

By the Committee on Judiciary and Senator Brown-Waite

308-2084-00

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 certain disclosure or attempted
8 disclosure of intercepted communications;
9 providing penalties; amending s. 934.07, F.S.;
10 deleting prostitution as an offense for which
11 interception of communications may be
12 authorized; amending s. 934.09, F.S.; providing
13 for emergency interception of certain
14 communications; providing exemptions from
15 requirements for specification of facilities
16 for certain interceptions; amending s. 934.10,
17 F.S.; providing additional defense to civil
18 liability; amending s. 934.23, F.S.; requiring
19 a provider of electronic or remote computer
20 service to provide certain information when
21 subpoenaed; revising grounds for issuance of a
22 court order for disclosure; requiring
23 preservation of records; providing immunity
24 from civil liability; providing for
25 compensation; amending s. 934.27, F.S.;
26 providing additional grounds for immunity from
27 civil liability; amending s. 934.31, F.S.;
28 requiring certain technology to be used in
29 installation of pen registers and trap and
30 trace devices; amending s. 934.34, F.S.;
31 revising conditions under which assistance in

1 installing or using pen registers or trap and
2 trace devices must be provided; providing for
3 emergency pen register and trap and trace
4 device installation; providing an effective
5 date.

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

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9 Section 1. Subsections (1), (4), and (12) of section
10 934.02, Florida Statutes, are amended to read:

11 934.02 Definitions.--As used in this chapter:

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

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

28 (a) Any telephone or telegraph instrument, equipment,
29 or facility, or any component thereof:

30 1. Furnished to the subscriber or user by a provider
31 of wire or electronic communication service in the ordinary

1 course of its business and being used by the subscriber or
2 user in the ordinary course of its business or furnished by
3 such subscriber or user for connection to the facilities of
4 such service and used in the ordinary course of its business;
5 or

6 2. Being used by a provider of wire or electronic
7 communications service ~~communications common carrier~~ in the
8 ordinary course of its business or by an investigative or law
9 enforcement officer in the ordinary course of her or his
10 duties.

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

13 (12) "Electronic communication" means any transfer of
14 signs, signals, writing, images, sounds, data, or intelligence
15 of any nature transmitted in whole or in part by a wire,
16 radio, electromagnetic, photoelectronic, or photooptical
17 system that affects intrastate, interstate, or foreign
18 commerce, but does not include:

19 ~~(a) The radio portion of a cordless telephone~~
20 ~~communication that is transmitted between the cordless~~
21 ~~telephone handset and the base unit;~~

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

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

25 (c)~~(d)~~ Any communication from an electronic or
26 mechanical device which permits the tracking of the movement
27 of a person or an object; ~~or~~

28 (d) Electronic funds transfer information stored by a
29 financial institution in a communications system used for the
30 electronic storage and transfer of funds.

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

4 934.03 Interception and disclosure of wire, oral, or
5 electronic communications prohibited.--

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

8 (a) Intentionally intercepts, endeavors to intercept,
9 or procures any other person to intercept or endeavor to
10 intercept any wire, oral, or electronic communication;

11 (b) Intentionally uses, endeavors to use, or procures
12 any other person to use or endeavor to use any electronic,
13 mechanical, or other device to intercept any oral
14 communication when:

15 1. Such device is affixed to, or otherwise transmits a
16 signal through, a wire, cable, or other like connection used
17 in wire communication; or

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

20 (c) Intentionally discloses, or endeavors to disclose,
21 to any other person the contents of any wire, oral, or
22 electronic communication, knowing or having reason to know
23 that the information was obtained through the interception of
24 a wire, oral, or electronic communication in violation of this
25 subsection; ~~or~~

