

By Senator Brown-Waite

10-1057-99

1 A bill to be entitled
2 An act relating to security of communications;
3 amending s. 934.02, F.S.; redefining the terms
4 "wire communication," "electronic, mechanical,
5 or other device," and "electronic
6 communication"; amending s. 934.03, F.S.;
7 prohibiting intentional disclosure of certain
8 communications; prescribing circumstances in
9 which a person may aid in intercepting a
10 communication; providing penalties; amending s.
11 934.09, F.S.; prescribing additional procedures
12 for interception of communications; amending s.
13 934.10, F.S.; providing an additional defense
14 against civil liability; amending s. 934.23,
15 F.S.; requiring providers of electronic
16 communications or remote computing services to
17 provide certain assistance; providing
18 additional grounds for issuance of a court
19 order; amending s. 934.27, F.S.; providing an
20 additional defense against civil or criminal
21 liability; amending s. 934.31, F.S.; providing
22 duties of officers authorized to install and
23 use pen registers; amending s. 934.34, F.S.;
24 providing for assistance in the use of a per
25 register or trap and trace device; creating s.
26 934.35, F.S.; providing guidelines and
27 standards for emergency installation of pen
28 registers and trap and trace devices; providing
29 an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsections (1), (4), and (12) of section
2 934.02, Florida Statutes, are amended to read:

3 934.02 Definitions.--As used in this chapter:

4 (1) "Wire communication" means any aural transfer made
5 in whole or in part through the use of facilities for the
6 transmission of communications by the aid of wire, cable, or
7 other like connection between the point of origin and the
8 point of reception including the use of such connection in a
9 switching station furnished or operated by any person engaged
10 in providing or operating such facilities for the transmission
11 of intrastate, interstate, or foreign communications or
12 communications affecting intrastate, interstate, or foreign
13 commerce. Such term includes any electronic storage of such
14 communication ~~but does not include the radio portion of a~~
15 ~~cordless telephone communication that is transmitted between~~
16 ~~the cordless telephone handset and the base unit.~~

17 (4) "Electronic, mechanical, or other device" means
18 any device or apparatus which can be used to intercept a wire,
19 electronic, or oral communication other than:

20 (a) Any telephone or telegraph instrument, equipment,
21 or facility, or any component thereof:

22 1. Furnished to the subscriber or user by a provider
23 of wire or electronic communication service in the ordinary
24 course of its business and being used by the subscriber or
25 user in the ordinary course of its business or furnished by
26 such subscriber or user for connection to the facilities of
27 such service and used in the ordinary course of its business;
28 or

29 2. Being used by a provider of wire or electronic
30 communications service ~~communications common carrier~~ in the
31 ordinary course of its business or by an investigative or law

1 enforcement officer in the ordinary course of her or his
2 duties.

3 (b) A hearing aid or similar device being used to
4 correct subnormal hearing to not better than normal.

5 (12) "Electronic communication" means any transfer of
6 signs, signals, writing, images, sounds, data, or intelligence
7 of any nature transmitted in whole or in part by a wire,
8 radio, electromagnetic, photoelectronic, or photooptical
9 system that affects intrastate, interstate, or foreign
10 commerce, but does not include:

11 ~~(a) The radio portion of a cordless telephone~~
12 ~~communication that is transmitted between the cordless~~
13 ~~telephone handset and the base unit;~~

14 (a)~~(b)~~ Any wire or oral communication;

15 (b)~~(c)~~ Any communication made through a tone-only
16 paging device; ~~or~~

17 (c)~~(d)~~ Any communication from an electronic or
18 mechanical device which permits the tracking of the movement
19 of a person or an object; or~~-~~

20 (d) Electronic funds transfer information stored by a
21 financial institution in a communications system used for the
22 electronic storage and transfer of funds.

