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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 60 - 224
and insert:

enforcement agency or other governmental entity incident to arrest except pursuant to a warrant issued by a duly authorized judicial officer using established procedures.

(3) DEFINITION.—As used in this section, the term “portable electronic device” means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and that communicates with, by any means, another



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13 entity or individual.

14 (4) PROHIBITED ACTS.—

15 (a) The contents and communications of a portable
16 electronic device, including, but not limited to, data or
17 information contained in or transmitted from the portable
18 electronic device, are not subject to a search or seizure by a
19 law enforcement agency or other governmental entity except
20 pursuant to a warrant issued by a duly authorized judicial
21 officer using the procedures established by law.

22 (b) Except as provided in paragraph (a), this section does
23 not:

24 1. Curtail reliance by a law enforcement agency or other
25 governmental entity on lawful exceptions to the warrant
26 requirement;

27 2. Apply in cases of a search conducted incident to
28 national security; or

29 3. Apply in cases of a search for a missing child who is
30 less than 18 years of age.

31 4. Apply to transponders used for the purpose of assessing
32 or collecting toll.

33 5. Apply whenever the government entity reasonably believes
34 that an emergency involving immediate danger of death or serious
35 physical injury to a person requires the search or seizure,
36 without delay, of the contents of a portable electronic device
37 concerning a specific person or persons and that a warrant
38 cannot be obtained in time to prevent the identified danger, or
39 the possessor of the portable electronic device, in good faith,
40 believes that an emergency involves the danger of death.



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42 The government entity seeking the contents of the portable
43 electronic device shall file with the appropriate court a
44 written statement setting forth the facts giving rise to the
45 emergency and the facts as to why the person or persons whose
46 contents of a portable electronic device was sought are believed
47 to be important in addressing the emergency, no later than 48
48 hours after seeking disclosure. Private entities providing
49 electronic communications services shall not be made responsible
50 for ensuring that government entities comply with this section.

51 (5) Remedy.—

52 (a) Any aggrieved person in any trial, hearing, or
53 proceeding in or before any court, department, officer, agency,
54 regulatory body, or other authority may move to suppress the
55 contents of any information contained in a portable electronic
56 device or evidence derived therefrom, on the grounds that:

57 1. The information was unlawfully obtained;

58 2. The search warrant under which it was obtained is
59 insufficient on its face; or

60 3. The information was not obtained in conformity with the
61 search warrant.

62
63 Such motion shall be made before the trial, hearing, or
64 proceeding unless there was no opportunity to make such motion
65 or the person was not aware of the grounds of the motion. If the
66 motion is granted, the information or evidence derived
67 therefrom, shall be suppressed. The judge, upon the filing of
68 such motion by the aggrieved person, may make available to the
69 aggrieved person or his or her counsel for inspection such
70 portions of the information or evidence derived therefrom as the



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71 judge determines to be in the interest of justice.

72 (b) In addition to any other right to appeal, the state
73 shall have the right to appeal from an order granting a motion
74 to suppress made under paragraph (a) or the denial of an
75 application for a search warrant if the attorney shall certify
76 to the judge or other official granting such motion or denying
77 such application that the appeal is not taken for purposes of
78 delay. Such appeal shall be taken within 30 days after the date
79 the order was entered and shall be diligently prosecuted.

80 (c) The remedies and sanctions described herein with
81 respect to the information contained in a portable electronic
82 device are the only judicial remedies and sanctions for
83 violations of those sections involving such information.

84 Section 2. Location informational tracking; prohibited
85 search and seizure.-

86 (1) FINDINGS.-The Legislature finds that existing law
87 authorizes a court to issue a warrant for the search of a place
88 and the seizure of property or things identified in the warrant
89 when there is probable cause to believe that specified grounds
90 exist. The Legislature also finds that existing law provides for
91 a judicial procedure for the acquisition of stored
92 communications in the possession of a provider of electronic
93 communication service or a remote computing service.

