

By Senator Jenne

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A bill to be entitled
An act relating to the statewide prosecutor;
amending ss. 16.56, 27.14, 110.205, 849.086,
905.36, 934.03, 934.07, 934.09, 934.32, F.S.;
conforming those sections to a constitutional
amendment designating the Attorney General
personally the statewide prosecutor; providing
a conditional effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 16.56, Florida
Statutes, is amended to read:

16.56 Office of Statewide Prosecution.--

(2) The Attorney General shall serve as the ~~appoint a~~
statewide prosecutor ~~from not less than three persons~~
~~nominated by the judicial nominating commission for the~~
~~Supreme Court.~~ The statewide prosecutor is ~~shall be~~ in charge
of the Office of Statewide Prosecution ~~for a term of 4 years~~
~~to run concurrently with the term of the appointing official.~~
~~The statewide prosecutor shall be an elector of the state,~~
~~shall have been a member of The Florida Bar for the preceding~~
~~5 years, and shall devote full time to the duties of statewide~~
~~prosecutor and not engage in the private practice of law. The~~
~~Attorney General may remove the statewide prosecutor prior to~~
~~the end of his or her term. A vacancy in the position of~~
~~statewide prosecutor shall be filled within 60 days. During~~
~~the period of any vacancy, the Attorney General shall exercise~~
~~all the powers and perform all the duties of the statewide~~
~~prosecutor. A person appointed statewide prosecutor is~~
~~prohibited from running for or accepting appointment to any~~

1 ~~state office for a period of 2 years following vacation of~~
2 ~~office.~~ The Attorney General ~~statewide prosecutor~~ shall on
3 March 1 of each year report in writing to the Governor ~~and the~~
4 ~~Attorney General~~ on the activities of the Office of Statewide
5 Prosecution for the preceding year and on the goals and
6 objectives for the next year.

7 Section 2. Subsection (2) of section 27.14, Florida
8 Statutes, is amended to read:

9 27.14 Assigning state attorneys to other circuits.--

10 (2) If the Attorney General, acting in the capacity of
11 statewide prosecutor,~~in charge of the Office of Statewide~~
12 ~~Prosecution~~ determines that he or she is not qualified to
13 represent the state in any investigation, case, or matter
14 pending in the courts of the state or if a court of competent
15 jurisdiction disqualifies him or her from representing the
16 state, the Governor may, by executive order filed with the
17 Department of State, order an assignment of any state attorney
18 to discharge the duties of such prosecutor with respect to one
19 or more specified investigations, cases, or matters, generally
20 described in the order. The assignment of any state attorney
21 shall expire 12 months after the date of issuance, unless an
22 extension is approved by order of the Supreme Court upon
23 application of the Governor showing good and sufficient cause
24 to extend such assignment.

25 Section 3. Paragraph (r) of subsection (2) of section
26 110.205, Florida Statutes, is amended to read:

27 110.205 Career service; exemptions.--

28 (2) EXEMPT POSITIONS.--The exempt positions which are
29 not covered by this part include the following, provided that
30 no position, except for positions established for a limited
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1 period of time pursuant to paragraph (h), shall be exempted if
2 the position reports to a position in the career service:

3 (r) Employees in ~~The statewide prosecutor in charge of~~
4 the Office of Statewide Prosecution of the Department of Legal
5 Affairs ~~and all employees in the office.~~ The Department of
6 Legal Affairs shall set the salary of these positions.

7 Section 4. Paragraph (b) of subsection (15) of section
8 849.086, Florida Statutes, is amended to read:

9 849.086 Cardrooms authorized.--

10 (15) CRIMINAL PENALTY; INJUNCTION.--

11 (b) The division, any state attorney, ~~the statewide~~
12 ~~prosecutor,~~ or the Attorney General may apply for a temporary
13 or permanent injunction restraining further violation of this
14 section, and such injunction shall issue without bond.

15 Section 5. Section 905.36, Florida Statutes, is
16 amended to read:

17 905.36 Duty of state attorney or other legal adviser;
18 presentation of evidence.--The Attorney General, in the
19 capacity of statewide prosecutor,~~in charge of the Office of~~
20 ~~Statewide Prosecution~~ shall attend sessions of the statewide
21 grand jury and serve as its legal adviser. The legal adviser
22 shall examine witnesses; present evidence; and draft
23 indictments, presentments, and reports upon the direction of
24 the statewide grand jury. The legal adviser may designate one
25 or more of her or his assistants, any state attorney, or one
26 or more assistant state attorneys to attend sessions of the
27 statewide grand jury and perform the legal adviser's duties.
28 The legal adviser and her or his assistants or a state
29 attorney or assistant state attorney designated by the legal
30 adviser to advise the statewide grand jury shall be empowered

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1 to prosecute an indictment returned by the statewide grand
2 jury in the judicial circuit where the proper venue lies.

3 Section 6. Paragraph (a) of subsection (2) of section
4 934.03, Florida Statutes, is amended to read:

5 934.03 Interception and disclosure of wire, oral, or
6 electronic communications prohibited.--

7 (2)(a)1. It is lawful under ss. 934.03-934.09 for an
8 operator of a switchboard, or an officer, employee, or agent
9 of a provider of wire or electronic communication service
10 whose facilities are used in the transmission of a wire
11 communication, to intercept, disclose, or use that
12 communication in the normal course of his or her employment
13 while engaged in any activity which is a necessary incident to
14 the rendition of his or her service or to the protection of
15 the rights or property of the provider of that service, except
16 that a provider of wire communication service to the public
17 shall not utilize service observing or random monitoring
18 except for mechanical or service quality control checks.

