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LEGISLATIVE ACTION

Senate

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House

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03/06/2018 11:01 AM

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Senator Brandes moved the following:

Senate Amendment (with title amendment)

Delete lines 160 - 730

and insert:

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data that society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person,



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12 cellular phone, or portable electronic communication device
13 without the consent of the person or owner of the cellular phone
14 or portable electronic communication device should be allowed
15 only when authorized by a warrant issued by a court of competent
16 jurisdiction and should remain under the control and supervision
17 of the authorizing court.

18 (6) The Legislature recognizes that the use of portable
19 electronic communication devices is growing at a rapidly
20 increasing rate. These devices can store, and encourage the
21 storing of, an almost limitless amount of personal and private
22 information. Often linked to the Internet, these devices are
23 commonly used to access personal and business information and
24 databases in computers and servers that can be located anywhere
25 in the world. The user of a portable electronic communication
26 device has a reasonable and justifiable expectation of privacy
27 in the information that these devices contain.

28 (7) The Legislature recognizes that the use of household
29 electronic devices, including microphone-enabled household
30 devices, is growing at a rapidly increasing rate. These devices
31 often contain microphones that listen for and respond to
32 environmental cues. These household devices are generally
33 connected to and communicate through the Internet, resulting in
34 the storage of and accessibility to daily household information
35 in a device itself or in a remote computing service. Persons
36 should not have to choose between using household technological
37 enhancements and conveniences or preserving the right to privacy
38 in one's home.

39 Section 2. Subsection (2) of section 934.02, Florida
40 Statutes, is amended, and subsections (27) and (28) are added to



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41 that section, to read:

42 934.02 Definitions.—As used in this chapter:

43 (2) "Oral communication" means any oral communication
44 uttered by a person exhibiting an expectation that such
45 communication is not subject to interception under circumstances
46 justifying such expectation, including the use of a microphone-
47 enabled household device, and does not mean any public oral
48 communication uttered at a public meeting or any electronic
49 communication.

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

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

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

56 (c) Which communicates with, by any means, another entity
57 or individual; and

58 (d) Which contains a microphone designed to listen for and
59 respond to environmental cues.

60 (28) "Portable electronic communication device" means an
61 object capable of being easily transported or conveyed by a
62 person which is capable of creating, receiving, accessing, or
63 storing electronic data or communications and which communicates
64 with, by any means, another device, entity, or individual.

65 Section 3. Section 934.21, Florida Statutes, is amended to
66 read:

67 934.21 Unlawful access to stored communications;
68 penalties.—

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



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

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

75
76 and thereby obtains, alters, or prevents authorized access to a
77 wire or electronic communication while it is in electronic
78 storage in such system shall be punished as provided in
79 subsection (2).

80 (2) The punishment for an offense under subsection (1) is
81 as follows:

82 (a) If the offense is committed for purposes of commercial
83 advantage, malicious destruction or damage, or private
84 commercial gain, the person ~~is~~:

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

88 2. In the case of any subsequent offense under this
89 subsection, commits ~~guilty of~~ a felony of the third degree,
90 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
91 s. 934.41.

92 (b) In any other case, the person commits ~~is guilty of~~ a
93 misdemeanor of the second degree, punishable as provided in s.
94 775.082 or s. 775.083.

95 (3) Subsection (1) does not apply with respect to conduct
96 authorized:

97 (a) By the person or entity providing a wire, oral, or
98 electronic communications service, including through cellular



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99 phones, portable electronic communication devices, or
100 microphone-enabled household devices;

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

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

106 (d) In chapter 933; or

107 (e) For accessing for a legitimate business purpose
108 information that is not personally identifiable or that has been
109 collected in a way that prevents identification of the user of
110 the device.

111 Section 4. Section 934.42, Florida Statutes, is amended to
112 read:

113 934.42 Mobile tracking device and location tracking
114 authorization.—

115 (1) As used in this section:

116 (a) "Mobile tracking device" means an electronic or
117 mechanical device which permits the tracking of the movement of
118 a person or object.

119 (b) "Real-time location tracking" means:

120 1. Installation and use of a mobile tracking device on the
121 object to be tracked;

122 2. Acquisition of real-time cell-site location data; or

123 3. Acquisition of real-time precise global positioning
124 system location data.

125 (c) "Historical location data" means the acquisition of
126 historical precise global positioning system location data in
127 the possession of a provider.



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128 (2)~~(1)~~ An investigative or law enforcement officer may make
129 application to a judge of competent jurisdiction for a warrant
130 ~~an order~~ authorizing or approving real-time location tracking
131 ~~the installation and use of a mobile tracking device~~ or the
132 acquisition of historical location data in the possession of the
133 provider.

134 (3)~~(2)~~ An application under subsection (2) ~~(1)~~ of this
135 section must include:

136 (a) A statement of the identity of the applicant and the
137 identity of the law enforcement agency conducting the
138 investigation.

139 (b) A statement setting forth a reasonable period of time
140 that the mobile tracking device may be used or the location data
141 may be obtained in real-time, not to exceed 45 days from the
142 date the warrant is issued. The court may, for good cause, grant
143 one or more extensions for a reasonable period of time, not to
144 exceed 45 days each. When seeking historical location data, the
145 applicant must specify a data range for the data sought
146 ~~certification by the applicant that the information likely to be~~
147 ~~obtained is relevant to an ongoing criminal investigation being~~
148 ~~conducted by the investigating agency.~~

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

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

154 (4)~~(3)~~ Upon application made as provided under subsection
155 (3)~~(2)~~, the court, if it finds probable cause ~~that the~~
156 ~~certification~~ and finds that the statements required by



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157 subsection (3)~~(2)~~ have been made in the application, shall grant
158 a warrant ~~enter an~~ ex parte ~~order~~ authorizing real-time location
159 tracking the installation and use of a mobile tracking device or
160 the acquisition of historical location data. Such warrant ~~order~~
161 may authorize the use of the mobile tracking device within the
162 jurisdiction of the court and outside that jurisdiction but
163 within the State of Florida if the mobile tracking device is
164 installed within the jurisdiction of the court. The warrant must
165 command the officer to complete any installation authorized by
166 the warrant within a specified period of time not to exceed 10
167 calendar days.