23 Section 2. Subsection (1), paragraphs (a) and (e) of
24 subsection (2), and subsection (4) of section 934.03, Florida
25 Statutes, are amended to read:

26 934.03 Interception and disclosure of wire, oral, or
27 electronic communications prohibited.--

28 (1) Except as otherwise specifically provided in this
29 chapter, any person who:

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1 (a) Intentionally intercepts, endeavors to intercept,
2 or procures any other person to intercept or endeavor to
3 intercept any wire, oral, or electronic communication;

4 (b) Intentionally uses, endeavors to use, or procures
5 any other person to use or endeavor to use any electronic,
6 mechanical, or other device to intercept any oral
7 communication when:

8 1. Such device is affixed to, or otherwise transmits a
9 signal through, a wire, cable, or other like connection used
10 in wire communication; or

11 2. Such device transmits communications by radio or
12 interferes with the transmission of such communication;

13 (c) Intentionally discloses, or endeavors to disclose,
14 to any other person the contents of any wire, oral, or
15 electronic communication, knowing or having reason to know
16 that the information was obtained through the interception of
17 a wire, oral, or electronic communication in violation of this
18 subsection; ~~or~~

19 (d) Intentionally uses, or endeavors to use, the
20 contents of any wire, oral, or electronic communication,
21 knowing or having reason to know that the information was
22 obtained through the interception of a wire, oral, or
23 electronic communication in violation of this subsection; or

24 (e) Intentionally discloses, or endeavors to disclose,
25 to any other person the contents of any wire, oral, or
26 electronic communication intercepted by means authorized by
27 subparagraph (2)(a)2., paragraph (2)(b) or (c), s. 934.07, or
28 s. 934.09 when that person: knows or has reason to know that
29 the information was obtained through the interception of such
30 a communication in connection with a criminal investigation,
31 has obtained or received the information in connection with a

1 criminal investigation, and intends to improperly obstruct,
2 impede, or interfere with a duly authorized criminal
3 investigation;

4
5 shall be punished as provided in subsection (4).

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

18 2. Notwithstanding any other law, a provider of wire,
19 oral, or electronic communication service, or an officer,
20 employee, or agent thereof, or landlord, custodian, or other
21 person, may provide information, facilities, or technical
22 assistance to a person authorized by law to intercept wire,
23 oral, or electronic communications if such provider, or an
24 officer, employee, or agent thereof, or landlord, custodian,
25 or other person, has been provided with:

26 a. A court order directing such assistance signed by
27 the authorizing judge, or

28 b. A certification in writing by a person specified in
29 s. 934.09(7) that no warrant or court order is required by
30 law, that all statutory requirements have been met, and that
31 the specified assistance is required

1
2 setting forth the period of time during which the provision of
3 the information, facilities, or technical assistance is
4 authorized and specifying the information, facilities, or
5 technical assistance required.

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

23 (e) It is unlawful to intercept any wire, oral, or
24 electronic communication for the purpose of committing any
25 criminal act.

26 (4)(a) Except as provided in paragraph (b), whoever
27 violates subsection (1) is guilty of a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, s.
29 775.084, or s. 934.41.

30 (b) If the offense is a first offense under paragraph
31 (a) and is not for any tortious or illegal purpose or for

1 purposes of direct or indirect commercial advantage or private
2 commercial gain, and the wire or electronic communication with
3 respect to which the offense under paragraph (a) was committed
4 is a radio communication that is not scrambled,~~or~~ encrypted,
5 or transmitted using modulation techniques the essential
6 parameters of which have been withheld from the public with
7 the intention of preserving the privacy of such communication,
8 then:

9 1. If the communication is not the radio portion of a
10 cellular telephone communication, a cordless telephone
11 communication that is transmitted between the cordless
12 telephone handset and the base unit,a public land mobile
13 radio service communication, or a paging service
14 communication, and the conduct is not that described in
15 subparagraph (2)(h)7., the person committing the offense is
16 guilty of a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 2. If the communication is the radio portion of a
19 cellular telephone communication, a cordless telephone
20 communication that is transmitted between the cordless
21 telephone handset and the base unit,a public land mobile
22 radio service communication, or a paging service
23 communication, the person committing the offense is guilty of
24 a misdemeanor of the second degree, punishable as provided in
25 s. 775.082 or s. 775.083.

26 Section 3. Paragraph (b) of subsection (1) and
27 paragraph (d) of subsection (3) of section 934.09, Florida
28 Statutes, are amended, present subsections (7) through (11) of
29 that section are renumbered subsections (8) through (12),
30 respectively, and amended, and a new subsection (7) is added
31 to that section, to read:

1 934.09 Procedure for interception of wire, oral, or
2 electronic communications.--

3 (1) Each application for an order authorizing or
4 approving the interception of a wire, oral, or electronic
5 communication under ss. 934.03-934.09 shall be made in writing
6 upon oath or affirmation to a judge of competent jurisdiction
7 and shall state the applicant's authority to make such
8 application. Each application shall include the following
9 information:

10 (b) A full and complete statement of the facts and
11 circumstances relied upon by the applicant to justify his or
12 her belief that an order should be issued, including:

13 1. Details as to the particular offense that has been,
14 is being, or is about to be committed.