26 (d) Intentionally uses, or endeavors to use, the
27 contents of any wire, oral, or electronic communication,
28 knowing or having reason to know that the information was
29 obtained through the interception of a wire, oral, or
30 electronic communication in violation of this subsection; or
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1 (e) Intentionally discloses, or endeavors to disclose,
2 to any other person the contents of any wire, oral, or
3 electronic communication intercepted by means authorized by
4 subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s.
5 934.07, or s. 934.09 when that person knows or has reason to
6 know that the information was obtained through the
7 interception of such a communication in connection with a
8 criminal investigation, has obtained or received the
9 information in connection with a criminal investigation, and
10 intends to improperly obstruct, impede, or interfere with a
11 duly authorized criminal investigation;

12

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

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

26 2. Notwithstanding any other law, a provider of wire,
27 oral, or electronic communication service, or an officer,
28 employee, or agent thereof, or landlord, custodian, or other
29 person, may provide information, facilities, or technical
30 assistance to a person authorized by law to intercept wire,
31 oral, or electronic communications if such provider, or an

1 officer, employee, or agent thereof, or landlord, custodian,
2 or other person, has been provided with:
3 a. A court order directing such assistance signed by
4 the authorizing judge; or
5 b. A certification in writing by a person specified in
6 s. 934.09(7) that no warrant or court order is required by
7 law, that all statutory requirements have been met, and that
8 the specified assistance is required, setting forth the period
9 of time during which the provision of the information,
10 facilities, or technical assistance is authorized and
11 specifying the information, facilities, or technical
12 assistance required.
13 3. A provider of wire, oral, or electronic
14 communication service, or an officer, employee, or agent
15 thereof, or landlord, custodian, or other person may not
16 disclose the existence of any interception or the device used
17 to accomplish the interception with respect to which the
18 person has been furnished an order under ss. 934.03-934.09,
19 except as may otherwise be required by legal process and then
20 only after prior notice to the Governor, the Attorney General,
21 the statewide prosecutor, or a state attorney, as may be
22 appropriate. Any such disclosure renders such person liable
23 for the civil damages provided under s. 934.10 and such person
24 may be prosecuted under s. 934.43. An action may not be
25 brought against any provider of wire, oral, or electronic
26 communication service, or an officer, employee, or agent
27 thereof, or landlord, custodian, or other person for providing
28 information, facilities, or assistance in accordance with the
29 terms of a court order under ss. 934.03-934.09.
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1 (e) It is unlawful to intercept any wire, oral, or
2 electronic communication for the purpose of committing any
3 criminal act.

4 (4)(a) Except as provided in paragraph (b), whoever
5 violates subsection (1) is guilty of a felony of the third
6 degree, punishable as provided in s. 775.082, s. 775.083, s.
7 775.084, or s. 934.41.

8 (b) If the offense is a first offense under paragraph
9 (a) and is not for any tortious or illegal purpose or for
10 purposes of direct or indirect commercial advantage or private
11 commercial gain, and the wire or electronic communication with
12 respect to which the offense under paragraph (a) was committed
13 is a radio communication that is not scrambled, ~~encrypted or,~~
14 or transmitted using modulation techniques the essential
15 parameters of which have been withheld from the public with
16 the intention of preserving the privacy of such communication,
17 then:

18 1. If the communication is not 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, and the conduct is not that described in
24 subparagraph (2)(h)7., the person committing the offense is
25 guilty of a misdemeanor of the first degree, punishable as
26 provided in s. 775.082 or s. 775.083.

27 2. If the communication is the radio portion of a
28 cellular telephone communication, a cordless telephone
29 communication that is transmitted between the cordless
30 telephone handset and the base unit, a public land mobile
31 radio service communication, or a paging service

1 communication, the person committing the offense is guilty of
2 a misdemeanor of the second degree, punishable as provided in
3 s. 775.082 or s. 775.083.

