

1                                   A bill to be entitled  
2           An act relating to the interception of  
3           communications; amending s. 934.02, F.S.;  
4           revising definitions; including wire  
5           communications within the meaning of an  
6           electronic communications system; redefining  
7           the terms "pen register" and "trap and trace  
8           device"; defining the terms "foreign  
9           intelligence information," "protected  
10          computer," and "computer trespasser"; amending  
11          s. 934.03, F.S.; authorizing the interception  
12          of certain wire or electronic communications of  
13          a computer trespasser; amending s. 934.07,  
14          F.S.; authorizing the Department of Law  
15          Enforcement to intercept wire, oral, or  
16          electronic communications for purposes of  
17          investigating certain additional offenses  
18          concerning terrorism and the attempted or  
19          threatened use of a destructive device or  
20          weapon of mass destruction; requiring a law  
21          enforcement agency to notify the Department of  
22          Law Enforcement if an intercepted communication  
23          provides evidence of certain acts of terrorism;  
24          amending s. 934.09, F.S.; providing for the  
25          interception of communications upon certain  
26          findings of activities that threaten the  
27          security of the nation or state; specifying  
28          circumstances under which the court may  
29          authorize the interception of communications  
30          outside the court's jurisdiction; amending s.  
31          934.08, F.S.; authorizing the disclosure of the

1 contents of an intercepted communication to  
2 certain state and federal officials; amending  
3 s. 934.22, F.S.; prohibiting a provider of  
4 electronic communication service or a provider  
5 of remote computing service from disclosing the  
6 contents of communications or information  
7 pertaining to a subscriber or customer;  
8 specifying certain exceptions; amending s.  
9 934.23, F.S.; providing for disclosure of  
10 information pertaining to a subscriber or  
11 customer under specified circumstances and  
12 pursuant to a warrant; amending s. 934.27,  
13 F.S.; providing that a request of an  
14 investigative or law enforcement officer to  
15 preserve records is a defense with respect to a  
16 civil or criminal action concerning unlawful  
17 access to communications; amending s. 934.31,  
18 F.S.; prohibiting the recording of the contents  
19 of communications by the use of a pen register  
20 or trap and trace device; amending s. 934.33,  
21 F.S.; requiring that a certification of an  
22 order for a pen register or a trap and trace  
23 device be provided to any person or entity not  
24 specifically named in the order; requiring that  
25 the order include information concerning  
26 location of the device and geographic limits of  
27 the order; requiring an investigative or law  
28 enforcement agency to maintain a record of the  
29 use of a pen register or trap and trace device  
30 installed pursuant to an ex parte order;  
31 requiring that the record be provided to the

1 court; amending s. 934.34, F.S.; providing for  
2 a trap and trace device to be installed on  
3 other facilities; providing an effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
6

7 Section 1. Subsections (1), (8), (14), (20), and (21)  
8 of section 934.02, Florida Statutes, are amended, and  
9 subsections (24), (25), and (26) are added to said section, to  
10 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.~~

23 (8) "Judge of competent jurisdiction" means justice of  
24 the Supreme Court, judge of a district court of appeal,  
25 circuit judge, or judge of any court of record having felony  
26 jurisdiction of the State of Florida, irrespective of the  
27 geographic location or jurisdiction where the judge presides.

28 (14) "Electronic communications system" means any  
29 wire, radio, electromagnetic, photooptical, or photoelectronic  
30 facilities for the transmission of wire or electronic  
31 communications, and any computer facilities or related

1 electronic equipment for the electronic storage of such  
2 communications.

3 (20) "Pen register" means a device or process that  
4 ~~which~~ records or decodes dialing, routing, addressing, or  
5 signaling information transmitted by an instrument or facility  
6 from which a wire or electronic communication is transmitted,  
7 but such information does not include the contents of any  
8 communication. The ~~electronic or other impulses which identify~~  
9 ~~the numbers dialed or otherwise transmitted on the telephone~~  
10 ~~line to which such device is attached, but such~~ term does not  
11 include any device or process used by a provider or customer  
12 of a wire or electronic communication service for billing or  
13 recording as an incident to billing or for communication  
14 services provided by such provider, and does not include or  
15 any device or process used by a provider or customer of a wire  
16 communication service for cost accounting or other like  
17 purposes in the ordinary course of its business.