15 2. Except as provided in subsection~~(11)~~(10), a
16 particular description of the nature and location of the
17 facilities from which, or the place where, the communications
18 are to be intercepted.

19 3. A particular description of the type of
20 communications sought to be intercepted.

21 4. The identity of the person, if known, committing
22 the offense and whose communications are to be intercepted.

23 (3) Upon such application, the judge may enter an ex
24 parte order, as requested or as modified, authorizing or
25 approving interception of wire, oral, or electronic
26 communications within the territorial jurisdiction of the
27 court in which the judge is sitting, and outside such
28 jurisdiction but within the State of Florida in the case of a
29 mobile interception device authorized by the judge within such
30 jurisdiction, if the judge determines on the basis of the
31 facts submitted by the applicant that:

1 (d) Except as provided in subsection ~~(11)~~~~(10)~~, there
2 is probable cause for belief that the facilities from which,
3 or the place where, the wire, oral, or electronic
4 communications are to be intercepted are being used, or are
5 about to be used, in connection with the commission of such
6 offense, or are leased to, listed in the name of, or commonly
7 used by such person.

8 (7) Notwithstanding any other provision of this
9 chapter, any investigative or law enforcement officer
10 specifically designated by the Governor, the Attorney General,
11 the statewide prosecutor, or a state attorney acting under
12 this chapter, who reasonably determines that:

13 (a) An emergency exists which involves immediate
14 danger of death or serious physical injury to any person;
15 involves conspiratorial activities characteristic of organized
16 crime; or involves the danger of escape of a prisoner which
17 requires that a wire, oral, or electronic communication be
18 intercepted before an order authorizing such interception can,
19 with due diligence, be obtained, and

20 (b) There are grounds upon which an order could be
21 entered under this chapter to authorize such interception
22
23 may intercept such wire, oral, or electronic communication if
24 an application for an order approving the interception is made
25 in accordance with this section within 48 hours after the
26 interception has occurred or begins to occur. In the absence
27 of an order, such interception shall immediately terminate
28 when the communication sought is obtained or when the
29 application for the order is denied, whichever is earlier. If
30 such application for approval is denied, or in any other case
31 in which the interception is terminated without an order

1 having been issued, the contents of any wire, oral, or
2 electronic communication intercepted shall be treated as
3 having been obtained in violation of s. 934.03(4), and an
4 inventory shall be served as provided for in paragraph (8)(e)
5 on the person named in the application.

6 (8)(a)(7)(a) The contents of any wire, oral, or
7 electronic communication intercepted by any means authorized
8 by ss. 934.03-934.09 shall, if possible, be recorded on tape
9 or wire or other comparable device. The recording of the
10 contents of any wire, oral, or electronic communication under
11 this subsection shall be kept in such a way as will protect
12 the recording from editing or other alterations. Immediately
13 upon the expiration of the period of the order, or extensions
14 thereof, such recordings shall be made available to the judge
15 issuing such order and sealed under his or her directions.
16 Custody of the recordings shall be wherever the judge orders.
17 They shall not be destroyed except upon an order of the
18 issuing or denying judge, or that judge's successor in office,
19 and in any event shall be kept for 10 years. Duplicate
20 recordings may be made for use or disclosure pursuant to the
21 provisions of s. 934.08(1) and (2) for investigations.

22 (b) The presence of the seal provided for by this
23 subsection, or a satisfactory explanation for the absence
24 thereof, shall be a prerequisite for the use or disclosure of
25 the contents of any wire, oral, or electronic communication or
26 evidence derived therefrom under s. 934.08(3), as required by
27 federal law.

28 (c) Applications made and orders granted under ss.
29 934.03-934.09 shall be sealed by the judge. Custody of the
30 applications and orders shall be wherever the judge directs.
31 As required by federal law, such applications and orders shall

1 be disclosed only upon a showing of good cause before a judge
2 of competent jurisdiction and shall not be destroyed except on
3 order of the issuing or denying judge, or that judge's
4 successor in office, and in any event shall be kept for 10
5 years.

6 (d) Any violation of the provisions of this subsection
7 may be punished as contempt of the issuing or denying judge.