4 Section 3. Section 934.07, Florida Statutes, is
5 amended to read:

6 934.07 Authorization for interception of wire, oral,
7 or electronic communications.--The Governor, the Attorney
8 General, the statewide prosecutor, or any state attorney may
9 authorize an application to a judge of competent jurisdiction
10 for, and such judge may grant in conformity with ss.
11 934.03-934.09, an order authorizing or approving the
12 interception of wire, oral, or electronic communications by
13 the Department of Law Enforcement or any law enforcement
14 agency as defined in s. 934.02 having responsibility for the
15 investigation of the offense as to which the application is
16 made when such interception may provide or has provided
17 evidence of the commission of the offense of murder,
18 kidnapping, arson, gambling, robbery, burglary, theft, dealing
19 in stolen property, ~~prostitution~~, criminal usury, bribery, or
20 extortion; any violation of chapter 893; any violation of the
21 provisions of the Florida Anti-Fencing Act; any violation of
22 chapter 895; any violation of chapter 896; any violation of
23 chapter 815; any violation of chapter 847; any violation of s.
24 827.071; any violation of s. 944.40; or any conspiracy to
25 commit any violation of the laws of this state relating to the
26 crimes specifically enumerated above.

27 Section 4. Paragraph (b) of subsection (1) and
28 paragraph (d) of subsection (3) of section 934.09, Florida
29 Statutes, are amended, present subsections (7) through (11) of
30 that section are renumbered subsections (8) through (12),
31

1 respectively, and amended, and a new subsection (7) is added
2 to that section, to read:

3 934.09 Procedure for interception of wire, oral, or
4 electronic communications.--

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

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

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

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

21 3. A particular description of the type of
22 communications sought to be intercepted.

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

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

1 jurisdiction, if the judge determines on the basis of the
2 facts submitted by the applicant that:

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

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

15 (a) An emergency exists that:

16 1. Involves immediate danger of death or serious
17 physical injury to any person or the danger of escape of a
18 prisoner; and

19 2. Requires that a wire, oral, or electronic
20 communication be intercepted before an order authorizing such
21 interception can, with due diligence, be obtained; and

22 (b) There are grounds upon which an order could be
23 entered under this chapter to authorize such interception

24
25 may intercept such wire, oral, or electronic communication if
26 an application for an order approving the interception is made
27 in accordance with this section within 48 hours after the
28 interception has occurred or begins to occur. In the absence
29 of an order, such interception shall immediately terminate
30 when the communication sought is obtained or when the
31 application for the order is denied, whichever is earlier. If

1 such application for approval is denied, or in any other case
2 in which the interception is terminated without an order
3 having been issued, the contents of any wire, oral, or
4 electronic communication intercepted shall be treated as
5 having been obtained in violation of s. 934.03(4), and an
6 inventory shall be served as provided for in paragraph (8)(e)
7 on the person named in the application.

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

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

30 (c) Applications made and orders granted under ss.
31 934.03-934.09 shall be sealed by the judge. Custody of the

1 applications and orders shall be wherever the judge directs.
2 As required by federal law, such applications and orders shall
3 be disclosed only upon a showing of good cause before a judge
4 of competent jurisdiction and shall not be destroyed except on
5 order of the issuing or denying judge, or that judge's
6 successor in office, and in any event shall be kept for 10
7 years.

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

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

18 1. The fact of the entry of the order or the
19 application.

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

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

25
26 The judge, upon the filing of a motion, may make available to
27 such person or the person's counsel for inspection such
28 portions of the intercepted communications, applications, and
29 orders as the judge determines to be in the interest of
30 justice. On an ex parte showing of good cause to a judge of
31

1 competent jurisdiction, the serving of the inventory required
2 by this paragraph may be postponed.

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

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

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

27
28 Such motion shall be made before the trial, hearing, or
29 proceeding unless there was no opportunity to make such motion
30 or the person was not aware of the grounds of the motion. If
31 the motion is granted, the contents of the intercepted wire or

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

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

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

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

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

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

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

5 3. The judge finds that such specification is not
6 practical.

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

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

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

20 3. The judge finds that such showing ~~purpose~~ has been
21 adequately made ~~shown~~.

