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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/26/2018	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 187 and 188

insert:

Section 4. Section 934.23, Florida Statutes, is amended to read:

934.23 Required disclosure of customer communications or records.—

(1) As used in this section, the term:

(a) "A court of competent jurisdiction" means a court that has jurisdiction over the investigation or that is otherwise



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12 authorized by law.

13 (b) "Investigative or law enforcement officer" has the same
14 meaning as s. 934.02(6), except that in any investigation
15 relating to whether a crime has been or is being committed only
16 a state attorney, an assistant state attorney, the statewide
17 prosecutor, or an assistant statewide prosecutor may seek under
18 this section the disclosure of a wire or electronic
19 communication, including the contents of such communication, and
20 any record or other information pertaining to a subscriber or
21 customer of a provider of electronic communication service or
22 provider of remote computing service.

23 (2) ~~(1)~~ An investigative or law enforcement officer may
24 require the disclosure by a provider of electronic communication
25 service or remote computing service of the contents of a wire or
26 electronic communication that has been in electronic storage in
27 an electronic communications system for 180 days or less only
28 pursuant to a warrant issued by the judge of a court of
29 competent jurisdiction. As used in this section, the term "a
30 court of competent jurisdiction" means a court that has
31 jurisdiction over the investigation or that is otherwise
32 authorized by law. An investigative or law enforcement officer
33 may require the disclosure by a provider of electronic
34 communication services of the contents of a wire or electronic
35 communication that has been in electronic storage in an
36 electronic communications system for more than 180 days by the
37 means available under subsection (3) ~~(2)~~.

38 ~~(2) An investigative or law enforcement officer may require~~
39 ~~a provider of remote computing service to disclose the contents~~
40 ~~of any wire or electronic communication to which this subsection~~



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41 ~~is made applicable by subsection (3):~~

42 ~~(a) Without required notice to the subscriber or customer~~
43 ~~if the investigative or law enforcement officer obtains a~~
44 ~~warrant issued by the judge of a court of competent~~
45 ~~jurisdiction; or~~

46 ~~(b) With prior notice, or with delayed notice pursuant to~~
47 ~~s. 934.25, from the investigative or law enforcement officer to~~
48 ~~the subscriber or customer if the investigative or law~~
49 ~~enforcement officer:~~

50 ~~1. Uses a subpoena; or~~

51 ~~2. Obtains a court order for such disclosure under~~
52 ~~subsection (5).~~

53 (3) Subsection (2) is applicable with respect to any
54 electronic communication that is held or maintained on a remote
55 computing service:

56 (a) On behalf of a subscriber or customer of such service
57 and received by means of electronic transmission from, or
58 created by means of computer processing of communications
59 received by means of electronic transmission from, a subscriber
60 or customer of such service.

61 (b) Solely for the purposes of providing storage or
62 computer processing services to a subscriber or customer, if the
63 provider is not authorized to access the contents of any such
64 communication for purposes of providing any service other than
65 storage or computer processing.

66 (4) (a) An investigative or law enforcement officer may
67 require a provider of electronic communication service or remote
68 computing service to disclose a record or other information
69 pertaining to a subscriber or customer of such service, not



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70 including the contents of a communication, only when the
71 investigative or law enforcement officer:

72 1. Obtains a warrant issued by the judge of a court of
73 competent jurisdiction;

74 2. Obtains a court order for such disclosure under
75 subsection (5);

76 3. Has the consent of the subscriber or customer to such
77 disclosure; or

78 4. Seeks information under paragraph (b).

79 (b) A provider of electronic communication service or
80 remote computing service shall disclose to an investigative or
81 law enforcement officer the name; address; local and long-
82 distance telephone connection records, or records of session
83 times or durations; length of service, including the starting
84 date of service; types of services used; telephone or instrument
85 number or other subscriber number or identity, including any
86 temporarily assigned network address; and means and source of
87 payment, including any credit card or bank account number of a
88 subscriber to or customer of such service when the governmental
89 entity uses a subpoena or obtains such information in the manner
90 specified in paragraph (a) for obtaining information under that
91 paragraph.