94 (2) INTENT.-It is the intent of the Legislature to prohibit
95 a government entity from obtaining the location information of
96 an electronic device without a valid court order issued by a
97 duly authorized judicial officer unless certain exceptions
98 apply, including in an emergency or when requested by the owner
99 of the device. However, it is also the intent of the Legislature



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100 that this bill, with certain exceptions, prohibits the use of
101 information obtained in violation of this section in a civil or
102 administrative hearing.

103 (3) DEFINITIONS.-As used in this section the term:

104 (a) "Electronic communication service" means a service that
105 provides to its users the ability to send or receive wire or
106 electronic communications.

107 (b) "Government entity" means a state or local agency,
108 including, but not limited to, a law enforcement entity or any
109 other investigative entity, agency, department, division,
110 bureau, board, or commission, or an individual acting or
111 purporting to act for or on behalf of a state or local agency.

112 (c) "Location information" means information, concerning
113 the location of an electronic device, including both the current
114 location and any previous location of the device, that, in whole
115 or in part, is generated, derived from, or obtained by the
116 operation of an electronic device.

117 (d) "Location information service" means the provision of a
118 global positioning service or other mapping, locational, or
119 directional information service.

120 (e) "Owner" means the person or entity recognized by the
121 law as having the legal title, claim, or right to an electronic
122 device.

123 (f) "Portable electronic device" means an object capable of
124 being easily transported or conveyed by a person which is
125 capable of creating, receiving, accessing, or storing electronic
126 data or communications and that communicates with, by any means,
127 another entity or individual.

128 (g) "Remote computing service" means the provision of



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129 computer storage or processing services by means of an
130 electronic communications system.

131 (h) "User" means a person or entity that uses an electronic
132 device.

133 (4) PROHIBITED ACTS.-

134 (a) A law enforcement agency or other government entity may
135 not obtain the location information of an electronic device
136 without a valid court order issued by a duly authorized judicial
137 officer using the procedure set forth in this section.

138 (b) An investigative or law enforcement officer may make
139 application to a judge of competent jurisdiction for an order
140 authorizing or approving the search for and seizure of the
141 location information related to an electronic device.

142 (c) The application must include:

143 1. A statement of the identity of the applicant and the
144 identity of the law enforcement agency conducting the
145 investigation.

146 2. A certification by the applicant that the information
147 likely to be obtained is relevant to an ongoing criminal
148 investigation being conducted by the investigating agency.

149 3. A statement of the offense to which the information
150 likely to be obtained relates.

151 4. A statement whether it may be necessary to monitor the
152 electronic device outside the jurisdiction of the court from
153 which authorization is being sought.

154 (d) If the court finds that the required certification and
155 statements have been made in the application, the court shall
156 enter an ex parte order authorizing the monitoring of an
157 electronic device. Such order may authorize the monitoring of



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158 the device within the jurisdiction of the court and outside that
159 jurisdiction but within the State of Florida.

160 (e) A court may not require greater specificity or
161 additional information beyond that which is required by this
162 section as a requisite for issuing an order.

163 (f) A court order may not be issued for the location of an
164 electronic device pursuant to this section for a period of time
165 longer than is necessary to achieve the objective of the
166 authorization, and in any event no longer than 30 days,
167 commencing on the day the order is issued, or 10 days after the
168 location information is initially obtained whichever comes
169 first.

170 (g) Extensions of an order may be granted, but only upon a
171 judge finding continuing probable cause and that the extension
172 is necessary to achieve the objective of the authorization. Each
173 extension granted for an order pursuant to this section shall be
174 for no longer than the authorizing judge deems necessary to
175 achieve the purposes for which the order was originally granted,
176 but in any event, shall be for no longer than 30 days.

177 (5) EXCEPTIONS.—Notwithstanding subsection (4), a
178 government entity may obtain location information without a
179 search warrant if disclosure of the location information is not
180 prohibited by federal law, in any of the following
181 circumstances:

182 (a) Transponders used for the purpose of assessing or
183 collecting tolls.

184 (b) Reliance by a law enforcement agency or other
185 governmental entity on lawful exceptions to the warrant
186 requirement.



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187 (c) Cases of a search conducted incident to a national
188 security event.

