

By Senator Brandes

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1 A bill to be entitled
2 An act relating to the search of the content,
3 information, and communications of cellular phones,
4 portable electronic communication devices, and
5 microphone-enabled household devices; amending s.
6 92.605, F.S.; authorizing the obtaining in criminal
7 cases of the contents of electronic communications
8 only by court order or by search warrant, as provided
9 in ch. 934, F.S., unless otherwise required by law;
10 amending s. 934.01, F.S.; revising and providing
11 legislative findings; reordering and amending s.
12 934.02, F.S.; redefining the term "oral
13 communication"; defining the terms "portable
14 electronic communication device" and "microphone-
15 enabled household device"; amending s. 934.03, F.S.;
16 authorizing specified persons to provide information,
17 facilities, or technical assistance to a person
18 authorized by law to intercept wire, oral, or
19 electronic communications if the person has been
20 provided with a warrant; prohibiting specified persons
21 from disclosing the existence of any interception of a
22 wire, oral, or electronic communication with respect
23 to which the person has been served with a warrant;
24 conforming a cross-reference; amending s. 934.07,
25 F.S.; authorizing a judge to issue, instead of
26 granting, a warrant in conformity with specified
27 provisions; authorizing the Department of Law
28 Enforcement to request a law enforcement agency that
29 provided it with certain information to join with the

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30 department in seeking a new warrant; amending s.
31 934.08, F.S.; authorizing certain disclosure or use
32 when an investigative or law enforcement officer
33 intercepts wire, oral, or electronic communications
34 relating to offenses other than those specified in a
35 warrant; amending s. 934.09, F.S.; requiring that each
36 application for a warrant, rather than an order,
37 authorizing or approving the interception of wire,
38 oral, or electronic communications be made in writing
39 and state the applicant's authority; authorizing a
40 judge to authorize a warrant ex parte, rather than an
41 ex parte order, based on the application under certain
42 circumstances; specifying requirements for warrants,
43 rather than orders, issued under certain
44 circumstances; deleting a time limitation that, if not
45 met, prohibits the introduction into evidence of the
46 contents of certain wire, oral, or electronic
47 communications or other evidence; deleting a provision
48 authorizing a judge to waive the time limitation if he
49 or she makes certain findings; authorizing an
50 aggrieved person to move to suppress the contents of
51 certain wire, oral, or electronic communications
52 before, as well as during, a trial, hearing, or
53 proceeding; providing for inadmissibility of certain
54 evidence if a certain motion is granted; authorizing a
55 judge of competent jurisdiction to authorize
56 interception within this state under specified
57 circumstances; amending s. 934.10, F.S.; providing
58 that a good faith reliance on a warrant issued under

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59 certain provisions constitutes a complete defense
60 against specified actions; amending s. 934.21, F.S.;
61 providing criminal penalties for the intentional and
62 unlawful access without authorization of certain
63 devices and obtainment of wire, oral, or electronic
64 communications stored within those devices; conforming
65 cross-references; reordering and amending s. 934.42,
66 F.S.; authorizing an investigative or law enforcement
67 officer to apply to a judge of competent jurisdiction
68 for a warrant, rather than an order, authorizing the
69 acquisition of cellular-site location data, precise
70 global positioning system data, or historical global
71 positioning satellite data; requiring an application
72 for a warrant to include a statement of a reasonable
73 length of time that a mobile tracking device may be
74 used, not to exceed a specified duration; authorizing
75 a court to grant extensions not individually exceeding
76 a specified duration, for good cause; deleting a
77 provision requiring a certification to be included in
78 the application for an order; requiring a court to
79 grant a warrant ex parte if it finds probable cause in
80 the application and if the required statements have
81 been made; requiring the warrant to command the
82 officer to complete an installation authorized by the
83 warrant within a certain timeframe; providing
84 requirements for the return of the warrant to the
85 judge and service of a copy of the warrant on the
86 person who was tracked or whose property was tracked;
87 authorizing a court to delay the notice requirement

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88 for a certain time upon request by the law enforcement
89 agency; requiring that the standards established by
90 Florida courts for the installation, use, or
91 monitoring of mobile tracking devices apply to the
92 installation, use, or monitoring of certain devices;
93 redefining the term "tracking device"; authorizing any
94 investigative or law enforcement officer who is
95 specially designated by certain persons and who makes
96 specified determinations to install or use a mobile
97 tracking device under certain circumstances; providing
98 requirements for the installation and use of the
99 mobile tracking devices; providing criminal penalties;
100 reenacting s. 934.22(2)(b), F.S., relating to
101 voluntary disclosure of customer communications or
102 records, to incorporate the amendments made to ss.
103 934.03 and 934.07, F.S., in references thereto;
104 reenacting s. 934.27(1) and (4), F.S., relating to
105 relief, damages, and defenses for certain civil
106 actions, to incorporate the amendments made to ss.
107 934.09 and 934.21, F.S., in references thereto;
108 reenacting ss. 934.23(6), 934.24(6) and (7),
109 934.25(5), and 934.28, F.S., relating to required
110 disclosures of customer communications or records, a
111 subscriber or customer filing a motion for certain
112 relief and customer notification, delayed notice, and
113 the exclusivity of remedies and sanctions for certain
114 violations, respectively, to incorporate the amendment
115 made to s. 934.21, F.S., in references thereto;
116 providing an effective date.

