag-anti-stalking-privacy-tech/>. An example of the anti-stalking function is when “an AirTag separated from its owner for an extended period of time [the AirTag] will play a sound when moved to draw attention to it.” The anti-stalking function is evidence of corporations protecting the privacy of individual citizens, even when their governments fail to do so.

⁹² Although GPS-tracking devices are hardly considered cutting-edge technology, they continue to present issues in Georgia courtrooms. *See* Greg Land, *Case That Generated \$11M Settlement Sparks New LawsUIT Targeting Baker Donelson, AmFam Insurance*, THE DAILY REP. (July 21, 2021, 5:56 PM), <https://www.law.com/dailyreportonline/2021/07/21/case-that-generated-11m-settlement-sparks-new-lawsuit-targeting-baker-donelson-amfam-insurance/?slreturn=20210622121658> (discussing a complaint filed July 7, 2021 claims defense counsel hired a private investigator to use GPS-tracking devices to track a Plaintiff during the course of litigation, which the private investigator claims to be “legal in the State of Georgia.”).

⁹³ James Salzer, *Georgia Agencies Told to plan Billions in Spending Cuts due to Pandemic*, ATLANTA JOURNAL-CONSTITUTION (May 3, 2020), <https://www.ajc.com/news/state--regional-govt--politics/georgia-agencies-told-plan-billions-spending-cuts-due-pandemic/tLrAiX29jBWzIizTLzX8wN/>.

⁹⁴ Interestingly, the Georgia Assembly has done just this by introducing House Bill 905. H.R. 905, 156th Gen. Assemb., Reg. Sess. (Ga. 2022). The reintroduction of this content

Georgia legislation, but the Georgia Assembly would still have to ensure that the 2009 language is aggressive enough to tackle 2022 technology.

Georgia's second option is to modify its statutes to be more general, like how the EU recommended to its member nations.⁹⁵ This option gives the judicial branch greater deference in applying more ambiguous statutes. Contrastingly, this very reasoning may draw criticism from those who think judicial deference is something to be contained in an attempt to mitigate judges from legislating from the bench.

Georgia's third option would be to update its laws by including specific language to curb abuses of technology, while also giving more deference to the judicial branch, similar to how Delaware has dealt with the increase in technology.⁹⁶ This would take little resources and would give courts the tools necessary to deter reprehensible abuses of technology, including GPS-tracking by private citizens. This expanded reach for the courts would allow greater deference in situations where the legislature could not account for the advances of technology and would allow for more flexibility for Georgia courts. After modifying the legislation to be more encompassing of developing technology, the State of Georgia would be better equipped to protect its citizens from a myriad of technology abuses that have not been conceived yet.

While it is understandable, and even expected, for there to be gaps in the law, it is imperative these issues be addressed by the legislature in a timely manner.⁹⁷ This is even more necessary when gaps in the law are explicitly pointed out by Georgia judges, like Judge Leonard, to better protect Georgians and their right to privacy from ever-invasive waves of technology.

highlights the importance of protecting Georgians' right to privacy, which has increasingly come under fire as GPS-tracking devices enter the commercial mainstream.

⁹⁵ Stannard et al., *supra* note 78, at 2.

⁹⁶ DEL. CODE ANN. tit. 11, § 1335 (2017).

⁹⁷ It has been twelve years since HB 16 failed and six years since Judge Leonard's call for help to the Georgia Assembly.