8 (e) Within a reasonable time but not later than 90
9 days after the termination of the period of an order or
10 extensions thereof, the issuing or denying judge shall cause
11 to be served on the persons named in the order or the
12 application, and such other parties to intercepted
13 communications as the judge may determine in his or her
14 discretion to be in the interest of justice, an inventory
15 which shall include notice of:

16 1. The fact of the entry of the order or the
17 application.

18 2. The date of the entry and the period of authorized,
19 approved, or disapproved interception, or the denial of the
20 application.

21 3. The fact that during the period wire, oral, or
22 electronic communications were or were not intercepted.

23

24 The judge, upon the filing of a motion, may make available to
25 such person or the person's counsel for inspection such
26 portions of the intercepted communications, applications, and
27 orders as the judge determines to be in the interest of
28 justice. On an ex parte showing of good cause to a judge of
29 competent jurisdiction, the serving of the inventory required
30 by this paragraph may be postponed.

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1 (9)~~(8)~~ As required by federal law, the contents of any
2 intercepted wire, oral, or electronic communication or
3 evidence derived therefrom shall not be received in evidence
4 or otherwise disclosed in any trial, hearing, or other
5 proceeding unless each party, not less than 10 days before the
6 trial, hearing, or proceeding, has been furnished with a copy
7 of the court order and accompanying application under which
8 the interception was authorized or approved. This 10-day
9 period may be waived by the judge if he or she finds that it
10 was not possible to furnish the party with the above
11 information 10 days before the trial, hearing, or proceeding
12 and that the party will not be prejudiced by the delay in
13 receiving such information.

14 (10)(a)~~(9)(a)~~ Any aggrieved person in any trial,
15 hearing, or proceeding in or before any court, department,
16 officer, agency, regulatory body, or other authority may move
17 to suppress the contents of any intercepted wire, oral, or
18 electronic communication, or evidence derived therefrom, on
19 the grounds that:

- 20 1. The communication was unlawfully intercepted;
- 21 2. The order of authorization or approval under which
22 it was intercepted is insufficient on its face; or
- 23 3. The interception was not made in conformity with
24 the order of authorization or approval.

25
26 Such motion shall be made before the trial, hearing, or
27 proceeding unless there was no opportunity to make such motion
28 or the person was not aware of the grounds of the motion. If
29 the motion is granted, the contents of the intercepted wire or
30 oral communication, or evidence derived therefrom, shall be
31 treated as having been obtained in violation of ss.

1 934.03-934.09. The judge, upon the filing of such motion by
2 the aggrieved person, may make available to the aggrieved
3 person or his or her counsel for inspection such portions of
4 the intercepted communication or evidence derived therefrom as
5 the judge determines to be in the interest of justice.

6 (b) In addition to any other right to appeal, the
7 state shall have the right to appeal from an order granting a
8 motion to suppress made under paragraph (a) or the denial of
9 an application for an order of approval if the attorney shall
10 certify to the judge or other official granting such motion or
11 denying such application that the appeal is not taken for
12 purposes of delay. Such appeal shall be taken within 30 days
13 after the date the order was entered and shall be diligently
14 prosecuted.

15 (c) The remedies and sanctions described in ss.
16 934.03-934.10 with respect to the interception of electronic
17 communications are the only judicial remedies and sanctions
18 for violations of those sections involving such
19 communications.

20 (11)~~(10)~~ The requirements of subparagraph (1)(b)2. and
21 paragraph (3)(d) relating to the specification of the
22 facilities from which, or the place where, the communication
23 is to be intercepted do not apply if:

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

26 1. The application is by an agent or officer of a law
27 enforcement agency and is approved by the Governor, the
28 Attorney General, the statewide prosecutor, or a state
29 attorney.

30 2. The application contains a full and complete
31 statement as to why such specification is not practical and

1 identifies the person committing the offense and whose
2 communications are to be intercepted.

3 3. The judge finds that such specification is not
4 practical.

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

7 1. The application is by an agent or officer of a law
8 enforcement agency and is approved by the Governor, the
9 Attorney General, the statewide prosecutor, or a state
10 attorney;~~;~~

11 2. The application identifies the person believed to
12 be committing the offense and whose communications are to be
13 intercepted and the applicant makes a showing that there is
14 probable cause to believe that the person's actions could have
15 the effect of thwarting interception from a specified
16 facility~~;~~~~of a purpose, on the part of that person, to thwart~~
17 ~~interception by changing facilities.~~

18 3. The judge finds that such showing has been
19 adequately made~~; and purpose has been adequately shown.~~

20 4. The order authorizing or approving the interception
21 is limited to interception only for such time as it is
22 reasonable to presume that the person identified in the
23 application is or was reasonably proximate to the instrument
24 through which such communication will be or was transmitted.