189 (d) Cases of a search for a missing child who is less than
190 18 years of age.

191 (e) In order to respond to the user's call for emergency
192 services.

193 (f) With the informed, affirmative consent of the owner or
194 user of the electronic device concerned, provided that the owner
195 or user may not consent to the disclosure of location
196 information if the device is known or believed to be in the
197 possession of, or attached to a possession of, a third party
198 known to the owner or user, unless that third party is less than
199 18 years of age. The informed, affirmative consent of the owner
200 or user of the electronic device concerned may not be used as
201 consent to disclose the location information of another portable
202 electronic device that may be remotely linked or connected to
203 the owner or user of the portable electronic device concerned.

204 (g) With the informed, affirmative consent of the legal
205 guardian or next of kin of the electronic device's user, if the
206 user is believed to be deceased or has been reported missing and
207 unable to be contacted.

208 (h) If the government entity reasonably believes that an
209 emergency involving immediate danger of death or serious
210 physical injury to a person requires the disclosure, without
211 delay, of location information concerning a specific person or
212 persons and that a warrant cannot be obtained in time to prevent
213 the identified danger and the possessor of the location
214 information, in good faith, believes that an emergency involving
215 danger of death or serious physical injury to a person requires



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216 the disclosure without delay.

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218 The government entity seeking the location information shall
219 file with the appropriate court a written statement setting
220 forth the facts giving rise to the emergency and the facts as to
221 why the person or persons whose location information was sought
222 are believed to be important in addressing the emergency, no
223 later than 48 hours after seeking disclosure. Private entities
224 providing electronic communications services shall not be made
225 responsible for ensuring that government entities comply with
226 this section.

227 (6) Remedy.-

228 (a) Any aggrieved person in any trial, hearing, or
229 proceeding in or before any court, department, officer, agency,
230 regulatory body, or other authority may move to suppress the
231 contents of any information contained in a portable electronic
232 device or evidence derived therefrom, on the grounds that:

233 1. The information was unlawfully obtained;

234 2. The order of authorization or approval under which it
235 was obtained is insufficient on its face; or

236 3. The information was not obtained in conformity with the
237 order of authorization or approval.

238

239 Such motion shall be made before the trial, hearing, or
240 proceeding unless there was no opportunity to make such motion
241 or the person was not aware of the grounds of the motion. If the
242 motion is granted, the information or evidence derived
243 therefrom, shall be suppressed. The judge, upon the filing of
244 such motion by the aggrieved person, may make available to the



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245 aggrieved person or his or her counsel for inspection such
246 portions of the information or evidence derived therefrom as the
247 judge determines to be in the interest of justice.

248 (b) In addition to any other right to appeal, the state
249 shall have the right to appeal from an order granting a motion
250 to suppress made under paragraph (a) or the denial of an
251 application for an order of approval if the attorney shall
252 certify to the judge or other official granting such motion or
253 denying such application that the appeal is not taken for
254 purposes of delay. Such appeal shall be taken within 30 days
255 after the date the order was entered and shall be diligently
256 prosecuted.

257 (c) The remedies and sanctions described herein with
258 respect to the information contained in a portable electronic
259 device are the only judicial remedies and sanctions for
260 violations of those sections involving such information.

261 (7) CAUSE OF ACTION.—This section does not create a cause
262

263 ===== T I T L E A M E N D M E N T =====

264 And the title is amended as follows:

265 Delete lines 10 - 24

266 and insert:

267 established by law; providing exceptions; providing a
268 remedy; prohibiting location informational tracking;
269 providing legislative findings and intent; defining
270 terms; prohibiting a government entity from obtaining
271 the location information of an electronic device
272 without a valid court order issued by a duly
273 authorized judicial officer; providing that a court



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274 order may not be issued for the location of an
275 electronic device for a period of time longer than is
276 necessary to achieve the objective of the court order
277 authorization; providing time periods for the validity
278 of a court order; providing criteria by which to
279 extend a court order for location information;
280 providing exceptions to the requirement to obtain a
281 court order for location information; providing a
282 remedy; providing an