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

27 (12)(11) If an interception of a communication is to
28 be carried out pursuant to subsection(11)(10), such
29 interception may not begin until the facilities from which, or
30 the place where, the communication is to be intercepted is
31 ascertained by the person implementing the interception order.

1 A provider of wire or electronic communications service that
2 has received an order as provided under paragraph (11)(b)
3 ~~(10)(b)~~ may petition the court to modify or quash the order on
4 the ground that the interception cannot be performed in a
5 timely or reasonable fashion. The court, upon notice to the
6 state, shall decide such a petition expeditiously.

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

9 934.10 Civil remedies.--

10 (2) A good faith reliance on:

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

13 (b) A request of an investigative or law enforcement
14 officer under s. 934.09(7), or

15 (c) ~~(b)~~ A good faith determination that ~~federal or~~
16 Florida or federal law, other than 18 U.S.C. s. 2511(2)(d),
17 permitted the conduct complained of

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19 shall constitute a complete defense to any civil or criminal,
20 or administrative action arising out of such conduct under the
21 laws of this state.

22 Section 6. Subsections (4) and (5) of section 934.23,
23 Florida Statutes, are amended, and subsections (7) and (8) are
24 added to that section, to read:

25 934.23 Requirements for governmental access.--

26 (4)(a) Except as provided in paragraph (b), a provider
27 of electronic communication service or remote computing
28 service may disclose a record or other information pertaining
29 to a subscriber or customer of such service, not including the
30 contents of communication covered by subsection (1) or

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1 subsection (2), to any person other than an investigative or
2 law enforcement officer.

3 (b) A provider of electronic communication service or
4 remote computing service shall disclose a record or other
5 information pertaining to a subscriber to or customer of such
6 service, not including the contents of communications covered
7 by subsection (1) or subsection (2), to an investigative or
8 law enforcement officer only when the investigative or law
9 enforcement officer:

10 ~~1. Uses a subpoena;~~

11 ~~1.2.~~ Obtains a warrant issued by the judge of a court
12 of competent jurisdiction;

13 ~~2.3.~~ Obtains a court order for such disclosure under
14 subsection (5); or

15 ~~3.4.~~ Has the consent of the subscriber or customer to
16 such disclosure.

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

24 ~~(d)(e)~~ An investigative or law enforcement officer who
25 receives records or information under this subsection is not
26 required to provide notice to a subscriber or customer.

27 (5) A court order for disclosure under subsection (2),
28 subsection (3), or subsection (4) shall issue only if the
29 investigative or law enforcement officer offers specific and
30 articulable facts showing that there are reasonable grounds
31 ~~shows that there is reason~~ to believe the contents of a wire

1 or electronic communication or the records of other
2 information sought are relevant and material to an ongoing
3 criminal investigation to a legitimate law enforcement
4 inquiry. A court issuing an order pursuant to this section,
5 on a motion made promptly by the service provider, may quash
6 or modify such order ~~on motion made promptly by the service~~
7 ~~provider~~ if the information or records requested are unusually
8 voluminous in nature or compliance with such order otherwise
9 would cause an undue burden on such provider.

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

16 (b) Records referred to in paragraph (a) shall be
17 retained for a period of 90 days, which shall be extended for
18 an additional 90 days upon a renewed request by an
19 investigative or law enforcement officer.

20 (8) A provider of electronic communication service, a
21 remote computing service, or any other person who furnished
22 assistance pursuant to this section shall be held harmless
23 from any claim and civil liability resulting from the
24 disclosure of information pursuant to this section and shall
25 be reasonably compensated for reasonable expenses incurred in
26 providing such assistance.

27 Section 7. Subsection (4) of section 934.27, Florida
28 Statutes, is amended to read:

29 934.27 Civil action: relief; damages; defenses.--
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1 (4) A good faith reliance on any of the following is a
2 complete defense to any civil or criminal action brought under
3 ss. 934.21-934.28:

4 (a) A court warrant or order, a subpoena, or a
5 statutory authorization.