18 (21) "Trap and trace device" means a device or process  
19 that ~~which~~ captures the incoming electronic or other impulses  
20 that ~~which~~ identify the originating number or other dialing,  
21 routing, addressing, or signaling information reasonably  
22 likely to identify the source of a wire or electronic  
23 communication, but such information does not include the  
24 contents of any communication ~~of an instrument or a device~~  
25 ~~from which a wire or electronic communication was transmitted.~~

26 (24) "Foreign intelligence information" means  
27 information, whether or not concerning a United States person,  
28 as that term is defined in 50 U.S.C. s. 1801, which relates  
29 to:  
30  
31

1           (a) The ability of the United States to protect  
2 against actual or potential attack or other grave hostile acts  
3 of a foreign power or an agent of a foreign power;

4           (b) Sabotage or international terrorism by a foreign  
5 power or an agent of a foreign power;

6           (c) Clandestine intelligence activities by an  
7 intelligence service, a network of a foreign power, or an  
8 agent of a foreign power; or

9           (d) With respect to a foreign power or foreign  
10 territory, the national defense or security of the United  
11 States or the conduct of the foreign affairs of the United  
12 States.

13           (25) "Protected computer" means:

14           (a) A computer for the exclusive use of a financial  
15 institution or governmental entity;

16           (b) A computer that is not for the exclusive use of a  
17 financial institution or governmental entity, but that is used  
18 by or for a financial institution or governmental entity and  
19 with respect to which unlawful conduct can affect the use by  
20 or for the financial institution or governmental entity; or

21           (c) A computer that is used in interstate or foreign  
22 commerce or communication, including a computer located  
23 outside the United States.

24           (26) "Computer trespasser" means a person who accesses  
25 a protected computer without authorization and thus does not  
26 have a reasonable expectation of privacy with respect to any  
27 communication transmitted to, through, or from the protected  
28 computer. The term does not include a person known by the  
29 owner or operator of the protected computer to have an  
30 existing contractual relationship with the owner or operator  
31

1 of the protected computer for access to all or part of the  
2 protected computer.

3 Section 2. Paragraph (j) is added to subsection (2) of  
4 section 934.03, Florida Statutes, to read:

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

7 (2)

8 (j) It is not unlawful under ss. 934.03-934.09 for a  
9 person acting under color of law to intercept the wire or  
10 electronic communications of a computer trespasser which are  
11 transmitted to, through, or from a protected computer if:

12 1. The owner or operator of the protected computer  
13 authorizes the interception of the communications of the  
14 computer trespasser;

15 2. The person acting under color of law is lawfully  
16 engaged in an investigation;

17 3. The person acting under color of law has reasonable  
18 grounds to believe that the contents of the communications of  
19 the computer trespasser will be relevant to the investigation;  
20 and

21 4. The interception does not acquire communications  
22 other than those transmitted to, through, or from the computer  
23 trespasser.

24 Section 3. Section 934.07, Florida Statutes, as  
25 amended by section 1 of chapter 2001-359, Laws of Florida, is  
26 amended to read:

27 934.07 Authorization for interception of wire, oral,  
28 or electronic communications.--

29 (1) The Governor, the Attorney General, the statewide  
30 prosecutor, or any state attorney may authorize an application  
31 to a judge of competent jurisdiction for, and such judge may

1 grant in conformity with ss. 934.03-934.09 an order  
2 authorizing or approving the interception of, wire, oral, or  
3 electronic communications by:

4 (a) The Department of Law Enforcement or any law  
5 enforcement agency as defined in s. 934.02 having  
6 responsibility for the investigation of the offense as to  
7 which the application is made when such interception may  
8 provide or has provided evidence of the commission of the  
9 offense of murder, kidnapping, aircraft piracy, arson,  
10 gambling, robbery, burglary, theft, dealing in stolen  
11 property, criminal usury, bribery, or extortion; any felony  
12 violation of ss. 790.161-790.166, inclusive; any violation of  
13 chapter 893; any violation of the provisions of the Florida  
14 Anti-Fencing Act; any violation of chapter 895; any violation  
15 of chapter 896; any violation of chapter 815; any violation of  
16 chapter 847; any violation of s. 827.071; any violation of s.  
17 944.40; or any conspiracy or solicitation to commit any  
18 violation of the laws of this state relating to the crimes  
19 specifically enumerated in this paragraph.

20 (b) The Department of Law Enforcement, together with  
21 other assisting personnel as authorized and requested by the  
22 department under s. 934.09(5), for the investigation of the  
23 offense as to which the application is made when such  
24 interception may provide or has provided evidence of the  
25 commission of any offense that may be an act of terrorism or  
26 in furtherance of an act of terrorism or evidence of any  
27 conspiracy or solicitation to commit any such violation.

28 (2)(a) If, during the course of an interception of  
29 communications by a law enforcement agency as authorized under  
30 paragraph (1)(a), the law enforcement agency finds that the  
31 intercepted communications may provide or have provided

1 evidence of the commission of any offense that may be an act  
2 of terrorism or in furtherance of an act of terrorism, or  
3 evidence of any conspiracy or solicitation to commit any such  
4 violation, the law enforcement agency shall promptly notify  
5 the Department of Law Enforcement and apprise the department  
6 of the contents of the intercepted communications. The agency  
7 notifying the department may continue its previously  
8 authorized interception with appropriate minimization, as  
9 applicable, and may otherwise assist the department as  
10 provided in this section.

11 (b) Upon its receipt of information of the contents of  
12 an intercepted communications from a law enforcement agency,  
13 the Department of Law Enforcement shall promptly review the  
14 information to determine whether the information relates to an  
15 actual or anticipated act of terrorism as defined in this  
16 section. If, after reviewing the contents of the intercepted  
17 communications, there is probable cause that the contents of  
18 the intercepted communications meet the criteria of paragraph  
19 (1)(b), the Department of Law Enforcement may make application  
20 for the interception of wire, oral, or electronic  
21 communications consistent with paragraph (1)(b). The  
22 department may make an independent new application for  
23 interception based on the contents of the intercepted  
24 communications. Alternatively, the department may request the  
25 law enforcement agency that provided the information to join  
26 with the department in seeking an amendment of the original  
27 interception order, or may seek additional authority to  
28 continue intercepting communications under the direction of  
29 the department. In carrying out its duties under this section,  
30 the department may use the provisions for an emergency

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1 interception provided in s. 934.09(7) if applicable under  
2 statutory criteria.

3 ~~(3)(2)~~ As used in this section, the term "terrorism"  
4 means an activity that:

5 (a)1. Involves a violent act or an act dangerous to  
6 human life which is a violation of the criminal laws of this  
7 state or of the United States; or

8 2. Involves a violation of s. 815.06; and

9 (b) Is intended to:

10 1. Intimidate, injure, or coerce a civilian  
11 population;

12 2. Influence the policy of a government by  
13 intimidation or coercion; or

14 3. Affect the conduct of government through  
15 destruction of property, assassination, murder, kidnapping, or  
16 aircraft piracy.

17 Section 4. Subsection (7) and paragraph (b) of  
18 subsection (11) of section 934.09, Florida Statutes, as  
19 amended by section 2 of chapter 2001-359, Laws of Florida, are  
20 amended to read:

21 934.09 Procedure for interception of wire, oral, or  
22 electronic communications.--

23 (7) Notwithstanding any other provision of this  
24 chapter, any investigative or law enforcement officer  
25 specially designated by the Governor, the Attorney General,  
26 the statewide prosecutor, or a state attorney acting under  
27 this chapter, who reasonably determines that:

28 (a) An emergency exists that:

29 1. Involves immediate danger of death or serious  
30 physical injury to any person, ~~or~~ or the danger of escape of a  
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1 prisoner, or conspiratorial activities threatening the  
2 security interest of the nation or state; and

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

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

8  
9 may intercept such wire, oral, or electronic communication if  
10 an application for an order approving the interception is made  
11 in accordance with this section within 48 hours after the  
12 interception has occurred or begins to occur. In the absence  
13 of an order, such interception shall immediately terminate  
14 when the communication sought is obtained or when the  
15 application for the order is denied, whichever is earlier. If  
16 such application for approval is denied, or in any other case  
17 in which the interception is terminated without an order  
18 having been issued, the contents of any wire, oral, or  
19 electronic communication intercepted shall be treated as  
20 having been obtained in violation of s. 934.03(4), and an  
21 inventory shall be served as provided for in paragraph (8)(e)  
22 on the person named in the application.

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

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

29           1. The application is by an agent or officer of a law  
30 enforcement agency and is approved by the Governor, the

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1 Attorney General, the statewide prosecutor, or a state  
2 attorney.

3           2. The application identifies the person believed to  
4 be committing the offense and whose communications are to be  
5 intercepted and the applicant makes a showing that there is  
6 probable cause to believe that the person's actions could have  
7 the effect of thwarting interception from a specified facility  
8 or that the person whose communications are to be intercepted  
9 has removed, or is likely to remove, himself or herself to  
10 another judicial circuit within the state.

11           3. The judge finds that such showing has been  
12 adequately made.

13           4. The order authorizing or approving the interception  
14 is limited to interception only for such time as it is  
15 reasonable to presume that the person identified in the  
16 application is or was reasonably proximate to the instrument  
17 through which such communication will be or was transmitted.

18  
19 Consistent with this paragraph, a judge of competent  
20 jurisdiction and limited to investigations of acts of  
21 terrorism, as that term is defined in s. 934.07, the court may  
22 authorize ~~continued~~ interception within this state, whether  
23 the interception is both within or and outside the court's its  
24 jurisdiction, if the application for the interception makes a  
25 showing that some activity or conspiracy believed to be  
26 related to, or in furtherance of, the criminal predicate for  
27 the requested interception has occurred or will likely occur,  
28 or the communication to be intercepted or expected to be  
29 intercepted is occurring or will likely occur, in whole or in  
30 part, within the jurisdiction of the court where the order is  
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1 being sought ~~original interception occurred within its~~  
2 ~~jurisdiction.~~

3 Section 5. Effective July 1, 2004, paragraph (b) of  
4 subsection (11) of section 934.09, Florida Statutes, as  
5 amended by this act and by section 3 of chapter 2001-359, Laws  
6 of Florida, is amended to read:

7 934.09 Procedure for interception of wire, oral, or  
8 electronic communications.--

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

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

15 1. The application is by an agent or officer of a law  
16 enforcement agency and is approved by the Governor, the  
17 Attorney General, the statewide prosecutor, or a state  
18 attorney.

19 2. The application identifies the person believed to  
20 be committing the offense and whose communications are to be  
21 intercepted and the applicant makes a showing that there is  
22 probable cause to believe that the person's actions could have  
23 the effect of thwarting interception from a specified facility  
24 or that the person whose communications are to be intercepted  
25 has removed, or is likely to remove, himself or herself to  
26 another judicial circuit within the state.

27 3. The judge finds that such showing has been  
28 adequately made.

29 4. The order authorizing or approving the interception  
30 is limited to interception only for such time as it is  
31 reasonable to presume that the person identified in the

1 application is or was reasonably proximate to the instrument  
2 through which such communication will be or was transmitted.

3  
4 Consistent with this paragraph, a judge of competent  
5 jurisdiction may authorize interception within this state,  
6 whether the interception is within or outside the court's  
7 jurisdiction, if the application for the interception makes a  
8 showing that some activity or conspiracy believed to be  
9 related to, or in furtherance of, the criminal predicate for  
10 the requested interception has occurred or will likely occur,  
11 or the communication to be intercepted or expected to be  
12 intercepted is occurring or will likely occur, in whole or in  
13 part, within the jurisdiction of the court where the order is  
14 being sought.