92 ~~(c) An investigative or law enforcement officer who~~
93 ~~receives records or information under this subsection is not~~
94 ~~required to provide notice to a subscriber or customer.~~

95 (5) A court order for disclosure under ~~subsection (2),~~
96 ~~subsection (3), or~~ subsection (4) shall issue only if the
97 investigative or law enforcement officer offers specific and
98 articulable facts showing that there are reasonable grounds to



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99 believe that a record or other information pertaining to a
100 subscriber or customer of an electronic communication service or
101 remote computing service ~~the contents of a wire or electronic~~
102 ~~communication or the records of other information sought~~ are
103 relevant and material to an ongoing criminal investigation. A
104 court issuing an order pursuant to this section, on a motion
105 made promptly by the service provider, may quash or modify such
106 order if the information or records requested are unusually
107 voluminous in nature or compliance with such order otherwise
108 would cause an undue burden on such provider.

109 (6) No cause of action shall lie in any court against any
110 provider of wire or electronic communication service, its
111 officers, employees, agents, or other specified persons for
112 providing information, facilities, or assistance in accordance
113 with the terms of a court order, warrant, subpoena, or
114 certification under ss. 934.21-934.28.

115 (7) (a) A provider of wire or electronic communication
116 services or a remote computing service, upon the request of an
117 investigative or law enforcement officer, shall take all
118 necessary steps to preserve records and other evidence in its
119 possession pending the issuance of a court order or other
120 process.

121 (b) Records referred to in paragraph (a) shall be retained
122 for a period of 90 days, which shall be extended for an
123 additional 90 days upon a renewed request by an investigative or
124 law enforcement officer.

125 (8) A provider of electronic communication service, a
126 remote computing service, or any other person who furnished
127 assistance pursuant to this section shall be held harmless from



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128 any claim and civil liability resulting from the disclosure of
129 information pursuant to this section and shall be reasonably
130 compensated for reasonable expenses incurred in providing such
131 assistance.

132 Section 5. Section 934.24, Florida Statutes is repealed.

133 Section 6. Section 934.25, Florida Statutes, is amended to
134 read:

135 934.25 Nondisclosure by service provider ~~Delayed notice.~~-

136 ~~(1) An investigative or law enforcement officer acting~~
137 ~~under s. 934.23(2) may:~~

138 ~~(a) Where a court order is sought, include in the~~
139 ~~application a request for an order delaying the notification~~
140 ~~required under s. 934.23(2) for a period not to exceed 90 days,~~
141 ~~which request the court shall grant if it determines that there~~
142 ~~is reason to believe that notification of the existence of the~~
143 ~~court order may have an adverse result described in subsection~~
144 ~~(2).~~

145 ~~(b) Where a subpoena is obtained, delay the notification~~
146 ~~required under s. 934.23(2) for a period not to exceed 90 days~~
147 ~~upon the execution of a written certification of a supervisory~~
148 ~~official that there is reason to believe that notification of~~
149 ~~the existence of the subpoena may have an adverse result~~
150 ~~described in subsection (2).~~

151 ~~(2) Any of the following acts constitute an adverse result~~
152 ~~for purposes of subsection (1):~~

153 ~~(a) Endangering the life or physical safety of an~~
154 ~~individual.~~

155 ~~(b) Fleeing from prosecution.~~

156 ~~(c) Destroying or tampering with evidence.~~



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157 ~~(d) Intimidating potential witnesses.~~
158 ~~(e) Seriously jeopardizing an investigation or unduly~~
159 ~~delaying a trial.~~
160 ~~(3) The investigative or law enforcement officer shall~~
161 ~~maintain a true copy of a certification obtained under paragraph~~
162 ~~(1)(b).~~
163 ~~(4) Extensions of the delay of notification provided in s.~~
164 ~~934.23(2) of up to 90 days each may be granted by the court upon~~
165 ~~application, or by certification by an investigative or law~~
166 ~~enforcement officer, but only in accordance with subsection (6).~~
167 ~~(5) Upon the expiration of the period of delay of~~
168 ~~notification under subsection (1) or subsection (4), the~~
169 ~~investigative or law enforcement officer must serve upon or~~
170 ~~deliver by registered or first-class mail to the subscriber or~~
171 ~~customer a copy of the process or request together with notice~~
172 ~~which:~~
173 ~~(a) States with reasonable specificity the nature of the~~
174 ~~law enforcement inquiry, and~~
175 ~~(b) Informs the subscriber or customer:~~
176 ~~1. That information maintained for such subscriber or~~
177 ~~customer by the service provider named in the process or request~~
178 ~~was supplied to or requested by the investigative or law~~
179 ~~enforcement officer and the date on which such information was~~
180 ~~so supplied or requested.~~
181 ~~2. That notification of such subscriber or customer was~~
182 ~~delayed.~~
183 ~~3. What investigative or law enforcement officer or what~~
184 ~~court made the certification or determination pursuant to which~~
185 ~~that delay was made.~~



