

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; revising exceptions to a prohibition on
10 unlawful access to stored communications; amending s.
11 934.42, F.S.; requiring that law enforcement obtain a
12 warrant to acquire certain location information;
13 providing procedures for such warrants; providing
14 limited exceptions in certain circumstances; providing
15 an effective date.

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

18
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 (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 (2).

128 (2) The punishment for an offense under subsection (1) is
129 as follows:

130 (a) If the offense is committed for purposes of commercial
131 advantage, malicious destruction or damage, or private
132 commercial gain, the person ~~is~~:

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

136 2. In the case of any subsequent offense under this
137 subsection, commits ~~guilty of~~ a felony of the third degree,
138 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
139 s. 934.41.

140 (b) In any other case, the person commits ~~is guilty of~~ a
141 misdemeanor of the second degree, punishable as provided in s.
142 775.082 or s. 775.083.

143 (3) Subsection (1) does not apply with respect to conduct
144 authorized:

145 (a) By the person or entity providing a wire, oral, or
146 electronic communications service, including through cellular
147 phones, portable electronic communication devices, or
148 microphone-enabled household devices;

149 (b) By a user of a wire, oral, or electronic
150 communications service, including through cellular phones,

151 portable electronic communication devices, or microphone-enabled
 152 household devices, with respect to a communication of or
 153 intended for that user; ~~or~~

154 (c) In s. 934.09, s. 934.23, or s. 934.24;

155 (d) In chapter 933; or

156 (e) For accessing for a legitimate business purpose
 157 information that is not personally identifiable or that has been
 158 collected in a way that prevents identification of the user of
 159 the device.

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

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

164 (1) An investigative or law enforcement officer may make
 165 application to a judge of competent jurisdiction for a warrant
 166 ~~an order~~ authorizing or approving the installation and use of a
 167 mobile tracking device.

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

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

173 (b) A statement setting forth a reasonable period of time
 174 that the tracking device may be used or the location data may be
 175 obtained in real-time, not to exceed 45 days from the date the

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

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

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

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

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

201 (5) Within 10 days after the time period specified in
 202 paragraph (2) (b) has ended, the officer executing a warrant must
 203 return the warrant to the issuing judge. When the warrant is
 204 authorizing historical global positioning satellite location
 205 data, the officer executing the warrant must return the warrant
 206 to the issuing judge within 10 days after receipt of the
 207 records. The officer may do so by reliable electronic means.

208 (6) Within 10 days after the time period specified in
 209 paragraph (2) (b) has ended, the officer executing a warrant must
 210 serve a copy of the warrant on the person who, or whose
 211 property, was tracked. Service may be accomplished by delivering
 212 a copy to the person who, or whose property, was tracked or by
 213 leaving a copy at the person's residence or usual place of abode
 214 with an individual of suitable age and discretion who resides at
 215 that location and by mailing a copy to the person's last known
 216 address. Upon a showing of good cause to a court of competent
 217 jurisdiction, the court may grant one or more postponements of
 218 this notice for a period of 90 days each.

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

224 (8)~~(6)~~ As used in this section, the term "mobile tracking
 225 device" or a "tracking device" means an electronic or mechanical

226 | device that allows ~~which permits~~ the tracking of the movement of
227 | a person or object, including a cellular telephone or a portable
228 | electronic communication device, and may be used to obtain real-
229 | time cellular-site location data, precise global positioning
230 | satellite location data, or historical global positioning
231 | satellite location data.

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

237 | 1. An emergency exists which:

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

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

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

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

249 | (b) In the absence of an authorizing warrant, such
250 |

251 installation or use shall immediately terminate when the
252 information sought is obtained, when the application for the
253 warrant is denied, or when 48 hours have lapsed since the
254 installation or use of the mobile tracking device began,
255 whichever is earlier.

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

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