

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Grant, J. offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 934.01, Florida Statutes, is amended to
8 read:

9 934.01 Legislative findings.—On the basis of its own
10 investigations and of published studies, the Legislature makes
11 the following findings:

12 (1) Wire communications are normally conducted through the
13 use of facilities which form part of an intrastate network. The
14 same facilities are used for interstate and intrastate
15 communications.

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16 (2) In order to protect effectively the privacy of wire,
17 ~~and~~ oral, and electronic communications, to protect the
18 integrity of court and administrative proceedings, and to
19 prevent the obstruction of intrastate commerce, it is necessary
20 for the Legislature to define the circumstances and conditions
21 under which the interception of wire, ~~and~~ oral, and electronic
22 communications may be authorized and to prohibit any
23 unauthorized interception of such communications and the use of
24 the contents thereof in evidence in courts and administrative
25 proceedings.

26 (3) Organized criminals make extensive use of wire, ~~and~~
27 oral, and electronic communications in their criminal
28 activities. The interception of such communications to obtain
29 evidence of the commission of crimes or to prevent their
30 commission is an indispensable aid to law enforcement and the
31 administration of justice.

32 (4) To safeguard the privacy of innocent persons, the
33 interception of wire, ~~or~~ oral, or electronic communications when
34 none of the parties to the communication has consented to the
35 interception should be allowed only when authorized by a court
36 of competent jurisdiction and should remain under the control
37 and supervision of the authorizing court. Interception of wire,
38 ~~and~~ oral, and electronic communications should further be
39 limited to certain major types of offenses and specific
40 categories of crime with assurance that the interception is

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41 justified and that the information obtained thereby will not be
42 misused.

43 (5) To safeguard the privacy of innocent persons, the
44 Legislature recognizes that the subjective expectation of
45 privacy in precision location data that society is now prepared
46 to accept is objectively reasonable. As such, the law
47 enforcement collection of the precise location of a person, cell
48 phone, or portable electronic communication device without the
49 consent of the person or owner of the cell phone or portable
50 electronic communication device should be allowed only when
51 authorized by a warrant issued by a court of competent
52 jurisdiction and should remain under the control and supervision
53 of the authorizing court.

54 (6) The Legislature recognizes that the use of portable
55 electronic communication devices is growing at a rapidly
56 increasing rate. These devices can store, and encourage the
57 storing of, an almost limitless amount of personal and private
58 information. Often linked to the Internet, these devices are
59 commonly used to access personal and business information and
60 databases in computers and servers that can be located anywhere
61 in the world. The user of a portable electronic communication
62 device has a reasonable and justifiable expectation of privacy
63 in the information that these devices contain.

64 (7) The Legislature recognizes that the use of household
65 electronic devices, including microphone-enabled household

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66 devices, is growing at a rapidly increasing rate. These devices
67 often contain microphones that listen for and respond to
68 environmental triggers. These household devices are generally
69 connected to and communicate through the Internet resulting in
70 the storage of and accessibility to daily household information
71 in a device itself or in a remote computing service. Persons
72 should not have to choose between using household technological
73 enhancements and conveniences or preserving the right to privacy
74 in one's home.

75 Section 2. Subsection (2) of section 934.02, Florida
76 Statutes, is amended, and subsections (27) and (28) are added to
77 that section, to read:

78 934.02 Definitions.—As used in this chapter:

79 (2) "Oral communication" means any oral communication
80 uttered by a person exhibiting an expectation that such
81 communication is not subject to interception under circumstances
82 justifying such expectation, including the use of a microphone-
83 enabled household device, and does not mean any public oral
84 communication uttered at a public meeting or any electronic
85 communication.

86 (27) "Microphone-enabled household device" means a device,
87 sensor, or other physical object within a residence:

88 (a) Capable of connecting to the Internet, directly or
89 indirectly, or to another connected device;

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90 (b) Capable of creating, receiving, accessing, processing,
91 or storing electronic data or communications;

92 (c) That communicates with, by any means, another entity
93 or individual; and

94 (d) That contains a microphone designed to listen for and
95 respond to environmental cues.