15 Section 6. Subsection (1) of section 934.08, Florida  
16 Statutes, is amended to read:

17 934.08 Authorization for disclosure and use of  
18 intercepted wire, oral, or electronic communications.--

19 (1) Any investigative or law enforcement officer who,  
20 by any means authorized by this chapter, has obtained  
21 knowledge of the contents of any wire, oral, or electronic  
22 communication or evidence derived therefrom may disclose such  
23 contents to:

24 (a) The Department of Legal Affairs for use in  
25 investigations or proceedings pursuant to s. 812.035, part II  
26 of chapter 501, chapter 542, or chapter 895, to any attorney  
27 authorized by law to investigate and institute any action on  
28 behalf of the State of Florida or political subdivision  
29 thereof, or to another investigative or law enforcement  
30 officer to the extent that such disclosure is appropriate to  
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1 the proper performance of the official duties of the officer  
2 or person making or receiving the disclosure.

3 (b) Any state or federal law enforcement official,  
4 state or federal intelligence official, state or federal  
5 protective services official, federal immigration official,  
6 state or federal defense official, or state or federal  
7 security official to the extent that the contents or evidence  
8 includes foreign intelligence or counterintelligence, as  
9 defined in 50 U.S.C. s. 401a, or foreign intelligence  
10 information, as defined in this chapter, in order to assist  
11 the official who receives that information in performing his  
12 or her official duties. Any state or federal official who  
13 receives information under this subsection may use that  
14 information only as necessary in conducting official duties  
15 and is subject to any limitations on the unauthorized  
16 disclosure of such information.

17 Section 7. Section 934.22, Florida Statutes, is  
18 amended to read:

19 934.22 Voluntary disclosure of customer communications  
20 or records ~~contents~~.--

21 (1) Except as provided in subsection (2) or subsection  
22 (3):

23 (a) ~~A provider of person or entity who provides an~~  
24 ~~electronic communication service to the public may not~~  
25 ~~knowingly divulge to:~~

26 1. Any person or entity the contents of a  
27 communication while in electronic storage by that service; ~~or~~

28 2. Any governmental entity a record or other  
29 information pertaining to a subscriber to or customer of such  
30 service.

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1           (b) A provider of ~~person or entity who provides~~ remote  
2 computing service to the public may not knowingly divulge to:

3           1. Any person or entity the contents of any  
4 communication that ~~which~~ is carried or maintained on that  
5 service:

6           a.1. On behalf of a subscriber or customer of such  
7 service and received by means of electronic transmission from,  
8 or created by means of computer processing of communications  
9 received by means of electronic transmission from, a  
10 subscriber or customer of such remote computing service; and  
11 ~~or~~

12           b.2. Solely for the purpose of providing storage or  
13 computer processing services to its subscriber or customer, if  
14 the provider is not authorized to access the contents of any  
15 such communication for purposes of providing any service other  
16 than storage or computer processing; or ~~-~~

17           2. Any governmental entity a record or other  
18 information pertaining to a subscriber to or customer of such  
19 service.

20           (2) A provider described in subsection (1) ~~person or~~  
21 ~~entity~~ may divulge the contents of a communication:

22           (a) To an addressee or intended recipient of such  
23 communication or an agent of such addressee or intended  
24 recipient.

25           (b) As otherwise authorized in s. 934.03(2)(a), s.  
26 934.07, or s. 934.23.

27           (c) With the lawful consent of the originator or an  
28 addressee or intended recipient of such communication, or the  
29 subscriber in the case of a remote computing service.

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1 (d) To a person employed or authorized, or whose  
2 facilities are used, to forward such communication to its  
3 destination.

4 (e) As may be necessarily incident to the rendition of  
5 the service or to the protection of the rights or property of  
6 the provider of that service.

