

1                   A bill to be entitled  
2           An act relating to the search of the content,  
3           information, and communications of cellular phones,  
4           portable electronic communication devices, and  
5           microphone-enabled household devices; amending s.  
6           934.01, F.S.; providing legislative findings; amending  
7           s. 934.02, F.S.; providing definitions; amending s.  
8           934.21, F.S.; conforming provisions to changes made by  
9           the act; prohibiting unlawful access to communications  
10          stored in specified devices; providing penalties;  
11          amending s. 934.42, F.S.; requiring that law  
12          enforcement obtain a warrant to acquire certain  
13          location information; providing procedures for such  
14          warrants; providing limited exceptions in certain  
15          circumstances; providing an effective date.

16  
17   Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Section 934.01, Florida Statutes, is amended to  
20   read:

21           934.01 Legislative findings.—On the basis of its own  
22   investigations and of published studies, the Legislature makes  
23   the following findings:

24           (1) Wire communications are normally conducted through the  
25   use of facilities which form part of an intrastate network. The

26 | same facilities are used for interstate and intrastate  
27 | communications.

28 |       (2) In order to protect effectively the privacy of wire,  
29 | ~~and oral,~~ and electronic communications, to protect the  
30 | integrity of court and administrative proceedings, and to  
31 | prevent the obstruction of intrastate commerce, it is necessary  
32 | for the Legislature to define the circumstances and conditions  
33 | under which the interception of wire, ~~and oral,~~ and electronic  
34 | communications may be authorized and to prohibit any  
35 | unauthorized interception of such communications and the use of  
36 | the contents thereof in evidence in courts and administrative  
37 | proceedings.

38 |       (3) Organized criminals make extensive use of wire, ~~and~~  
39 | oral, and electronic communications in their criminal  
40 | activities. The interception of such communications to obtain  
41 | evidence of the commission of crimes or to prevent their  
42 | commission is an indispensable aid to law enforcement and the  
43 | administration of justice.

44 |       (4) To safeguard the privacy of innocent persons, the  
45 | interception of wire, ~~or~~ oral, or electronic communications when  
46 | none of the parties to the communication has consented to the  
47 | interception should be allowed only when authorized by a court  
48 | of competent jurisdiction and should remain under the control  
49 | and supervision of the authorizing court. Interception of wire,  
50 | ~~and oral,~~ and electronic communications should further be

51 | limited to certain major types of offenses and specific  
52 | categories of crime with assurance that the interception is  
53 | justified and that the information obtained thereby will not be  
54 | misused.

55 | (5) To safeguard the privacy of innocent persons, the  
56 | Legislature recognizes that the subjective expectation of  
57 | privacy in precision location data that society is now prepared  
58 | to accept is objectively reasonable. As such, the law  
59 | enforcement collection of the precise location of a person, cell  
60 | phone, or portable electronic communication device without the  
61 | consent of the person or owner of the cell phone or portable  
62 | electronic communication device should be allowed only when  
63 | authorized by a warrant issued by a court of competent  
64 | jurisdiction and should remain under the control and supervision  
65 | of the authorizing court.

66 | (6) The Legislature recognizes that the use of portable  
67 | electronic communication devices is growing at a rapidly  
68 | increasing rate. These devices can store, and encourage the  
69 | storing of, an almost limitless amount of personal and private  
70 | information. Often linked to the Internet, these devices are  
71 | commonly used to access personal and business information and  
72 | databases in computers and servers that can be located anywhere  
73 | in the world. The user of a portable electronic communication  
74 | device has a reasonable and justifiable expectation of privacy  
75 | in the information that these devices contain.

76        (7) The Legislature recognizes that the use of household  
77 electronic devices, including microphone-enabled household  
78 devices, is growing at a rapidly increasing rate. These devices  
79 often contain microphones that listen for and respond to  
80 environmental triggers. These household devices are generally  
81 connected to and communicate through the Internet resulting in  
82 the storage of and accessibility to daily household information  
83 in a device itself or in a remote computing service. Persons  
84 should not have to choose between using household technological  
85 enhancements and conveniences or preserving the right to privacy  
86 in one's home.

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

90        934.02 Definitions.—As used in this chapter:

91        (2) "Oral communication" means any oral communication  
92 uttered by a person exhibiting an expectation that such  
93 communication is not subject to interception under circumstances  
94 justifying such expectation, including the use of a microphone-  
95 enabled household device, and does not mean any public oral  
96 communication uttered at a public meeting or any electronic  
97 communication.

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

100        (a) Capable of connecting to the Internet, directly or

101 indirectly, or to another connected device;  
 102 (b) Capable of creating, receiving, accessing, processing,  
 103 or storing electronic data or communications;  
 104 (c) That communicates with, by any means, another entity  
 105 or individual; and  
 106 (d) That contains a microphone designed to listen for and  
 107 respond to environmental cues.  
 108 (28) "Portable electronic communication device" means an  
 109 object capable of being easily transported or conveyed by a  
 110 person which is capable of creating, receiving, accessing, or  
 111 storing electronic data or communications and that communicates  
 112 with, by any means, another device, entity, or individual.  
 113 Section 3. Section 934.21, Florida Statutes, is amended to  
 114 read:  
 115 934.21 Unlawful access to stored communications;  
 116 penalties.—  
 117 (1) Except as provided in subsection (4)~~(3)~~, whoever:  
 118 (a) Intentionally accesses without authorization a  
 119 facility through which an electronic communication service is  
 120 provided, or  
 121 (b) Intentionally exceeds an authorization to access such  
 122 facility,  
 123  
 124 and thereby obtains, alters, or prevents authorized access to a  
 125 wire or electronic communication while it is in electronic

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

128 (2) Except as provided in subsection (4), whoever  
 129 intentionally and unlawfully accesses without authorization a  
 130 cell phone, portable electronic communication device, or  
 131 microphone-enabled household device and thereby obtains wire,  
 132 oral, or electronic communications stored within the cell phone,  
 133 portable electronic communication device, or microphone-enabled  
 134 household device shall be punished as provided in subsection  
 135 (3).