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

8 ~~(c)~~ **(b)** A good faith determination that s. 934.03(3)
9 permitted the conduct complained of.

10 Section 8. Present subsection (3) of section 934.31,
11 Florida Statutes, is renumbered as subsection (5), and new
12 subsections (3) and (4) are added to that section, to read:

13 934.31 General prohibition on pen register and trap
14 and trace device use; exception.--

15 **(3) An investigative or law enforcement officer**
16 **authorized to install and use a pen register under ss.**
17 **934.31-934.34 shall use technology reasonably available to him**
18 **or her which restricts the recording or decoding of electronic**
19 **or other impulses to the dialing and signaling information**
20 **used in call processing.**

21 **(4)(a) Notwithstanding any other provision of this**
22 **chapter, any investigative or law enforcement officer**
23 **specially designated by the Governor, the Attorney General,**
24 **the statewide prosecutor, or a state attorney acting pursuant**
25 **to this chapter, who reasonably determines that:**

26 **1. An emergency exists which:**

27 **a. Involves immediate danger of death or serious**
28 **physical injury to any person or the danger of escape of a**
29 **prisoner; and**

1 b. Requires the installation and use of a pen register
2 or a trap and trace device before an order authorizing such
3 installation and use can, with due diligence, be obtained; and

4 2. There are grounds upon which an order could be
5 entered under this chapter to authorize such installation and
6 use,

7
8 may have installed and use a pen register or trap and trace
9 device if, within 48 hours after the installation has occurred
10 or begins to occur, an order approving the installation or use
11 is issued in accordance with s. 934.33.

12 (b) In the absence of an authorizing order, such use
13 shall immediately terminate when the information sought is
14 obtained, when the application for the order is denied, or
15 when 48 hours have lapsed since the installation of the pen
16 register or trap and trace device, whichever is earlier.

17 (c) The knowing installation or use by any
18 investigative or law enforcement officer of a pen register or
19 trap and trace device pursuant to paragraph (a) without
20 application for the authorizing order within 48 hours after
21 the installation constitutes a violation of s. 934.31.

22 (d) A provider of wire or electronic service,
23 landlord, custodian, or other person who has furnished
24 facilities or technical assistance pursuant to this subsection
25 shall be held harmless from any claims and civil liability
26 resulting from the disclosure of information pursuant to this
27 subsection and shall be reasonably compensated for reasonable
28 expenses incurred in providing such facilities and assistance.

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

31

1 934.34 Assistance in installation and use of a pen
2 register or a trap and trace device.--

3 (2) Upon the request of the applicant specified in s.
4 934.32(1), a provider of a wire or electronic communication
5 service, landlord, custodian, or other person shall install a
6 trap and trace device forthwith on the appropriate line and
7 shall furnish such investigative or law enforcement officer or
8 other applicant all additional information, facilities, and
9 technical assistance, including installation and operation of
10 the device unobtrusively and with a minimum of interference
11 with the services that the person so ordered by the court
12 accords the party with respect to whom the installation and
13 use is to take place if such installation and assistance is
14 directed by a court order as provided in s. 934.33(2)(b).
15 Unless otherwise ordered by the court, the results of the trap
16 and trace device shall be furnished, pursuant to s.
17 934.33(2)(b) or s. 934.31(4), to an officer of the law
18 enforcement agency designated in the court order at reasonable
19 intervals during regular business hours for the duration of
20 the order. The obligation of a provider of electronic
21 communication service under such an order or under such
22 emergency pen register or trap and trace device installation
23 may include, but is not limited to, conducting an in-progress
24 trace, or providing other assistance to support the
25 investigation as may be specified in the order.

26 Section 10. This act shall take effect October 1,
27 2000.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1924

Relocates new provisions relating to wiretapping which allow for the emergency installation of pen registers and trap and trace devices into existing section on the use and prohibition of pen registers.

Corrects terminology by replacing the word "interception" with "installation and use" when referring to pen registers and trap and trace devices as used for wiretapping.