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186 ~~4. Which provision of ss. 934.21-934.28 allowed such delay.~~

187 ~~(1)-(6) An investigative or law enforcement officer acting~~
188 ~~under s. 934.23, when not required to notify the subscriber or~~
189 ~~customer under s. 934.23(2)(a), or to the extent that such~~
190 ~~notice may be delayed pursuant to subsection (1), may apply to a~~
191 ~~court for an order commanding a provider of electronic~~
192 ~~communication service or remote computing service to whom a~~
193 ~~warrant, subpoena, or court order is directed, for such period~~
194 ~~as the court deems appropriate, not to notify any other person~~
195 ~~of the existence of such warrant, subpoena, or court order. The~~
196 ~~court shall enter such order if it determines that there is~~
197 ~~reason to believe that notification of the existence of the~~
198 ~~warrant, subpoena, or court order will result in an adverse~~
199 ~~result. any of the following:~~

200 ~~(2) For purposes of this section, an "adverse result" means~~
201 ~~any of the following acts:~~

202 ~~(a) Endangering the life or physical safety of an~~
203 ~~individual.~~

204 ~~(b) Fleeing from prosecution.~~

205 ~~(c) Destroying or tampering with evidence.~~

206 ~~(d) Intimidating potential witnesses.~~

207 ~~(e) Seriously jeopardizing an investigation or unduly~~
208 ~~delaying a trial.~~

209 ~~(7) As used in paragraph (1)(b), the term "supervisory~~
210 ~~official" means the person in charge of an investigating or law~~
211 ~~enforcement agency's or entity's headquarters or regional~~
212 ~~office; the state attorney of the circuit from which the subject~~
213 ~~subpoena has been issued; the statewide prosecutor; or an~~
214 ~~assistant state attorney or assistant statewide prosecutor~~



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215 ~~specifically designated by the state attorney or statewide~~
216 ~~prosecutor to make such written certification.~~

217 ~~(8) As used in subsection (5), the term "deliver" shall be~~
218 ~~construed in accordance with the definition of "delivery" as~~
219 ~~provided in Rule 1.080, Florida Rules of Civil Procedure.~~

220 Section 7. Section 934.255, Florida Statutes, is created to
221 read:

222 934.255 Subpoenas in investigations of sexual offenses.—

223 (1) As used in this section, the term:

224 (a) "Adverse result" means any of the following acts:

225 1. Endangering the life or physical safety of an

226 individual.

227 2. Fleeing from prosecution.

228 3. Destroying or tampering with evidence.

229 4. Intimidating potential witnesses.

230 5. Seriously jeopardizing an investigation or unduly

231 delaying a trial.

232 (b) "Child" means a person under 18 years of age.

233 (c) "Investigative or law enforcement officer" has the same

234 meaning as s. 934.02(6), except that in any investigation

235 relating to whether a crime has been or is being committed only

236 a state attorney, an assistant state attorney, the statewide

237 prosecutor, or an assistant statewide prosecutor may seek

238 through use of a subpoena the information described in

239 paragraphs (2) (a) and (2) (b).

240 (d) "Sexual abuse of a child" means a criminal offense

241 based on any conduct described in s. 39.01(71).

242 (e) "Supervisory official" means the person in charge of an

243 investigating or law enforcement agency's or entity's



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244 headquarters or regional office; the state attorney of the
245 circuit from which the subpoena has been issued; the statewide
246 prosecutor; or an assistant state attorney or assistant
247 statewide prosecutor specifically designated by the state
248 attorney or statewide prosecutor to make such written
249 certification.

250 (2) An investigative or law enforcement officer who is
251 conducting an investigation into:

252 (a) Allegations of the sexual abuse of a child or an
253 individual's suspected commission of a crime listed in s.
254 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
255 production of records, documents, or other tangible objects and
256 the testimony of the subpoena recipient concerning the
257 production and authenticity of such records, documents, or
258 objects, except as provided in paragraph (b).

259 (b) Allegations of the sexual abuse of a child may use a
260 subpoena to require a provider of electronic communication
261 services or remote computing services to disclose a record or
262 other information pertaining to a subscriber or customer of such
263 service as described in s. 934.23(4)(b).

264 (c) A subpoena issued under paragraph (a) must describe the
265 records, documents, or other tangible objects required to be
266 produced, and must prescribe a date by which such records,
267 documents, or other tangible objects must be produced.

