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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(1) Wire communications are normally conducted through the



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11 use of facilities which form part of an intrastate network. The  
12 same facilities are used for interstate and intrastate  
13 communications.

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

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

30 (4) To safeguard the privacy of innocent persons, the  
31 interception of wire, ~~or~~ oral, or electronic communications when  
32 none of the parties to the communication has consented to the  
33 interception should be allowed only when authorized by a court  
34 of competent jurisdiction and should remain under the control  
35 and supervision of the authorizing court. Interception of wire,  
36 ~~and~~ oral, and electronic communications should further be  
37 limited to certain major types of offenses and specific  
38 categories of crime with assurance that the interception is  
39 justified and that the information obtained thereby will not be



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40 misused.

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

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

62 (7) The Legislature recognizes that the use of household  
63 electronic devices, including microphone-enabled household  
64 devices, is growing at a rapidly increasing rate. These devices  
65 often contain microphones that listen for and respond to  
66 environmental triggers. These household devices are generally  
67 connected to and communicate through the Internet resulting in  
68 the storage of and accessibility to daily household information



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69 in a device itself or in a remote computing service. Persons  
70 should not have to choose between using household technological  
71 enhancements and conveniences or preserving the right to privacy  
72 in one's home.

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

76 934.02 Definitions.—As used in this chapter:

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

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

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

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

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

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

94 (28) "Portable electronic communication device" means an  
95 object capable of being easily transported or conveyed by a  
96 person which is capable of creating, receiving, accessing, or  
97 storing electronic data or communications and that communicates



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98 with, by any means, another device, entity, or individual.

99 Section 3. Section 934.21, Florida Statutes, is amended to  
100 read:

101 934.21 Unlawful access to stored communications;  
102 penalties.—

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

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

107 (b) Intentionally exceeds an authorization to access such  
108 facility,

109  
110 and thereby obtains, alters, or prevents authorized access to a  
111 wire or electronic communication while it is in electronic  
112 storage in such system shall be punished as provided in  
113 subsection (3) ~~(2)~~.

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

122 (3) ~~(2)~~ The punishment for an offense under subsection (1)  
123 or subsection (2) is as follows:

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



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

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

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

137           (4)(3) Subsections subsection (1) and (2) do ~~does~~ not apply  
138 with respect to conduct authorized:

139           (a) By the person or entity providing a wire, oral, or  
140 electronic communications service, including through cellular  
141 phones, portable electronic communication devices, or  
142 microphone-enabled household devices;

143           (b) By a user of a wire, oral, or electronic communications  
144 service, including through cellular phones, portable electronic  
145 communication devices, or microphone-enabled household devices,  
146 with respect to a communication of or intended for that user; ~~or~~

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

148           (d) For accessing for a legitimate business purpose  
149 information that is not personally identifiable or that has been  
150 collected in a way that prevents identification of the user of  
151 the device.

152           Section 4. Section 934.42, Florida Statutes, is amended to  
153 read:

154           934.42 Mobile tracking device and location tracking  
155 authorization.-



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156 (1) An investigative or law enforcement officer may make  
157 application to a judge of competent jurisdiction for a warrant  
158 ~~an order~~ authorizing or approving the installation and use of a  
159 mobile tracking device or the acquisition of cellular-site  
160 location data, precise global positioning satellite location  
161 data, or historical global positioning satellite location data.

162 (2) An application under subsection (1) ~~of this section~~  
163 must include:

164 (a) A statement of the identity of the applicant and the  
165 identity of the law enforcement agency conducting the  
166 investigation.

167 (b) A statement setting forth a reasonable period of time  
168 that the device may be used or the location data may be  
169 obtained. The time must not exceed 45 days from the date the  
170 warrant was issued. The court may, for good cause, grant one or  
171 more extensions for a reasonable period of time not to exceed 45  
172 days each certification by the applicant that the information  
173 ~~likely to be obtained is relevant to an ongoing criminal~~  
174 ~~investigation being conducted by the investigating agency.~~

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

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

180 (3) Upon application made as provided under subsection (2),  
181 the court, if it finds probable cause, ~~that the certification~~  
182 ~~and the statements~~ required by subsection (2) have been made in  
183 the application, shall grant a warrant ~~enter an ex parte order~~  
184 authorizing the installation and use of a mobile tracking



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185 device. Such warrant order may authorize the use of the device  
186 within the jurisdiction of the court and outside that  
187 jurisdiction but within the State of Florida if the device is  
188 installed within the jurisdiction of the court. The warrant must  
189 command the officer to complete any installation authorized by  
190 the warrant within a specified period of time not to exceed 10  
191 calendar days.

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

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

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

210 (7) ~~(5)~~ The standards established by Florida courts and the  
211 United States Supreme Court for the installation, use, or and  
212 monitoring of mobile tracking devices shall apply to the  
213 installation, use, or monitoring and use of any device as





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214 authorized by this section.

215 (8)~~(6)~~ As used in this section, the term "mobile tracking  
216 device" or a "tracking device" means an electronic or mechanical  
217 device, including a cellular phone or a portable electronic  
218 communication device, which permits the tracking of the movement  
219 of a person or object and may be used to access cellular-site  
220 location data, precise global positioning satellite location  
221 data, or historical global positioning satellite location data.

222 (9) (a) Notwithstanding any other provision of this chapter,  
223 any investigative or law enforcement officer specially  
224 designated by the Governor, the Attorney General, the statewide  
225 prosecutor, or a state attorney acting pursuant to this chapter  
226 who reasonably determines that:

227 1. An emergency exists which:

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

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

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

235  
236 may install or use a mobile tracking device if, within 48 hours  
237 after the installation or use has occurred or begins to occur, a  
238 warrant approving the installation or use is issued in  
239 accordance with this section.

240 (b) In the absence of an authorizing warrant, such  
241 installation or use shall immediately terminate when the  
242 information sought is obtained, when the application for the



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243 warrant is denied, or when 48 hours have lapsed since the  
244 installation or use of the mobile tracking device began,  
245 whichever is earlier.

246 (c) The knowing installation or use by any investigative or  
247 law enforcement officer of a mobile tracking device pursuant to  
248 paragraph (a) without application for the authorizing warrant  
249 within 48 hours after the installation or use begins constitutes  
250 a violation of this section.

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

252

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

254 And the title is amended as follows:

255 Delete everything before the enacting clause  
256 and insert:

257 A bill to be entitled  
258 An act relating to the search of the content,  
259 information, and communications of cellular phones,  
260 portable electronic communication devices, and  
261 microphone-enabled household devices; amending s.  
262 934.01, F.S.; providing legislative findings; amending  
263 s. 934.02, F.S.; providing definitions; amending s.  
264 934.21, F.S.; conforming provisions to changes made by  
265 the act; prohibiting unlawful access to communications  
266 stored in specified devices; providing penalties;  
267 amending s. 934.42, F.S.; requiring that law  
268 enforcement obtain a warrant to acquire certain  
269 location information; providing procedures for such  
270 warrants; providing limited exceptions in certain  
271 circumstances; providing an effective date.