7 (f) To a law enforcement agency, if ~~such contents:~~

8 1. The contents were inadvertently obtained by the  
9 service provider; ~~and~~

10 2. The contents appear to pertain to the commission of  
11 a crime; ~~or-~~

12 3. The provider reasonably believes an emergency  
13 involving immediate danger of death or serious physical injury  
14 to another person requires disclosure of the contents without  
15 delay.

16 (3)(a) A provider described in subsection (1) may  
17 disclose a record or other information pertaining to a  
18 subscriber to or customer of such service:

19 1. As is otherwise authorized in s. 934.23.

20 2. With the lawful consent of the customer or  
21 subscriber.

22 3. As is necessary incident to rendering service or  
23 protecting the rights or property of the provider of that  
24 service.

25 4. To a governmental entity if the provider reasonably  
26 believes that an emergency involving immediate danger of death  
27 or serious physical injury to any person justifies disclosure  
28 of the information.

29 5. To any person other than a governmental entity.  
30  
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1           (b) Notwithstanding paragraph (a), a provider may not  
2 disclose the contents of communications specified in paragraph  
3 (1)(a) or paragraph (1)(b).

4           Section 8. Section 934.23, Florida Statutes, is  
5 amended to read:

6           934.23 Required disclosure of customer communications  
7 or records ~~Requirements for governmental access.--~~

8           (1) An investigative or law enforcement officer may  
9 require the disclosure by a provider of electronic  
10 communication service of the contents of a wire or an  
11 electronic communication that has been in electronic storage  
12 in an electronic communications system for 180 days or less  
13 only pursuant to a warrant issued by the judge of a court of  
14 competent jurisdiction. An investigative or law enforcement  
15 officer may require the disclosure by a provider of electronic  
16 communication services of the contents of a wire or an  
17 electronic communication that has been in electronic storage  
18 in an electronic communications system for more than 180 days  
19 by the means available under subsection (2).

20           (2) An investigative or law enforcement officer may  
21 require a provider of remote computing service to disclose the  
22 contents of any wire or electronic communication to which this  
23 subsection is made applicable by subsection (3):

24           (a) Without required notice to the subscriber or  
25 customer if the investigative or law enforcement officer  
26 obtains a warrant issued by the judge of a court of competent  
27 jurisdiction; or

28           (b) With prior notice, or with delayed notice pursuant  
29 to s. 934.25, from the investigative or law enforcement  
30 officer to the subscriber or customer if the investigative or  
31 law enforcement officer:

- 1           1. Uses a subpoena; or  
2           2. Obtains a court order for such disclosure under  
3 subsection (5).

4           (3) Subsection (2) is applicable with respect to any  
5 electronic communication that is held or maintained on a  
6 remote computing service:

7           (a) On behalf of a subscriber or customer of such  
8 service and received by means of electronic transmission from,  
9 or created by means of computer processing of communications  
10 received by means of electronic transmission from, a  
11 subscriber or customer of such service.

12           (b) Solely for the purposes of providing storage or  
13 computer processing services to a subscriber or customer, if  
14 the provider is not authorized to access the contents of any  
15 such communication for purposes of providing any service other  
16 than storage or computer processing.

17           (4)(a) An investigative or law enforcement officer may  
18 require ~~Except as provided in paragraph (b),~~ a provider of  
19 electronic communication service or remote computing service  
20 to ~~may~~ disclose a record or other information pertaining to a  
21 subscriber or customer of such service, not including the  
22 contents of a communication, ~~covered by subsection (1) or~~  
23 ~~subsection (2), to any person other than an investigative or~~  
24 ~~law enforcement officer.~~

25           ~~(b) A provider of electronic communication service or~~  
26 ~~remote computing service shall disclose a record or other~~  
27 ~~information pertaining to a subscriber to or customer of such~~  
28 ~~service, not including the contents of communications covered~~  
29 ~~by subsection (1) or subsection (2), to an investigative or~~  
30 ~~law enforcement officer only when the investigative or law~~  
31 ~~enforcement officer:~~

1           1. Obtains a warrant issued by the judge of a court of  
2 competent jurisdiction;

3           2. Obtains a court order for such disclosure under  
4 subsection (5); ~~or~~

5           3. Has the consent of the subscriber or customer to  
6 such disclosure; or-

7           4. Seeks information under paragraph (b).