96 (28) "Portable electronic communication device" means an
97 object capable of being easily transported or conveyed by a
98 person which is capable of creating, receiving, accessing, or
99 storing electronic data or communications and that communicates
100 with, by any means, another device, entity, or individual.

101 Section 3. Section 934.21, Florida Statutes, is amended to
102 read:

103 934.21 Unlawful access to stored communications;
104 penalties.—

105 (1) Except as provided in subsection (4)~~(3)~~, whoever:

106 (a) Intentionally accesses without authorization a
107 facility through which an electronic communication service is
108 provided, or

109 (b) Intentionally exceeds an authorization to access such
110 facility,

111
112 and thereby obtains, alters, or prevents authorized access to a
113 wire or electronic communication while it is in electronic

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114 storage in such system shall be punished as provided in
115 subsection (3)~~(2)~~.

116 (2) Except as provided in subsection (4), whoever
117 intentionally and unlawfully accesses without authorization a
118 cell phone, portable electronic communication device, or
119 microphone-enabled household device and thereby obtains wire,
120 oral, or electronic communications stored within the cell phone,
121 portable electronic communication device, or microphone-enabled
122 household device shall be punished as provided in subsection
123 (3).

124 (3)~~(2)~~ The punishment for an offense under subsection (1)
125 or subsection (2) is as follows:

126 (a) If the offense is committed for purposes of commercial
127 advantage, malicious destruction or damage, or private
128 commercial gain, the person ~~is~~:

129 1. In the case of a first offense under this subsection,
130 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
131 as provided in s. 775.082, s. 775.083, or s. 934.41.

132 2. In the case of any subsequent offense under this
133 subsection, commits ~~guilty of~~ a felony of the third degree,
134 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
135 s. 934.41.

136 (b) In any other case, the person commits ~~is guilty of~~ a
137 misdemeanor of the second degree, punishable as provided in s.
138 775.082 or s. 775.083.

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139 ~~(4)(3)~~ Subsection (1) does not apply with respect to
140 conduct authorized:

141 (a) By the person or entity providing a wire or electronic
142 communications service;

143 (b) By a user of a wire or electronic communications
144 service with respect to a communication of or intended for that
145 user; or

146 (c) In s. 934.09, s. 934.23, or s. 934.24.

147 Section 4. Section 934.42, Florida Statutes, is amended to
148 read:

149 934.42 Mobile tracking device and location tracking
150 authorization.—

151 (1) An investigative or law enforcement officer may make
152 application to a judge of competent jurisdiction for a warrant
153 ~~an order~~ authorizing or approving the installation and use of a
154 mobile tracking device or the acquisition of cell-site location
155 data, precise global positioning satellite location data, or
156 historical global positioning satellite location data.

157 (2) An application under subsection (1) ~~of this section~~
158 must include:

159 (a) A statement of the identity of the applicant and the
160 identity of the law enforcement agency conducting the
161 investigation.

162 (b) A statement setting forth a reasonable period of time
163 that the device may be used or the location data may be

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164 obtained. The time must not exceed 45 days from the date the
165 warrant was issued. The court may, for good cause, grant one or
166 more extensions for a reasonable period of time not to exceed 45
167 days each ~~certification by the applicant that the information~~
168 ~~likely to be obtained is relevant to an ongoing criminal~~
169 ~~investigation being conducted by the investigating agency.~~

170 (c) A statement of the offense to which the information
171 likely to be obtained relates.

172 (d) A statement whether it may be necessary to use and
173 monitor the mobile tracking device outside the jurisdiction of
174 the court from which authorization is being sought.

175 (3) Upon application made as provided under subsection
176 (2), the court, if it finds probable cause, ~~that the~~
177 ~~certification~~ and the statements required by subsection (2) have
178 been made in the application, shall grant a warrant ~~enter an ex~~
179 ~~parte order~~ authorizing the installation and use of a mobile
180 tracking device. Such warrant ~~order~~ may authorize the use of the
181 device within the jurisdiction of the court and outside that
182 jurisdiction but within the State of Florida if the device is
183 installed within the jurisdiction of the court. The warrant must
184 command the officer to complete any installation authorized by
185 the warrant within a specified period of time not to exceed 10
186 calendar days.