268 (3) At any time before the date prescribed in a subpoena
269 issued under subsection (2)(a) for production of records,
270 documents, or other tangible objects or the date prescribed in a
271 subpoena issued under subsection (2)(b) for production of a
272 record or other information, a person or entity receiving such



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273 subpoena may, before a judge of competent jurisdiction, petition
274 for an order modifying or setting aside the prohibition of
275 disclosure issued under subsection (5).

276 (4) An investigative or law enforcement officer who uses a
277 subpoena issued under paragraph (2) (a) to obtain any record,
278 document, or other tangible object may retain such items for use
279 in any ongoing criminal investigation or a closed investigation
280 with the intent that the investigation may later be reopened.

281 (5) (a) If a subpoena issued under subsection (2) is served
282 upon a recipient and accompanied by a written certification of a
283 supervisory official that there is reason to believe that
284 notification of the existence of the subpoena may have an
285 adverse result, the subpoena recipient is prohibited from
286 disclosing to any person for a period of 180 days the existence
287 of the subpoena.

288 (b) A recipient of a subpoena issued under subsection (2)
289 that is accompanied by a written certification issued pursuant
290 to this subsection is authorized to disclose information
291 otherwise subject to any applicable nondisclosure requirement to
292 persons as is necessary to comply with the subpoena, to an
293 attorney in order to obtain legal advice or assistance regarding
294 compliance with the subpoena, or to any other person as allowed
295 and specifically authorized by the investigative or law
296 enforcement officer who obtained the subpoena or the supervisory
297 official who issued the written certification. The subpoena
298 recipient shall notify any person to whom disclosure of the
299 subpoena is made pursuant to this paragraph of the existence of,
300 and length of time associated with, the nondisclosure
301 requirement.



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302 (c) A person to whom disclosure of the subpoena is made
303 under paragraph (a) is subject to the nondisclosure requirements
304 of this subsection in the same manner as the subpoena recipient.

305 (d) At the request of the investigative or law enforcement
306 officer who obtained the subpoena or the supervisory official
307 who issued the written certification, the subpoena recipient
308 shall identify to the investigative or law enforcement officer
309 or supervisory official, before or at the time of compliance
310 with the subpoena, the name of any person to whom disclosure was
311 made under paragraph (b). If the investigative or law
312 enforcement officer or supervisory official makes such a
313 request, the subpoena recipient has an ongoing duty to disclose
314 the identity of any individuals notified of the subpoena's
315 existence throughout the nondisclosure period.

316 (e) The investigative or law enforcement officer shall
317 maintain a true copy of a written certification obtained under
318 this subsection.

319 (6) An investigative or law enforcement officer acting
320 under paragraph (2)(b) may apply to a court for an order
321 extending the nondisclosure period provided in subsection (5)
322 for a subpoena and commanding a provider of electronic
323 communication service or remote computing service to whom the
324 subpoena is directed, for such period as the court deems
325 appropriate, not to notify any other person of the existence of
326 such subpoena. The court shall enter such order if it determines
327 that there is reason to believe that notification of the
328 existence of the subpoena will result in an adverse result.

329 (7) In the case of contumacy by a person served a subpoena
330 issued under subsection (2), or his or her refusal to comply



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331 with such a subpoena, the investigative or law enforcement
332 officer who sought the subpoena may petition a court of
333 competent jurisdiction to compel compliance. The court may
334 address the matter as indirect criminal contempt pursuant to
335 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
336 prohibited disclosure of a subpoena issued under subsection (2)
337 for which a period of prohibition of disclosure provided in
338 subsection (5) or an extension thereof under subsection (6) is
339 in effect is punishable as provided in s. 934.43. However,
340 limited disclosure is authorized as provided in subsection (5).

341 (8) No cause of action shall lie in any court against any
342 provider of wire or electronic communication service, its
343 officers, employees, agents, or other specified persons for
344 providing information, facilities, or assistance in accordance
345 with the terms of a subpoena under this section.

346 (9) (a) A provider of wire or electronic communication
347 services or a remote computing service, upon the request of an
348 investigative or law enforcement officer, shall take all
349 necessary steps to preserve records and other evidence in its
350 possession pending the issuance of a court order or other
351 process.

352 (b) Records referred to in paragraph (a) shall be retained
353 for a period of 90 days, which shall be extended for an
354 additional 90 days upon a renewed request by an investigative or
355 law enforcement officer.