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118 Be It Enacted by the Legislature of the State of Florida:

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120 Section 1. Subsection (9) of section 92.605, Florida
121 Statutes, is amended to read:

122 92.605 Production of certain records by Florida businesses
123 and out-of-state corporations.—

124 (9) In any criminal case, the content of any electronic
125 communication may be obtained under this section only by court
126 order or by the issuance of a search warrant, as provided in
127 chapter 934, unless otherwise required by ~~provided under~~ the
128 Electronic Communications Privacy Act or other provision of law.

129 Section 2. Section 934.01, Florida Statutes, is amended to
130 read:

131 934.01 Legislative findings.—On the basis of its own
132 investigations and of published studies, the Legislature makes
133 the following findings:

134 (1) Wire communications are normally conducted through the
135 use of facilities which form part of an intrastate network. The
136 same facilities are used for interstate and intrastate
137 communications.

138 (2) In order to protect effectively the privacy of wire,
139 ~~and~~ oral, and electronic communications, to protect the
140 integrity of court and administrative proceedings, and to
141 prevent the obstruction of intrastate commerce, it is necessary
142 for the Legislature to define the circumstances and conditions
143 under which the interception of wire, ~~and~~ oral, and electronic
144 communications may be authorized and to prohibit any
145 unauthorized interception of such communications and the use of

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146 the contents thereof in evidence in courts and administrative
147 proceedings.

148 (3) Organized criminals make extensive use of wire, ~~and~~
149 oral, and electronic communications in their criminal
150 activities. The interception of such communications to obtain
151 evidence of the commission of crimes or to prevent their
152 commission is an indispensable aid to law enforcement and the
153 administration of justice.

154 (4) To safeguard the privacy of innocent persons, the
155 interception of wire, ~~or~~ oral, or electronic communications when
156 none of the parties to the communication has consented to the
157 interception should be allowed only when authorized by a court
158 of competent jurisdiction and should remain under the control
159 and supervision of the authorizing court. Interception of wire,
160 ~~and~~ oral, and electronic communications should further be
161 limited to certain major types of offenses and specific
162 categories of crime with assurance that the interception is
163 justified and that the information obtained thereby will not be
164 misused.

165 (5) To safeguard the privacy of innocent persons, the
166 Legislature recognizes a subjective expectation of privacy in
167 precision location data that society is now prepared to accept
168 as objectively reasonable. As such, the collection by law
169 enforcement of the precise location of a person, a cellular
170 phone, or a portable electronic communication device without the
171 consent of the person or the owner of the cellular phone or
172 portable electronic communication device should be allowed only
173 when authorized by a warrant issued by a court of competent
174 jurisdiction and should remain under the control and supervision

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175 of the authorizing court.

176 (6) The Legislature recognizes that the use of portable
177 electronic communication devices is growing at a rapidly
178 increasing rate. These devices can store, and encourage the
179 storage of, an almost limitless amount of personal and private
180 information. Often linked to the Internet, these devices are
181 commonly used to access personal and business information and
182 other data stored in computers and servers that can be located
183 anywhere in the world. The user of a portable electronic
184 communication device has a reasonable and justifiable
185 expectation of privacy of the information that these devices
186 contain.

187 (7) The Legislature recognizes that the use of household
188 electronic devices, including microphone-enabled household
189 devices, is growing at a rapidly increasing rate. These devices
190 often contain microphones that listen for and respond to
191 environmental triggers. These household devices are generally
192 connected to and communicate through the Internet, resulting in
193 the storage of and accessibility of daily household information
194 in a device itself or in a remote computing service. An
195 individual should not have to choose between using household
196 technological enhancements and conveniences or preserving the
197 right to privacy in one's home.

198 Section 3. Section 934.02, Florida Statutes, is reordered
199 and amended to read:

200 934.02 Definitions.—As used in this chapter, the term:

201 (28)~~(1)~~ "Wire communication" means any aural transfer made
202 in whole or in part through the use of facilities for the
203 transmission of communications by the aid of wire, cable, or

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204 other like connection between the point of origin and the point
205 of reception including the use of such connection in a switching
206 station furnished or operated by any person engaged in providing
207 or operating such facilities for the transmission of intrastate,
208 interstate, or foreign communications or communications
209 affecting intrastate, interstate, or foreign commerce.