168 (5)~~(4)~~ A court may not require greater specificity or
169 additional information beyond that which is required by law and
170 this section as a requisite for issuing a warrant ~~an order~~.

171 (6) Within 10 days after the time period specified in
172 paragraph (3) (b) has ended, the officer executing a warrant must
173 return the warrant to the issuing judge. When the warrant is
174 authorizing historical location data, the officer executing the
175 warrant must return the warrant to the issuing judge within 10
176 days after receipt of the records. The officer may do so by
177 reliable electronic means.

178 (7) Within 10 days after the time period specified in
179 paragraph (3) (b) has ended, the officer executing a warrant must
180 serve a copy of the warrant on the person who, or whose
181 property, was tracked. When the warrant is authorizing
182 historical location data, the officer executing the warrant must
183 serve a copy of the warrant on the person whose data was
184 obtained within 10 days after receipt of the records. Service
185 may be accomplished by delivering a copy to the person who, or



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186 whose property, was tracked or data obtained or by leaving a
187 copy at the person's residence or usual place of abode with an
188 individual of suitable age and discretion who resides at that
189 location and by mailing a copy to the person's last known
190 address. Upon a showing of good cause to a court of competent
191 jurisdiction, the court may grant one or more postponements of
192 this notice for a period of 90 days each.

193 (8) ~~(5)~~ The standards established by Florida courts and the
194 United States Supreme Court for the installation, use, or ~~and~~
195 monitoring of mobile tracking devices and the acquisition of
196 location data shall apply to the installation, use, or
197 monitoring ~~and use~~ of any device and the acquisition of location
198 data as authorized by this section.

199 ~~(6) As used in this section, a "tracking device" means an~~
200 ~~electronic or mechanical device which permits the tracking of~~
201 ~~the movement of a person or object.~~

202 (9) (a) Notwithstanding any other provision of this chapter,
203 any investigative or law enforcement officer specially
204 designated by the Governor, the Attorney General, the statewide
205 prosecutor, or a state attorney acting pursuant to this chapter
206 who reasonably determines that:

207 1. An emergency exists which:

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

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

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



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216 may install or use a mobile tracking device if, within 48 hours
217 after the installation or use has occurred or begins to occur, a
218 warrant approving the installation or use is issued in
219 accordance with this section.

220 (b) In the absence of an authorizing warrant, such
221 installation or use must immediately terminate when the
222 information sought is obtained, when the application for the
223 warrant is denied, or when 48 hours have lapsed since the
224 installation or use of the mobile tracking device began,
225 whichever is earlier.

226
227 ===== T I T L E A M E N D M E N T =====

228 And the title is amended as follows:

229 Delete lines 2 - 120

230 and insert:

231 An act relating to the search of the content,
232 information, and communications of cellular phones,
233 portable electronic communication devices, and
234 microphone-enabled household devices; amending s.
235 934.01, F.S.; revising and providing legislative
236 findings; amending s. 934.02, F.S.; redefining the
237 term "oral communication"; defining the terms
238 "microphone-enabled household device" and "portable
239 electronic communication device"; amending s. 934.21,
240 F.S.; revising the exceptions to conduct that
241 constitute unlawful access to stored communications;
242 conforming a provision to changes made by the act;
243 amending s. 934.42, F.S.; defining the terms "mobile



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244 tracking device," "real-time location tracking," and
245 "historical location data"; authorizing an
246 investigative or law enforcement officer to apply to a
247 judge of competent jurisdiction for a warrant, rather
248 than an order, authorizing real-time location tracking
249 or acquisition of historical location data; requiring
250 an application for a warrant to include a statement of
251 a reasonable period of time that the mobile tracking
252 device may be used or the location data may be
253 obtained in real-time, not to exceed a specified
254 limit; authorizing a court to grant extensions that do
255 not individually exceed a specified limit, for good
256 cause; deleting a provision requiring a certification
257 to be included in the application for an order;
258 providing that the court, if it finds probable cause
259 and finds the required statements in the application,
260 must grant a warrant; specifying the warrant may
261 authorize real-time location tracking or acquisition
262 of historical location data; providing the warrant may
263 authorize the use of the mobile tracking device as
264 specified; requiring the warrant to command the
265 officer to complete any installation authorized by the
266 warrant within a certain timeframe; providing
267 requirements for the return of the warrant to the
268 judge and service of a copy of the warrant on the
269 person who was tracked or whose property was tracked;
270 specifying how a warrant authorizing historical
271 location data must be returned and served; authorizing
272 a court, for good cause, to postpone the notice



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273 requirement for a specified time period; deleting the
274 definition of "tracking device"; requiring that the
275 standards established by Florida courts for the
276 installation, use, or monitoring of mobile tracking
277 devices and the acquisition of location data apply to
278 the installation, use, or monitoring of any devices
279 and the acquisition of location data as authorized;
280 authorizing any investigative or law enforcement
281 officer who is specially designated by certain persons
282 and who makes specified determinations to install or
283 use a mobile tracking device under certain
284 circumstances; providing requirements for the
285 installation and use of such mobile tracking devices;
286 providing an effective date.