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LEGISLATIVE ACTION

Senate

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House

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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