210 (17)~~(2)~~ "Oral communication" means any oral communication
211 uttered by a person exhibiting an expectation that such
212 communication is not subject to interception under circumstances
213 justifying such expectation, including interception through the
214 use of a microphone-enabled household device. The term and does
215 not mean any public oral communication uttered at a public
216 meeting or any electronic communication.

217 (12)~~(3)~~ "Intercept" means the aural or other acquisition of
218 the contents of any wire, electronic, or oral communication
219 through the use of any electronic, mechanical, or other device.

220 (10)~~(4)~~ "Electronic, mechanical, or other device" means any
221 device or apparatus which can be used to intercept a wire,
222 electronic, or oral communication other than:

223 (a) Any telephone or telegraph instrument, equipment, or
224 facility, or any component thereof:

225 1. Furnished to the subscriber or user by a provider of
226 wire or electronic communication service in the ordinary course
227 of its business and being used by the subscriber or user in the
228 ordinary course of its business or furnished by such subscriber
229 or user for connection to the facilities of such service and
230 used in the ordinary course of its business; or

231 2. Being used by a provider of wire or electronic
232 communications service in the ordinary course of its business or

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233 by an investigative or law enforcement officer in the ordinary
234 course of her or his duties.

235 (b) A hearing aid or similar device being used to correct
236 subnormal hearing to not better than normal.

237 (19)~~(5)~~ "Person" means any employee or agent of the State
238 of Florida or political subdivision thereof, of the United
239 States, or of any other state or political subdivision thereof,
240 and any individual, partnership, association, joint stock
241 company, trust, or corporation.

242 (20) "Portable electronic communication device" means an
243 object capable of being easily transported or conveyed by a
244 person which is capable of creating, receiving, accessing, or
245 storing electronic data or communications and which communicates
246 with, by any means, another device, entity, or individual.

247 (13)~~(6)~~ "Investigative or law enforcement officer" means
248 any officer of the State of Florida or political subdivision
249 thereof, of the United States, or of any other state or
250 political subdivision thereof, who is empowered by law to
251 conduct on behalf of the Government investigations of, or to
252 make arrests for, offenses enumerated in this chapter or similar
253 federal offenses, any attorney authorized by law to prosecute or
254 participate in the prosecution of such offenses, or any other
255 attorney representing the State of Florida or political
256 subdivision thereof in any civil, regulatory, disciplinary, or
257 forfeiture action relating to, based upon, or derived from such
258 offenses.

259 (5)~~(7)~~ "Contents," when used with respect to any wire,
260 oral, or electronic communication, includes any information
261 concerning the substance, purport, or meaning of that

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262 communication.

263 (14)~~(8)~~ "Judge of competent jurisdiction" means justice of
264 the Supreme Court, judge of a district court of appeal, circuit
265 judge, or judge of any court of record having felony
266 jurisdiction of the State of Florida, irrespective of the
267 geographic location or jurisdiction where the judge presides.

268 (1)~~(9)~~ "Aggrieved person" means a person who was a party to
269 any intercepted wire, oral, or electronic communication or a
270 person against whom the interception was directed.

271 (15)~~(10)~~ "Law enforcement agency" means an agency of the
272 State of Florida or a political subdivision thereof or of the
273 United States if the primary responsibility of the agency is the
274 prevention and detection of crime or the enforcement of the
275 penal, traffic, or highway laws of this state and if its agents
276 and officers are empowered by law to conduct criminal
277 investigations and to make arrests.

278 (16) "Microphone-enabled household device" means a device,
279 sensor, or other physical object within a residence:

280 (a) Which is capable of connecting to the Internet,
281 directly or indirectly, or to another connected device;

282 (b) Which is capable of creating, receiving, accessing,
283 processing, or storing electronic data or communications;

284 (c) Which communicates with, by any means, another device,
285 entity, or individual; and

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

288 (3)~~(11)~~ "Communication common carrier" ~~has shall have~~ the
289 same meaning which is given the term "common carrier" in 47
290 U.S.C. s. 153 ~~47 U.S.C. s. 153(10)~~.

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291 (6)~~(12)~~ "Electronic communication" means any transfer of
292 signs, signals, writing, images, sounds, data, or intelligence
293 of any nature transmitted in whole or in part by a wire, radio,
294 electromagnetic, photoelectronic, or photooptical system that
295 affects intrastate, interstate, or foreign commerce, but does
296 not include:

297 (a) Any wire or oral communication;

298 (b) Any communication made through a tone-only paging
299 device;

300 (c) Any communication from an electronic or mechanical
301 device which allows ~~permits~~ the tracking of the movement of a
302 person or an object; or

303 (d) Electronic funds transfer information stored by a
304 financial institution in a communications system used for the
305 electronic storage and transfer of funds.