8           **(b)(c)** A provider of electronic communication service  
9 or remote computing service shall disclose to an investigative  
10 or law enforcement officer the name; address; local and long  
11 distance telephone connection records, or records of session  
12 times or durations; length of service, including the starting  
13 date of service; types of services used; telephone or  
14 instrument number or other subscriber number or identity,  
15 including any temporarily assigned network address; and means  
16 and source of payment, including any credit card or bank  
17 account number of, ~~telephone toll billing records, telephone~~  
18 number or other subscriber number or identity, and length of  
19 service as a subscriber to or customer of such service and the  
20 types of services the subscriber or customer used when the  
21 governmental entity uses a subpoena or obtains such  
22 information in the manner specified in paragraph (a) for  
23 obtaining information under that paragraph.

24           **(c)(d)** 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 to  
31 believe the contents of a wire or electronic communication or

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

8 (6) No cause of action shall lie in any court against  
9 any provider of wire or electronic communication service, its  
10 officers, employees, agents, or other specified persons for  
11 providing information, facilities, or assistance in accordance  
12 with the terms of a court order, warrant, subpoena, or  
13 certification under ss. 934.21-934.28.

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

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

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

31

1 Section 9. Subsection (4) of section 934.27, Florida  
2 Statutes, is amended to read:

3 934.27 Civil action: relief; damages; defenses.--

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

7 (a) A court warrant or order, a subpoena, or a  
8 statutory authorization, including, but not limited to, a  
9 request of an investigative or law enforcement officer to  
10 preserve records or other evidence, as provided in s.  
11 934.23(7).

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

14 (c) A good faith determination that s. 934.03(3)  
15 permitted the conduct complained of.

16 Section 10. Subsections (3) and (4) of section 934.31,  
17 Florida Statutes, are amended to read:

18 934.31 General prohibition on pen register and trap  
19 and trace device use; exception.--

20 (3) An investigative or law enforcement officer  
21 authorized to install and use a pen register or trap and trace  
22 device under ss. 934.31-934.34 shall use technology reasonably  
23 available to him or her which restricts the recording or  
24 decoding of electronic or other impulses to the dialing,  
25 routing, addressing, and signaling information used in  
26 processing and transmitting wire or electronic communications  
27 so that the contents of any wire or electronic communications  
28 are not recorded or decoded ~~call processing~~.

29 (4)(a) Notwithstanding any other provision of this  
30 chapter, any investigative or law enforcement officer  
31 specially designated by the Governor, the Attorney General,

1 the statewide prosecutor, or a state attorney acting pursuant  
2 to this chapter, who reasonably determines that:

3 1. An emergency exists which:

4 a. Involves immediate danger of death or serious  
5 physical injury to any person or the danger of escape of a  
6 prisoner; and

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

10 2. There are grounds upon which an order could be  
11 entered under this chapter to authorize such installation and  
12 use,

13  
14 may have installed and use a pen register or trap and trace  
15 device if, within 48 hours after the installation has occurred  
16 or begins to occur, an order approving the installation or use  
17 is issued in accordance with s. 934.33.

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

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

28 (d) A provider of wire or electronic service,  
29 landlord, custodian, or other person who has furnished  
30 facilities or technical assistance pursuant to this subsection  
31 shall be held harmless from any claims and civil liability

1 resulting from the disclosure of information pursuant to this  
2 subsection and shall be reasonably compensated for reasonable  
3 expenses incurred in providing such facilities and assistance.