19 2. Notwithstanding any other law, a provider of wire,
20 oral, or electronic communication service, or an officer,
21 employee, or agent thereof, or landlord, custodian, or other
22 person, may provide information, facilities, or technical
23 assistance to a person authorized by law to intercept wire,
24 oral, or electronic communications if such provider, or an
25 officer, employee, or agent thereof, or landlord, custodian,
26 or other person, has been provided with a court order
27 directing such assistance signed by the authorizing judge
28 setting forth the period of time during which the provision of
29 the information, facilities, or technical assistance is
30 authorized and specifying the information, facilities, or
31 technical assistance required.

1 3. A provider of wire, oral, or electronic
2 communication service, or an officer, employee, or agent
3 thereof, or landlord, custodian, or other person may not
4 disclose the existence of any interception or the device used
5 to accomplish the interception with respect to which the
6 person has been furnished an order under ss. 934.03-934.09,
7 except as may otherwise be required by legal process and then
8 only after prior notice to the Governor, the Attorney General,
9 ~~the statewide prosecutor~~, or a state attorney, as may be
10 appropriate. Any such disclosure renders such person liable
11 for the civil damages provided under s. 934.10 and such person
12 may be prosecuted under s. 934.43. An action may not be
13 brought against any provider of wire, oral, or electronic
14 communication service, or an officer, employee, or agent
15 thereof, or landlord, custodian, or other person for providing
16 information, facilities, or assistance in accordance with the
17 terms of a court order under ss. 934.03-934.09.

18 Section 7. Section 934.07, Florida Statutes, is
19 amended to read:

20 934.07 Authorization for interception of wire, oral,
21 or electronic communications.--The Governor, the Attorney
22 General, ~~the statewide prosecutor~~, or any state attorney may
23 authorize an application to a judge of competent jurisdiction
24 for, and such judge may grant in conformity with ss.
25 934.03-934.09, an order authorizing or approving the
26 interception of wire, oral, or electronic communications by
27 the Department of Law Enforcement or any law enforcement
28 agency as defined in s. 934.02 having responsibility for the
29 investigation of the offense as to which the application is
30 made when such interception may provide or has provided
31 evidence of the commission of the offense of murder,

1 kidnapping, arson, gambling, robbery, burglary, theft, dealing
2 in stolen property, prostitution, criminal usury, bribery, or
3 extortion; any violation of chapter 893; any violation of the
4 provisions of the Florida Anti-Fencing Act; any violation of
5 chapter 895; any violation of chapter 896; any violation of
6 chapter 815; any violation of chapter 847; any violation of s.
7 827.071; any violation of s. 944.40; or any conspiracy to
8 commit any violation of the laws of this state relating to the
9 crimes specifically enumerated above.

10 Section 8. Subsection (10) of section 934.09, Florida
11 Statutes, is amended to read:

12 934.09 Procedure for interception of wire, oral, or
13 electronic communications.--

14 (10) The requirements of subparagraph (1)(b)2. and
15 paragraph (3)(d) relating to the specification of the
16 facilities from which, or the place where, the communication
17 is to be intercepted do not apply if:

18 (a) In the case of an application with respect to the
19 interception of an oral communication:

20 1. The application is by an agent or officer of a law
21 enforcement agency and is approved by the Governor, the
22 Attorney General, ~~the statewide prosecutor,~~ or a state
23 attorney.

24 2. The application contains a full and complete
25 statement as to why such specification is not practical and
26 identifies the person committing the offense and whose
27 communications are to be intercepted.

28 3. The judge finds that such specification is not
29 practical.

30 (b) In the case of an application with respect to a
31 wire or electronic communication:

1 1. The application is by an agent or officer of a law
2 enforcement agency and is approved by the Governor, the
3 Attorney General, ~~the statewide prosecutor,~~ or a state
4 attorney.

5 2. The application identifies the person believed to
6 be committing the offense and whose communications are to be
7 intercepted and the applicant makes a showing of a purpose, on
8 the part of that person, to thwart interception by changing
9 facilities.

10 3. The judge finds that such purpose has been
11 adequately shown.

12 Section 9. Paragraph (a) of subsection (1) of section
13 934.32, Florida Statutes, is amended to read:

14 934.32 Application for an order for a pen register or
15 a trap and trace device.--

16 (1)(a) The Governor, the Attorney General, a state
17 attorney, ~~the statewide prosecutor,~~ or a designated assistant
18 state attorney or assistant statewide prosecutor may make
19 application for an order or an extension of an order under s.
20 934.33 authorizing or approving the installation and use of a
21 pen register or a trap and trace device under this chapter, in
22 writing under oath or equivalent affirmation, to the judge of
23 a court of competent jurisdiction.

24 Section 10. This act shall take effect on the
25 effective date of Senate Joint Resolution 164 or similar
26 legislation designating the Attorney General as the statewide
27 prosecutor, but this act shall not take effect if Senate Joint
28 Resolution 164 or similar legislation is not approved by the
29 electors of this state at the 1998 General Election or an
30 earlier special election.

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SENATE SUMMARY

Conforms provisions of the Florida Statutes to a constitutional amendment that designates the Attorney General, personally, as the statewide prosecutor.