306 (27)~~(13)~~ "User" means any person or entity who:

307 (a) Uses an electronic communication service, and

308 (b) Is duly authorized by the provider of such service to
309 engage in such use.

310 (8)~~(14)~~ "Electronic communications system" means any wire,
311 radio, electromagnetic, photooptical, or photoelectronic
312 facilities for the transmission of wire or electronic
313 communications, and any computer facilities or related
314 electronic equipment for the electronic storage of such
315 communications.

316 (7)~~(15)~~ "Electronic communication service" means any
317 service which provides to users thereof the ability to send or
318 receive wire or electronic communications.

319 (22)~~(16)~~ "Readily accessible to the general public" means,

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320 with respect to a radio communication, that such communication
321 is not:

322 (a) Scrambled or encrypted;

323 (b) Transmitted using modulation techniques whose essential
324 parameters have been withheld from the public with the intention
325 of preserving the privacy of such communication;

326 (c) Carried on a subcarrier or other signal subsidiary to a
327 radio transmission;

328 (d) Transmitted over a communications system provided by a
329 common carrier, unless the communication is a tone-only paging
330 system communication; or

331 (e) Transmitted on frequencies allocated under part 25;
332 subpart D, subpart E, or subpart F of part 74; or part 94 of the
333 Rules of the Federal Communications Commission, unless, in the
334 case of a communication transmitted on a frequency allocated
335 under part 74 that is not exclusively allocated to broadcast
336 auxiliary services, the communication is a two-way voice
337 communication by radio.

338 (9)~~(17)~~ "Electronic storage" means:

339 (a) Any temporary intermediate storage of a wire or
340 electronic communication incidental to the electronic
341 transmission thereof.

342 (b) Any storage of a wire or electronic communication by an
343 electronic communication service for purposes of backup
344 protection of such communication.

345 (2)~~(18)~~ "Aural transfer" means a transfer containing the
346 human voice at any point between and including the point of
347 origin and the point of reception.

348 (23)~~(19)~~ "Remote computing service" means the provision to

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349 the public of computer storage or processing services by means
350 of an electronic communications system.

351 (18)~~(20)~~ "Pen register" means a device or process that
352 records or decodes dialing, routing, addressing, or signaling
353 information transmitted by an instrument or facility from which
354 a wire or electronic communication is transmitted, but such
355 information does not include the contents of any communication.
356 The term does not include any device or process used by a
357 provider or customer of a wire or electronic communication
358 service for billing or recording as an incident to billing or
359 for communication services provided by such provider, and does
360 not include any device or process used by a provider or customer
361 of a wire communication service for cost accounting or other
362 like purposes in the ordinary course of its business.

363 (26)~~(21)~~ "Trap and trace device" means a device or process
364 that captures the incoming electronic or other impulses that
365 identify the originating number or other dialing, routing,
366 addressing, or signaling information reasonably likely to
367 identify the source of a wire or electronic communication, but
368 such information does not include the contents of any
369 communication.

370 (24)~~(22)~~ "State" means any state of the United States, the
371 District of Columbia, the Commonwealth of Puerto Rico, or any
372 other possession or territory of the United States.

373 (25)~~(23)~~ "Subpoena" means any administrative subpoena
374 authorized by federal or Florida law, federal or Florida grand
375 jury subpoena, or any criminal investigative subpoena as
376 authorized by Florida statute which may be utilized on behalf of
377 the government by an investigative or law enforcement officer.

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378 (11)~~(24)~~ "Foreign intelligence information" means
379 information, whether or not concerning a United States person,
380 as that term is defined in 50 U.S.C. s. 1801, which relates to:

381 (a) The ability of the United States to protect against
382 actual or potential attack or other grave hostile acts of a
383 foreign power or an agent of a foreign power;

384 (b) Sabotage or international terrorism by a foreign power
385 or an agent of a foreign power;

386 (c) Clandestine intelligence activities by an intelligence
387 service, a network of a foreign power, or an agent of a foreign
388 power; or

389 (d) With respect to a foreign power or foreign territory,
390 the national defense or security of the United States or the
391 conduct of the foreign affairs of the United States.

392 (21)~~(25)~~ "Protected computer" means:

393 (a) A computer for the exclusive use of a financial
394 institution or governmental entity;

395 (b) A computer that is not for the exclusive use of a
396 financial institution or governmental entity, but that is used
397 by or for a financial institution or governmental entity and
398 with respect to which unlawful conduct can affect the use by or
399 for the financial institution or governmental entity; or

400 (c) A computer that is used in interstate or foreign
401 commerce or communication, including a computer located outside
402 the United States.

