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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
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The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 150 - 297

and insert:

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

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

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



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12 and thereby obtains, alters, or prevents authorized access to a
13 wire or electronic communication while it is in electronic
14 storage in such system shall be punished as provided in
15 subsection (2).

16 (2) The punishment for an offense under subsection (1) is
17 as follows:

18 (a) If the offense is committed for purposes of commercial
19 advantage, malicious destruction or damage, or private
20 commercial gain, the person is:

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

24 2. In the case of any subsequent offense under this
25 subsection, commits ~~guilty of~~ a felony of the third degree,
26 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
27 s. 934.41.

28 (b) In any other case, the person is guilty of a
29 misdemeanor of the second degree, punishable as provided in s.
30 775.082 or s. 775.083.

31 (3) Subsection (1) does not apply with respect to conduct
32 authorized:

33 (a) By the person or entity providing a wire, oral, or
34 electronic communications service, including through cellular
35 phones, portable electronic communication devices, or
36 microphone-enabled household devices;

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



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41 (c) In s. 934.09, s. 934.23, or s. 934.24;
42 (d) In chapter 933; or
43 (e) For accessing for a legitimate business purpose
44 information that is not personally identifiable or that has been
45 collected in a way that prevents identification of the user of
46 the device.

47 Section 4. Section 934.42, Florida Statutes, is amended to
48 read:

49 934.42 Mobile tracking device and location tracking
50 authorization.—

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

55 (2) An application under subsection (1) ~~of this section~~
56 must include:

57 (a) A statement of the identity of the applicant and the
58 identity of the law enforcement agency conducting the
59 investigation.

60 (b) A statement setting forth a reasonable period of time
61 that the tracking device may be used or the location data may be
62 obtained in real-time, not exceed 45 days from the date the
63 warrant is issued. The court may, for good cause, grant one or
64 more extensions for a reasonable period of time, not to exceed
65 45 days each ~~certification by the applicant that the information~~
66 ~~likely to be obtained is relevant to an ongoing criminal~~
67 ~~investigation being conducted by the investigating agency.~~

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



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

73 (3) Upon application made as provided under subsection (2),
74 the court, if it finds probable cause, ~~that the certification~~
75 and that the statements required by subsection (2) have been
76 made in the application, shall grant a warrant ~~enter an ex parte~~
77 ~~order~~ authorizing the installation and use of a mobile tracking
78 device. Such warrant ~~order~~ may authorize the use of the device
79 within the jurisdiction of the court and outside that
80 jurisdiction but within the State of Florida if the device is
81 installed within the jurisdiction of the court. The warrant must
82 command the officer to complete any installation authorized by
83 the warrant within a specified period of time not to exceed 10
84 calendar days.

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

88 (5) Within 10 days after the time period specified in
89 paragraph (2) (b) has ended, the officer executing a warrant must
90 return the warrant to the issuing judge. When the warrant is
91 authorizing historical global positioning satellite location
92 data, the office executing the warrant must return the warrant
93 to the issuing judge within 10 days of the receipt of the
94 records. The officer may do so by reliable electronic means.

95 (6) Within 10 days after the time period specified in
96 paragraph (2) (b) has ended, the officer executing a warrant must
97 serve a copy of the warrant on the person who, or whose
98 property, was tracked. Service may be accomplished by delivering



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99 a copy to the person who, or whose property, was tracked or by
100 leaving a copy at the person's residence or usual place of abode
101 with an individual of suitable age and discretion who resides at
102 that location and by mailing a copy to the person's last known
103 address. Upon a showing of good cause to a court of competent
104 jurisdiction, the court may grant one or more postponements of
105 this notice for a period of 90 days each.

106 (7)~~(5)~~ The standards established by Florida courts and the
107 United States Supreme Court for the installation, use, or ~~and~~
108 monitoring of mobile tracking devices shall apply to the
109 installation, use, or monitoring ~~and use~~ of any device as
110 authorized by this section.

111 (8)~~(6)~~ As used in this section, the term "mobile tracking
112 device" or a "tracking device" means an electronic or mechanical
113 device which permits the tracking of the movement of a person or
114 object, including a cellular phone or a portable electronic
115 communication device, and may be used to obtain real-time
116 cellular-site location data, precise global positioning
117 satellite location data, or historical global positioning
118 satellite location data.

119 (9) (a) Notwithstanding any other provision of this chapter,
120 any investigative or law enforcement officer specially
121 designated by the Governor, the Attorney General, the statewide
122 prosecutor, or a state attorney acting pursuant to this chapter
123 who reasonably determines that:

- 124 1. An emergency exists which:
125 a. Involves immediate danger of death or serious physical
126 injury to any person or the danger of escape of a prisoner; and
127 b. Requires the installation or use of a mobile tracking



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128 device before a warrant authorizing such installation or use
129 can, with due diligence, be obtained; and

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

132
133 may install or use a mobile tracking device if, within 48 hours
134 after the installation or use has occurred or begins to occur, a
135 warrant approving the installation or use is issued in
136 accordance with this section.

137 (b) In the absence of an authorizing warrant, such
138 installation or use shall immediately terminate when the
139 information sought is obtained, when the application for the
140 warrant is denied, or when 48 hours have lapsed since the
141 installation or use of the mobile tracking device began,
142 whichever is earlier.

143
144 ===== T I T L E A M E N D M E N T =====

145 And the title is amended as follows:

146 Delete lines 11 - 47

147 and insert:

148 F.S.; revising exceptions to include authorized
149 conduct under specified circumstances; amending s.
150 934.42, F.S.; authorizing an investigative or law
151 enforcement officer to apply to a judge of competent
152 jurisdiction for a warrant, rather than an order,
153 authorizing the acquisition of cellular-site location
154 data, precise global positioning satellite location
155 data, or historical global positioning satellite
156 location data; requiring an application for a warrant



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157 to include a statement of a reasonable period of time
158 that a mobile tracking device may be used, not to
159 exceed a specified limit; authorizing a court to grant
160 extensions not individually exceeding a specified
161 limit, for good cause; deleting a provision requiring
162 a certification to be included in the application for
163 an order; requiring the warrant to command the officer
164 to complete an installation authorized by the warrant
165 within a certain timeframe; providing requirements for
166 the return of the warrant to the judge and service of
167 a copy of the warrant on the person who was tracked or
168 whose property was tracked; authorizing a court, for
169 good cause, to postpone the notice requirement for a
170 specified time period; requiring that the standards
171 established by Florida courts for the installation,
172 use, or monitoring of mobile tracking devices apply to
173 the installation, use, or monitoring of certain
174 devices; redefining the term "tracking device";
175 authorizing any investigative or law enforcement
176 officer who is specially designated by certain persons
177 and who makes specified determinations to install or
178 use a mobile tracking device under certain
179 circumstances; providing requirements for the
180 installation and use of the mobile tracking devices;
181 providing an effective