25 ~~(12)(11)~~ If an interception of a communication is to
26 be carried out pursuant to subsection (11)(a)~~(10)~~, such
27 interception may not begin until the facilities from which, or
28 the place where, the communication is to be intercepted is
29 ascertained by the person implementing the interception order.
30 A provider of wire or electronic communications service that
31 has received an order as provided under paragraph (11)(b)

1 ~~(10)(b)~~ may petition the court to modify or quash the order on
2 the ground that the interception cannot be performed in a
3 timely or reasonable fashion. The court, upon notice to the
4 state, shall decide such a petition expeditiously.

5 Section 4. Subsection (2) of section 934.10, Florida
6 Statutes, is amended to read:

7 934.10 Civil remedies.--

8 (2) A good faith reliance on:

9 (a) A court order, subpoena, or legislative
10 authorization as provided in ss. 934.03-934.09; ~~or~~

11 (b) A request of an investigative or law enforcement
12 officer under s. 943.09(7); or

13 (c) ~~(b)~~ A good faith determination that federal or
14 Florida law permitted the conduct complained of

15
16 shall constitute a complete defense to any civil or criminal,
17 or administrative action arising out of such conduct under the
18 laws of this state.

19 Section 5. Subsections (4) and (5) of section 934.23,
20 Florida Statutes, are amended, and subsection (7) is added to
21 that section, to read:

22 934.23 Requirements for governmental access.--

23 (4)(a) Except as provided in paragraph (b), a provider
24 of electronic communication service or remote computing
25 service may disclose a record or other information pertaining
26 to a subscriber or customer of such service, not including the
27 contents of communication covered by subsection (1) or
28 subsection (2), to any person other than an investigative or
29 law enforcement officer.

30 (b) A provider of electronic communication service or
31 remote computing service shall disclose a record or other

1 information pertaining to a subscriber to or customer of such
2 service, not including the contents of communications covered
3 by subsection (1) or subsection (2), to an investigative or
4 law enforcement officer only when the investigative or law
5 enforcement officer:

6 ~~1. Uses a subpoena;~~

7 ~~1.2.~~ Obtains a warrant issued by the judge of a court
8 of competent jurisdiction;

9 ~~2.3.~~ Obtains a court order for such disclosure under
10 subsection (5); or

11 ~~3.4.~~ Has the consent of the subscriber or customer to
12 such disclosure.

13 (c) A provider of electronic communication service or
14 remote computing service shall disclose to an investigative or
15 law enforcement officer the name, address, telephone toll
16 billing records, telephone number or other subscriber number
17 or identity, and length of service as a subscriber or customer
18 of such service and the types of services the subscriber or
19 customer used when the governmental entity uses a subpoena.

20 ~~(d)(c)~~ An investigative or law enforcement officer who
21 receives records or information under this subsection is not
22 required to provide notice to a subscriber or customer.

23 (5) A court order for disclosure under subsection (2),
24 subsection (3), or subsection (4) shall issue only if the
25 investigative or law enforcement officer offers specific and
26 articulable facts showing that there are reasonable grounds
27 ~~shows that there is reason~~ to believe the contents of a wire
28 or electronic communication or the records of other
29 information sought are relevant and material to an ongoing
30 criminal investigation to a legitimate law enforcement
31 inquiry. A court issuing an order pursuant to this section,

1 on a motion made promptly by the service provider, may quash
2 or modify such order ~~on motion made promptly by the service~~
3 ~~provider~~ if the information or records requested are unusually
4 voluminous in nature or compliance with such order otherwise
5 would cause an undue burden on such provider.

6 (7)(a) A provider of wire or electronic communication
7 services or a remote computing service, upon the request of an
8 investigative or law enforcement officer, shall take all
9 necessary steps to preserve records and other evidence in its
10 possession pending the issuance of a court order or other
11 process.

12 (b) Records referred to in paragraph (a) shall be
13 retained for a period of 90 days, which shall be extended for
14 an additional 90-day period upon a renewed request by an
15 investigative or law enforcement officer.

16 Section 6. Subsection (4) of section 934.27, Florida
17 Statutes, is amended to read:

18 934.27 Civil action: relief; damages; defenses.--

19 (4) A good faith reliance on any of the following is a
20 complete defense to any civil or criminal action brought under
21 ss. 934.21-934.28:

22 (a) A court warrant or order, a subpoena, or a
23 statutory authorization.