403 (4)~~(26)~~ "Computer trespasser" means a person who accesses a
404 protected computer without authorization and thus does not have
405 a reasonable expectation of privacy with respect to any
406 communication transmitted to, through, or from the protected

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407 computer. The term does not include a person known by the owner
408 or operator of the protected computer to have an existing
409 contractual relationship with the owner or operator of the
410 protected computer for access to all or part of the protected
411 computer.

412 Section 4. Paragraphs (a) and (g) of subsection (2) of
413 section 934.03, Florida Statutes, are amended, and subsection
414 (1), paragraphs (b) through (f) and (h) through (k) of
415 subsection (2), and paragraph (b) of subsection (3) of that
416 section are republished, to read:

417 934.03 Interception and disclosure of wire, oral, or
418 electronic communications prohibited.—

419 (1) Except as otherwise specifically provided in this
420 chapter, any person who:

421 (a) Intentionally intercepts, endeavors to intercept, or
422 procures any other person to intercept or endeavor to intercept
423 any wire, oral, or electronic communication;

424 (b) Intentionally uses, endeavors to use, or procures any
425 other person to use or endeavor to use any electronic,
426 mechanical, or other device to intercept any oral communication
427 when:

428 1. Such device is affixed to, or otherwise transmits a
429 signal through, a wire, cable, or other like connection used in
430 wire communication; or

431 2. Such device transmits communications by radio or
432 interferes with the transmission of such communication;

433 (c) Intentionally discloses, or endeavors to disclose, to
434 any other person the contents of any wire, oral, or electronic
435 communication, knowing or having reason to know that the

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436 information was obtained through the interception of a wire,
437 oral, or electronic communication in violation of this
438 subsection;

439 (d) Intentionally uses, or endeavors to use, the contents
440 of any wire, oral, or electronic communication, knowing or
441 having reason to know that the information was obtained through
442 the interception of a wire, oral, or electronic communication in
443 violation of this subsection; or

444 (e) Intentionally discloses, or endeavors to disclose, to
445 any other person the contents of any wire, oral, or electronic
446 communication intercepted by means authorized by subparagraph
447 (2) (a)2., paragraph (2) (b), paragraph (2) (c), s. 934.07, or s.
448 934.09 when that person knows or has reason to know that the
449 information was obtained through the interception of such a
450 communication in connection with a criminal investigation, has
451 obtained or received the information in connection with a
452 criminal investigation, and intends to improperly obstruct,
453 impede, or interfere with a duly authorized criminal
454 investigation;

455
456 shall be punished as provided in subsection (4).

457 (2) (a)1. It is lawful under this section and ss. 934.04-
458 934.09 for an operator of a switchboard, or an officer,
459 employee, or agent of a provider of wire or electronic
460 communication service whose facilities are used in the
461 transmission of a wire or electronic communication, to
462 intercept, disclose, or use that communication in the normal
463 course of his or her employment while engaged in any activity
464 which is a necessary incident to the rendition of his or her

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465 service or to the protection of the rights or property of the
466 provider of that service, except that a provider of wire
467 communication service to the public shall not utilize service
468 observing or random monitoring except for mechanical or service
469 quality control checks.

470 2. Notwithstanding any other law, a provider of wire, oral,
471 or electronic communication service, or an officer, employee, or
472 agent thereof, or landlord, custodian, or other person, may
473 provide information, facilities, or technical assistance to a
474 person authorized by law to intercept wire, oral, or electronic
475 communications if such provider, or an officer, employee, or
476 agent thereof, or landlord, custodian, or other person, has been
477 provided with:

478 a. A court order directing such assistance signed by the
479 authorizing judge; ~~or~~

480 b. A certification in writing by a person specified in s.
481 934.09(7) that no warrant or court order is required by law,
482 that all statutory requirements have been met, and that the
483 specified assistance is required, setting forth the period of
484 time during which the provision of the information, facilities,
485 or technical assistance is authorized and specifying the
486 information, facilities, or technical assistance required; or

487 c. A warrant issued by a judge of competent jurisdiction as
488 required by law.

489 3. A provider of wire, oral, or electronic communication
490 service, or an officer, employee, or agent thereof, or landlord,
491 custodian, or other person may not disclose the existence of any
492 interception or the device used to accomplish the interception
493 with respect to which the person has been served with a warrant

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494 or furnished an order under this section and ss. 934.04-934.09,
495 except as may otherwise be required by legal process and then
496 only after prior notice to the Governor, the Attorney General,
497 the statewide prosecutor, or a state attorney, as may be
498 appropriate. Any such disclosure renders such person liable for
499 the civil damages provided under s. 934.10, and such person may
500 be prosecuted under s. 934.43. An action may not be brought
501 against any provider of wire, oral, or electronic communication
502 service, or an officer, employee, or agent thereof, or landlord,
503 custodian, or other person for providing information,
504 facilities, or assistance in accordance with the terms of a
505 court order under this section and ss. 934.04-934.09.