356 (10) A provider of electronic communication service, a
357 remote computing service, or any other person who furnished
358 assistance pursuant to this section shall be held harmless from
359 any claim and civil liability resulting from the disclosure of



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360 information pursuant to this section and shall be reasonably
361 compensated for reasonable expenses incurred in providing such
362 assistance. A witness who is subpoenaed to appear to testify
363 under subsection (2) and who complies with the subpoena must be
364 paid the same fees and mileage rate paid to a witness appearing
365 before a court of competent jurisdiction in this state.

366
367 ===== T I T L E A M E N D M E N T =====

368 And the title is amended as follows:

369 Delete lines 2 - 12

370 and insert:

371 An act relating to security of communications;
372 amending s. 934.01, F.S.; revising and providing
373 legislative findings; amending s. 934.02, F.S.;
374 redefining the term "oral communication"; defining the
375 terms "microphone-enabled household device" and
376 "portable electronic communication device"; amending
377 s. 934.21, F.S.; revising the exceptions to conduct
378 that constitutes unlawful access to stored
379 communications; amending s. 934.23, F.S.; defining
380 "investigative or law enforcement officer" and
381 specifying that an exception to such definition is
382 that in any criminal investigation only a prosecutor
383 may obtain disclosure of a stored communications
384 through specified legal process; requiring a warrant
385 for any content of a stored communications; deleting
386 provisions relating to obtaining content of stored
387 communications, with required subscriber notice, by
388 obtaining a court order for disclosure or using a



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389 subpoena; deleting provisions relating to any
390 electronic communication held or maintained in a
391 remote computing service; deleting a provision on not
392 providing notice applicable to a subpoena for basic
393 subscriber information; repealing s. 934.24, F.S.;
394 deleting provisions relating to backup protection for
395 content of stored communication obtained, with prior
396 subscriber notice, by court order for disclosure or
397 subpoena; deleting provisions authorizing a subscriber
398 to seek a court order to quash such subpoena or vacate
399 such court order for disclosure; amending 934.25,
400 F.S., deleting provisions relating to delaying
401 subscriber notice when such notice is required for
402 obtaining contents of stored communications pursuant
403 to a court order for disclosure or subpoena; deleting
404 reference to subscriber notice or delay of such notice
405 in provisions relating to nondisclosure of a warrant,
406 court order, or subpoena for stored communications;
407 creating s. 934.255, F.S.; defining "adverse result,"
408 "child," "investigative or law enforcement officer,"
409 "sexual abuse of child," and "supervisory official";
410 specifying that an exception to the definition of
411 "investigative or law enforcement officer" is that in
412 any criminal investigation only a prosecutor may use a
413 subpoena to obtain disclosure of basic subscriber
414 information relevant to stored communications;
415 authorizing an investigative or law enforcement
416 officer conducting an investigation into specified
417 matters to subpoena certain persons or entities for



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418 the production of records, documents, or other
419 tangible things and testimony for stored
420 communications, excluding basic subscriber information
421 relevant to stored communications; authorizing an
422 investigative or law enforcement officer conducting an
423 investigation into specified matters to subpoena
424 certain person or entities for basic subscriber
425 information relevant to stored communications;
426 specifying requirements for the issuance of a
427 subpoena; authorizing a subpoenaed person to petition
428 a court for an order modifying or setting aside a
429 prohibition on disclosure; authorizing, under certain
430 circumstances, an investigative or law enforcement
431 officer to retain subpoenaed records, documents, or
432 other tangible objects; prohibiting the disclosure of
433 a subpoena for a specified period if the disclosure
434 might result in an adverse result; providing
435 exceptions; requiring an investigative or law
436 enforcement officer to maintain a true copy of a
437 written certification required for nondisclosure;
438 authorizing an investigative or law enforcement
439 officer to apply to a court for an order prohibiting
440 certain entities from notifying any person of the
441 existence of a subpoena under certain circumstances;
442 authorizing an investigative or law enforcement
443 officer to petition a court to compel compliance with
444 a subpoena; authorizing a court to punish a person who
445 does not comply with a subpoena as indirect criminal
446 contempt; providing criminal penalties; precluding a



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447 cause of action against certain entities or persons
448 for providing information, facilities, or assistance
449 in accordance with terms of a subpoena; providing for
450 preservation of evidence pending issuance of legal
451 process; providing that certain entities or persons
452 shall be held harmless from any claim and civil
453 liability resulting from disclosure of specified
454 information; providing for reasonable compensation for
455 reasonable expenses incurred in providing assistance;
456 requiring that a subpoenaed witness be paid certain
457 fees and mileage;