136 ~~(3)(2)~~ The punishment for an offense under subsection (1)  
 137 or subsection (2) is as follows:

138 (a) If the offense is committed for purposes of commercial  
 139 advantage, malicious destruction or damage, or private  
 140 commercial gain, the person ~~is~~:

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

144 2. In the case of any subsequent offense under this  
 145 subsection, commits ~~guilty of~~ a felony of the third degree,  
 146 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or  
 147 s. 934.41.

148 (b) In any other case, the person commits ~~is guilty of~~ a  
 149 misdemeanor of the second degree, punishable as provided in s.  
 150 775.082 or s. 775.083.

151        ~~(4)(3)~~ Subsection (1) does not apply with respect to  
152 conduct authorized:

153        (a) By the person or entity providing a wire or electronic  
154 communications service;

155        (b) By a user of a wire or electronic communications  
156 service with respect to a communication of or intended for that  
157 user; or

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

159        Section 4. Section 934.42, Florida Statutes, is amended to  
160 read:

161        934.42 Mobile tracking device and location tracking  
162 authorization.—

163        (1) An investigative or law enforcement officer may make  
164 application to a judge of competent jurisdiction for a warrant  
165 ~~an order~~ authorizing or approving the installation and use of a  
166 mobile tracking device or the acquisition of cell-site location  
167 data, precise global positioning satellite location data, or  
168 historical global positioning satellite location data.

169        (2) An application under subsection (1) ~~of this section~~  
170 must include:

171        (a) A statement of the identity of the applicant and the  
172 identity of the law enforcement agency conducting the  
173 investigation.

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

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

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

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

187 (3) Upon application made as provided under subsection  
188 (2), the court, if it finds probable cause, ~~that the~~  
189 ~~certification~~ and the statements required by subsection (2) have  
190 been made in the application, shall grant a warrant ~~enter an ex~~  
191 ~~parte order~~ authorizing the installation and use of a mobile  
192 tracking device. Such warrant ~~order~~ may authorize the use of the  
193 device within the jurisdiction of the court and outside that  
194 jurisdiction but within the State of Florida if the device is  
195 installed within the jurisdiction of the court. The warrant must  
196 command the officer to complete any installation authorized by  
197 the warrant within a specified period of time not to exceed 10  
198 calendar days.

199 (4) A court may not require greater specificity or  
200 additional information beyond that which is required by law and



201 | this section as a requisite for issuing a warrant ~~an order~~.

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

206 |       (6) Within 10 days after the time period specified in  
 207 | paragraph (2) (b) has ended, the officer executing a warrant must  
 208 | serve a copy of the warrant on the person who, or whose  
 209 | property, was tracked. Service may be accomplished by delivering  
 210 | a copy to the person who, or whose property, was tracked or by  
 211 | leaving a copy at the person's residence or usual place of abode  
 212 | with an individual of suitable age and discretion who resides at  
 213 | that location and by mailing a copy to the person's last known  
 214 | address. Upon request of the law enforcement agency, the court  
 215 | may delay notice for a period of 90 days as provided in s.  
 216 | 934.25.

217 |       ~~(7)(5)~~ The standards established by Florida courts and the  
 218 | United States Supreme Court for the installation, use, or and  
 219 | monitoring of mobile tracking devices shall apply to the  
 220 | installation, use, or monitoring and use of any device as  
 221 | authorized by this section.

222 |       ~~(8)(6)~~ As used in this section, the term "mobile tracking  
 223 | device" or a "tracking device" means an electronic or mechanical  
 224 | device, including a cell phone or a portable electronic  
 225 | communication device, which permits the tracking of the movement

226 | of a person or object and may be used to access cell-site  
227 | location data, precise global positioning satellite location  
228 | data, or historical global positioning satellite location data.

229 | (9) (a) Notwithstanding any other provision of this  
230 | chapter, any investigative or law enforcement officer specially  
231 | designated by the Governor, the Attorney General, the statewide  
232 | prosecutor, or a state attorney acting pursuant to this chapter  
233 | who reasonably determines that:

234 | 1. An emergency exists which:

235 | a. Involves immediate danger of death or serious physical  
236 | injury to any person or the danger of escape of a prisoner; and

237 | b. Requires the installation or use of a mobile tracking  
238 | device before a warrant authorizing such installation or use  
239 | can, with due diligence, be obtained; and

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

242 |  
243 | may install or use a mobile tracking device if, within 48 hours  
244 | after the installation or use has occurred or begins to occur, a  
245 | warrant approving the installation or use is issued in  
246 | accordance with this section.

247 | (b) In the absence of an authorizing warrant, such  
248 | installation or use shall immediately terminate when the  
249 | information sought is obtained, when the application for the  
250 | warrant is denied, or when 48 hours have lapsed since the

251 installation or use of the mobile tracking device began,  
252 whichever is earlier.

253 (c) The knowing installation or use by any investigative  
254 or law enforcement officer of a mobile tracking device pursuant  
255 to paragraph (a) without application for the authorizing warrant  
256 within 48 hours after the installation or use begins constitutes  
257 a violation of this section.

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