506 (b) It is lawful under this section and ss. 934.04-934.09
507 for an officer, employee, or agent of the Federal Communications
508 Commission, in the normal course of his or her employment and in
509 discharge of the monitoring responsibilities exercised by the
510 commission in the enforcement of 47 U.S.C. chapter 5, to
511 intercept a wire, oral, or electronic communication transmitted
512 by radio or to disclose or use the information thereby obtained.

513 (c) It is lawful under this section and ss. 934.04-934.09
514 for an investigative or law enforcement officer or a person
515 acting under the direction of an investigative or law
516 enforcement officer to intercept a wire, oral, or electronic
517 communication when such person is a party to the communication
518 or one of the parties to the communication has given prior
519 consent to such interception and the purpose of such
520 interception is to obtain evidence of a criminal act.

521 (d) It is lawful under this section and ss. 934.04-934.09
522 for a person to intercept a wire, oral, or electronic

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523 communication when all of the parties to the communication have
524 given prior consent to such interception.

525 (e) It is unlawful to intercept any wire, oral, or
526 electronic communication for the purpose of committing any
527 criminal act.

528 (f) It is lawful under this section and ss. 934.04-934.09
529 for an employee of a telephone company to intercept a wire
530 communication for the sole purpose of tracing the origin of such
531 communication when the interception is requested by the
532 recipient of the communication and the recipient alleges that
533 the communication is obscene, harassing, or threatening in
534 nature. The individual conducting the interception shall notify
535 local police authorities within 48 hours after the time of the
536 interception.

537 (g) It is lawful under this section and ss. 934.04-934.09
538 for an employee of:

539 1. An ambulance service licensed pursuant to s. 401.25, a
540 fire station employing firefighters as defined by s. 633.102, a
541 public utility, a law enforcement agency as defined by s. 934.02
542 ~~s. 934.02(10)~~, or any other entity with published emergency
543 telephone numbers;

544 2. An agency operating an emergency telephone number "911"
545 system established pursuant to s. 365.171; or

546 3. The central abuse hotline operated pursuant to s.
547 39.201,

548
549 to intercept and record incoming wire communications; however,
550 such employee may intercept and record incoming wire
551 communications on designated "911" telephone numbers and

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552 published nonemergency telephone numbers staffed by trained
553 dispatchers at public safety answering points only. It is also
554 lawful for such employee to intercept and record outgoing wire
555 communications to the numbers from which such incoming wire
556 communications were placed when necessary to obtain information
557 required to provide the emergency services being requested. For
558 the purpose of this paragraph, the term "public utility" has the
559 same meaning as provided in s. 366.02 and includes a person,
560 partnership, association, or corporation now or hereafter owning
561 or operating equipment or facilities in the state for conveying
562 or transmitting messages or communications by telephone or
563 telegraph to the public for compensation.

564 (h) It shall not be unlawful under this section and ss.
565 934.04-934.09 for any person:

566 1. To intercept or access an electronic communication made
567 through an electronic communication system that is configured so
568 that such electronic communication is readily accessible to the
569 general public.

570 2. To intercept any radio communication which is
571 transmitted:

572 a. By any station for the use of the general public, or
573 that relates to ships, aircraft, vehicles, or persons in
574 distress;

575 b. By any governmental, law enforcement, civil defense,
576 private land mobile, or public safety communications system,
577 including any police or fire communications system, readily
578 accessible to the general public;

579 c. By a station operating on an authorized frequency within
580 the bands allocated to the amateur, citizens band, or general

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581 mobile radio services; or

582 d. By any marine or aeronautical communications system.

583 3. To engage in any conduct which:

584 a. Is prohibited by s. 633 of the Communications Act of
585 1934; or

586 b. Is excepted from the application of s. 705(a) of the
587 Communications Act of 1934 by s. 705(b) of that act.

588 4. To intercept any wire or electronic communication the
589 transmission of which is causing harmful interference to any
590 lawfully operating station of consumer electronic equipment to
591 the extent necessary to identify the source of such
592 interference.

593 5. To intercept, if such person is another user of the same
594 frequency, any radio communication that is not scrambled or
595 encrypted made through a system that utilizes frequencies
596 monitored by individuals engaged in the provision or the use of
597 such system.