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187 (4) A court may not require greater specificity or
188 additional information beyond that which is required by law and
189 this section as a requisite for issuing a warrant ~~an order~~.

190 (5) Within 10 days after the time period specified in
191 paragraph (2)(b) has ended, the officer executing a warrant must
192 return the warrant to the issuing judge. The officer may do so
193 by reliable electronic means.

194 (6) Within 10 days after the time period specified in
195 paragraph (2)(b) has ended, the officer executing a warrant must
196 serve a copy of the warrant on the person who, or whose
197 property, was tracked. Service may be accomplished by delivering
198 a copy to the person who, or whose property, was tracked or by
199 leaving a copy at the person's residence or usual place of abode
200 with an individual of suitable age and discretion who resides at
201 that location and by mailing a copy to the person's last known
202 address. Upon request of the law enforcement agency, the court
203 may delay notice for a period of 90 days as provided in s.
204 934.25.

205 (7)~~(5)~~ The standards established by Florida courts and the
206 United States Supreme Court for the installation, use, or ~~and~~
207 monitoring of mobile tracking devices shall apply to the
208 installation, use, or monitoring ~~and use~~ of any device as
209 authorized by this section.

210 (8)~~(6)~~ As used in this section, the term "mobile tracking
211 device" or a "tracking device" means an electronic or mechanical

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212 device, including a cell phone or a portable electronic
213 communication device, which permits the tracking of the movement
214 of a person or object and may be used to access cell-site
215 location data, precise global positioning satellite location
216 data, or historical global positioning satellite location data.

217 (9) (a) Notwithstanding any other provision of this
218 chapter, any investigative or law enforcement officer specially
219 designated by the Governor, the Attorney General, the statewide
220 prosecutor, or a state attorney acting pursuant to this chapter
221 who reasonably determines that:

222 1. An emergency exists which:

223 a. Involves immediate danger of death or serious physical
224 injury to any person or the danger of escape of a prisoner; and

225 b. Requires the installation or use of a mobile tracking
226 device before a warrant authorizing such installation or use
227 can, with due diligence, be obtained; and

228 2. There are grounds upon which a warrant could be issued
229 under this chapter to authorize such installation or use,

230
231 may install or use a mobile tracking device if, within 48 hours
232 after the installation or use has occurred or begins to occur, a
233 warrant approving the installation or use is issued in
234 accordance with this section.

235 (b) In the absence of an authorizing warrant, such
236 installation or use shall immediately terminate when the

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237 information sought is obtained, when the application for the
238 warrant is denied, or when 48 hours have lapsed since the
239 installation or use of the mobile tracking device began,
240 whichever is earlier.

241 (c) The knowing installation or use by any investigative
242 or law enforcement officer of a mobile tracking device pursuant
243 to paragraph (a) without application for the authorizing warrant
244 within 48 hours after the installation or use begins constitutes
245 a violation of this section.

246 Section 5. This act shall take effect July 1, 2018.

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248 **T I T L E A M E N D M E N T**

249 Remove everything before the enacting clause and insert:

250 A bill to be entitled

251 An act relating to the search of the content,
252 information, and communications of cellular phones,
253 portable electronic communication devices, and
254 microphone-enabled household devices; amending s.
255 934.01, F.S.; providing legislative findings; amending
256 s. 934.02, F.S.; providing definitions; amending s.
257 934.21, F.S.; conforming provisions to changes made by
258 the act; prohibiting unlawful access to communications
259 stored in specified devices; providing penalties;
260 amending s. 934.42, F.S.; requiring that law
261 enforcement obtain a warrant to acquire certain

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1249 (2018)

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262 | location information; providing procedures for such
263 | warrants; providing limited exceptions in certain
264 | circumstances; providing an effective date.