24 (b) A request of an investigative or law enforcement
25 officer under s. 934.09(7).

26 (c)~~(b)~~ A good faith determination that s. 934.03(3)
27 permitted the conduct complained of.

28 Section 7. Present subsection (3) of section 934.31,
29 Florida Statutes, is renumbered as subsection (4), and a new
30 subsection (3) is added to that section, to read:

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1 934.31 General prohibition on pen register and trap
2 and trace device use; exception.--

3 (3) An investigative or law enforcement officer
4 authorized to install and use a pen register under ss.
5 934.31-934.34 shall use technology reasonably available to him
6 or her which restricts the recording or decoding of electronic
7 or other impulses to the dialing and signaling information
8 used in call processing.

9 Section 8. Subsection (2) of section 934.34, Florida
10 Statutes, is amended to read:

11 934.34 Assistance in installation and use of a pen
12 register or a trap and trace device.--

13 (2) Upon the request of the applicant specified in s.
14 934.32(1), a provider of a wire or electronic communication
15 service, landlord, custodian, or other person shall install a
16 trap and trace device forthwith on the appropriate line and
17 shall furnish such investigative or law enforcement officer or
18 other applicant all additional information, facilities, and
19 technical assistance, including installation and operation of
20 the device unobtrusively and with a minimum of interference
21 with the services that the person so ordered by the court
22 accords the party with respect to whom the installation and
23 use is to take place if such installation and assistance is
24 directed by a court order as provided in s. 934.33(2)(b).
25 Unless otherwise ordered by the court, the results of the trap
26 and trace device shall be furnished, pursuant to s.
27 934.33(2)(b) or s. 934.35, to an officer of the law
28 enforcement agency designated in the court order at reasonable
29 intervals during regular business hours for the duration of
30 the order. The obligation of a provider of electronic
31 communication service under such an order or under such

1 emergency pen register or trap and trace device installation
2 may include, but is not limited to, conducting an in-progress
3 trace, or providing other assistance to support the
4 investigation as may be specified in the order.

5 Section 9. Section 934.35, Florida Statutes, is
6 created to read:

7 934.35 Emergency pen register and trap and trace
8 device installation.--

9 (1) Notwithstanding any other provision of this
10 chapter, any investigative or law enforcement officer
11 specially designated by the Governor, the Attorney General,
12 the statewide prosecutor, or a state attorney acting pursuant
13 to this chapter, who reasonably determines that:

14 (a) An emergency exists which involves immediate
15 danger of death or serious physical injury to any person;
16 involves conspiratorial activities characteristic of organized
17 crime; or involves the danger of escape of a prisoner which
18 requires the installation and use of a pen register or a trap
19 and trace device before an order authorizing such installation
20 and use can, with due diligence, be obtained, and

21 (b) There are grounds upon which an order could be
22 entered under this chapter to authorize such interception,
23
24 may have installed and use a pen register or trap and trace
25 device if, within 48 hours after the installation has occurred
26 or begins to occur, an order approving the installation or use
27 is issued in accordance with s. 934.33.

28 (2) In the absence of an authorizing order, such use
29 shall immediately terminate when the information sought is
30 obtained, when the application for the order is denied, or
31

1 when 48 hours have lapsed since the installation of the pen
2 register or trap and trace device, whichever is earlier.

3 (3) The knowing installation or use by any
4 investigative or law enforcement officer of a pen register or
5 trap and trace device pursuant to subsection (1) without
6 application for the authorizing order within 48 hours after
7 the installation constitutes a violation of s. 934.31(3).

8 (4) A provider of wire or electronic service,
9 landlord, custodian, or other person who furnished facilities
10 or technical assistance pursuant to this section shall be
11 reasonably compensated for reasonable expenses incurred in
12 providing such facilities and assistance.

13 Section 10. This act shall take effect October 1,
14 1999.

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17 SENATE SUMMARY

18 Revises numerous provisions relating to security of
19 communications, generally to conform to federal law on
20 that subject. Provides additional duties of persons to
21 furnish assistance to officers in intercepting
22 communications and provides additional defenses against
23 civil or criminal liability. Prescribes duties of
24 providers of electronic communications or remote
25 computing services. Provides additional grounds for
26 issuance of a court order and provides for emergency
27 interception under specified conditions.
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