598 6. To intercept a satellite transmission that is not
599 scrambled or encrypted and that is transmitted:

600 a. To a broadcasting station for purposes of retransmission
601 to the general public; or

602 b. As an audio subcarrier intended for redistribution to
603 facilities open to the public, but not including data
604 transmissions or telephone calls, when such interception is not
605 for the purposes of direct or indirect commercial advantage or
606 private financial gain.

607 7. To intercept and privately view a private satellite
608 video communication that is not scrambled or encrypted or to
609 intercept a radio communication that is transmitted on

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610 frequencies allocated under subpart D of part 74 of the rules of
611 the Federal Communications Commission that is not scrambled or
612 encrypted, if such interception is not for a tortious or illegal
613 purpose or for purposes of direct or indirect commercial
614 advantage or private commercial gain.

615 (i) It shall not be unlawful under this section and ss.
616 934.04-934.09:

617 1. To use a pen register or a trap and trace device as
618 authorized under ss. 934.31-934.34 or under federal law; or

619 2. For a provider of electronic communication service to
620 record the fact that a wire or electronic communication was
621 initiated or completed in order to protect such provider,
622 another provider furnishing service toward the completion of the
623 wire or electronic communication, or a user of that service,
624 from fraudulent, unlawful, or abusive use of such service.

625 (j) It is not unlawful under this section and ss. 934.04-
626 934.09 for a person acting under color of law to intercept the
627 wire or electronic communications of a computer trespasser which
628 are transmitted to, through, or from a protected computer if:

629 1. The owner or operator of the protected computer
630 authorizes the interception of the communications of the
631 computer trespasser;

632 2. The person acting under color of law is lawfully engaged
633 in an investigation;

634 3. The person acting under color of law has reasonable
635 grounds to believe that the contents of the communications of
636 the computer trespasser will be relevant to the investigation;
637 and

638 4. The interception does not acquire communications other

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639 than those transmitted to, through, or from the computer
640 trespasser.

641 (k) It is lawful under this section and ss. 934.04-934.09
642 for a child under 18 years of age to intercept and record an
643 oral communication if the child is a party to the communication
644 and has reasonable grounds to believe that recording the
645 communication will capture a statement by another party to the
646 communication that the other party intends to commit, is
647 committing, or has committed an unlawful sexual act or an
648 unlawful act of physical force or violence against the child.

649 (3)

650 (b) A person or entity providing electronic communication
651 service to the public may divulge the contents of any such
652 communication:

653 1. As otherwise authorized in paragraph (2) (a) or s.
654 934.08;

655 2. With the lawful consent of the originator or any
656 addressee or intended recipient of such communication;

657 3. To a person employed or authorized, or whose facilities
658 are used, to forward such communication to its destination; or

659 4. Which were inadvertently obtained by the service
660 provider and which appear to pertain to the commission of a
661 crime, if such divulgence is made to a law enforcement agency.

662 Section 5. Subsections (1) and (2) of section 934.07,
663 Florida Statutes, are amended to read:

664 934.07 Authorization for interception of wire, oral, or
665 electronic communications.—

666 (1) The Governor, the Attorney General, the statewide
667 prosecutor, or any state attorney may authorize an application

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668 to a judge of competent jurisdiction for, and such judge may
669 issue ~~grant~~ in conformity with ss. 934.03-934.09, a warrant as
670 required by law or an order authorizing or approving the
671 interception of, wire, oral, or electronic communications by:

672 (a) The Department of Law Enforcement or any law
673 enforcement agency as defined in s. 934.02 having responsibility
674 for the investigation of the offense as to which the application
675 is made when such interception may provide or has provided
676 evidence of the commission of the offense of murder, kidnapping,
677 aircraft piracy, arson, gambling, robbery, burglary, theft,
678 dealing in stolen property, criminal usury, bribery, or
679 extortion; any felony violation of ss. 790.161-790.166,
680 inclusive; any violation of s. 787.06; any violation of chapter
681 893; any violation of the provisions of the Florida Anti-Fencing
682 Act; any violation of chapter 895; any violation of chapter 896;
683 any violation of chapter 815; any violation of chapter 847; any
684 violation of s. 827.071; any violation of s. 944.40; or any
685 conspiracy or solicitation to commit any violation of the laws
686 of this state relating to the crimes specifically enumerated in
687 this paragraph.

688 (b) The Department of Law Enforcement, together with other
689 assisting personnel as authorized and requested by the
690 department under s. 934.09(5), for the investigation of the
691 offense as to which the application is made when such
692 interception may provide or has provided evidence of the
693 commission of any offense that may be an act of terrorism or in
694 furtherance of an act of terrorism or evidence of any conspiracy
695 or solicitation to commit any such violation.