4 Section 11. Section 934.33, Florida Statutes, is  
5 amended to read:

6 934.33 Issuance of an order for a pen register or a  
7 trap and trace device.--

8 (1) Upon application made under s. 934.32, the court  
9 shall enter an ex parte order authorizing the installation and  
10 use of a pen register or a trap and trace device within the  
11 jurisdiction of the court if the court finds that the  
12 applicant specified in s. 934.32(1) has certified to the court  
13 that the information likely to be obtained by such  
14 installation and use is relevant to an ongoing criminal  
15 investigation. Whenever such order is served on any person or  
16 entity not specifically named in the order, upon request of  
17 such person or entity, the person specified in s. 934.32 who  
18 has requested and is serving such order shall provide written  
19 or electronic certification that such order applies to the  
20 person or entity being served.

21 (2) An order issued under this section:

22 (a) Must specify the following:

23 1. The identity, if known, of the person to whom is  
24 leased or in whose name is listed the telephone line or other  
25 facility to which the pen register or trap and trace device is  
26 to be attached or applied.

27 2. The identity, if known, of the person who is the  
28 subject of the criminal investigation.

29 3. The attributes of the communications to which the  
30 order applies, including the number or other identifier and,  
31 if known, the ~~physical~~ location of the telephone line or other

1 facility to which the pen register or trap and trace device is  
2 to be attached or applied and, in the case of an order  
3 authorizing installation and use of a trap and trace device,  
4 the geographic limits of the ~~trap and trace~~ order.

5 4. A statement of the offense to which the information  
6 likely to be obtained by the pen register or trap and trace  
7 device relates.

8 (b) Must direct, upon the request of the applicant,  
9 the furnishing of information, facilities, and technical  
10 assistance necessary to accomplish the installation of the pen  
11 register or trap and trace device under s. 934.34.

12 (3)(a) An order issued under this section may not  
13 authorize the installation and use of a pen register or a trap  
14 and trace device for more than 60 days.

15 (b) Extensions of such an order may be granted but  
16 only upon an application for an order under s. 934.32 and upon  
17 the judicial finding required by subsection (1). The period  
18 of extension may not exceed 60 days.

19 (4) An order authorizing or approving the installation  
20 and use of a pen register or a trap and trace device must  
21 direct that:

22 (a) The order be sealed until otherwise ordered by the  
23 court, and

24 (b) The person owning or leasing the line or other  
25 facility to which the pen register or a trap and trace device  
26 is attached or applied, or who is obligated by the order ~~has~~  
27 ~~been ordered by the court~~ to provide assistance to the  
28 applicant, not disclose the existence of the pen register or  
29 trap and trace device or the existence of the investigation to  
30 the listed subscriber or to any other person except as  
31 otherwise ordered by the court.

1 (5) A court may not require greater specificity or  
2 additional information beyond that which is required under s.  
3 934.32 and this section as a requisite for issuing an order as  
4 provided in this section.

5 (6)(a) If an investigative or law enforcement agency  
6 implementing an ex parte order under this section seeks to do  
7 so by installing and using its own pen register or trap and  
8 trace device on a packet-switched data network of a provider  
9 of electronic communication service to the public, the agency  
10 must ensure that a record is maintained which identifies:

11 1. Each officer who installed the device and each  
12 officer who accessed the device to obtain information from the  
13 network;

14 2. The date and time the device was installed; the  
15 date and time the device was uninstalled; and the date, time,  
16 and duration of each occasion the device was accessed to  
17 obtain information;

18 3. The configuration of the device at the time of its  
19 installation and any subsequent modification of that  
20 configuration; and

21 4. Any information that was collected by the device.

22 (b) To the extent that the pen register or trap and  
23 trace device can be set automatically to record electronically  
24 the information required in paragraph (a), the record shall be  
25 maintained electronically throughout the installation and use  
26 of the device.

27 (7) The record maintained under subsection (6) shall  
28 be provided ex parte and under seal to the court that entered  
29 the ex parte order authorizing the installation and use of the  
30 device within 30 days after termination of the order,  
31 including any extension of the order.

1           Section 12. Subsection (2) of section 934.34, Florida  
2 Statutes, is amended to read:

3           934.34 Assistance in installation and use of a pen  
4 register or a trap and trace device.--

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

28           Section 13. This act shall take effect upon becoming a  
29 law.