696 (2) (a) If, during the course of an interception of

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697 communications by a law enforcement agency as authorized under
698 paragraph (1)(a), the law enforcement agency finds that the
699 intercepted communications may provide or have provided evidence
700 of the commission of any offense that may be an act of terrorism
701 or in furtherance of an act of terrorism, or evidence of any
702 conspiracy or solicitation to commit any such violation, the law
703 enforcement agency shall promptly notify the Department of Law
704 Enforcement and apprise the department of the contents of the
705 intercepted communications. The agency notifying the department
706 may continue its previously authorized interception with
707 appropriate minimization, as applicable, and may otherwise
708 assist the department as provided in this section.

709 (b) Upon its receipt of information of the contents of an
710 intercepted communications from a law enforcement agency, the
711 Department of Law Enforcement shall promptly review the
712 information to determine whether the information relates to an
713 actual or anticipated act of terrorism as defined in this
714 section. If, after reviewing the contents of the intercepted
715 communications, there is probable cause that the contents of the
716 intercepted communications meet the criteria of paragraph
717 (1)(b), the Department of Law Enforcement may make application
718 for the interception of wire, oral, or electronic communications
719 consistent with paragraph (1)(b). The department may make an
720 independent new application for interception based on the
721 contents of the intercepted communications. Alternatively, the
722 department may request the law enforcement agency that provided
723 the information to join with the department in seeking a new
724 warrant as required by law or an amendment of the original
725 interception order, or may seek additional authority to continue

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726 intercepting communications under the direction of the
727 department. In carrying out its duties under this section, the
728 department may use the provisions for an emergency interception
729 provided in s. 934.09(7) if applicable under statutory criteria.

730 Section 6. Subsection (5) of section 934.08, Florida
731 Statutes, is amended to read:

732 934.08 Authorization for disclosure and use of intercepted
733 wire, oral, or electronic communications.—

734 (5) When an investigative or law enforcement officer, while
735 engaged in intercepting wire, oral, or electronic communications
736 in the manner authorized herein, intercepts wire, oral, or
737 electronic communications relating to offenses other than those
738 specified in the warrant or order of authorization or approval,
739 the contents thereof and evidence derived therefrom may be
740 disclosed or used as provided in subsections (1) and (2). Such
741 contents and any evidence derived therefrom may be used under
742 subsection (3) when authorized or approved by a judge of
743 competent jurisdiction when such judge finds on subsequent
744 application that the contents were otherwise intercepted in
745 accordance with the provisions of this chapter. Such application
746 shall be made as soon as practicable.

747 Section 7. Section 934.09, Florida Statutes, is amended to
748 read:

749 934.09 Procedure for interception of wire, oral, or
750 electronic communications.—

751 (1) Each application for a warrant ~~an order~~ authorizing or
752 approving the interception of a wire, oral, or electronic
753 communication under ss. 934.03-934.09 shall be made in writing
754 upon oath or affirmation to a judge of competent jurisdiction

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755 and shall state the applicant's authority to make such
756 application. Each application shall include the following
757 information:

758 (a) The identity of the investigative or law enforcement
759 officer making the application and the officer authorizing the
760 application.

761 (b) A full and complete statement of the facts and
762 circumstances relied upon by the applicant to justify his or her
763 belief that a warrant ~~an order~~ should be issued, including:

764 1. Details as to the particular offense that has been, is
765 being, or is about to be committed.

766 2. Except as provided in subsection (11), a particular
767 description of the nature and location of the facilities from
768 which, or the place where, the communications are to be
769 intercepted.

770 3. A particular description of the type of communications
771 sought to be intercepted.

772 4. The identity of the person, if known, committing the
773 offense and whose communications are to be intercepted.

774 (c) A full and complete statement as to whether or not
775 other investigative procedures have been tried and failed or why
776 they reasonably appear to be unlikely to succeed if tried or to
777 be too dangerous.

778 (d) A statement of the period of time for which the
779 interception is required to be maintained and, if the nature of
780 the investigation is such that the authorization for
781 interception should not automatically terminate when the
782 described type of communication has been first obtained, a
783 particular description of facts establishing probable cause to

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784 believe that additional communications of the same type will
785 occur thereafter.

786 (e) A full and complete statement of the facts concerning
787 all previous applications known to the individual authorizing
788 and making the application, made to any judge for authorization
789 to intercept, or for approval of interceptions of, wire, oral,
790 or electronic communications involving any of the same persons,
791 facilities, or places specified in the application, and the
792 action taken by the judge on each such application.

793 (f) When the application is for the extension of a warrant
794 ~~an order~~, a statement setting forth the results thus far
795 obtained from the interception or a reasonable explanation of
796 the failure to obtain such results.

797 (2) The judge may require the applicant to furnish
798 additional testimony or documentary evidence in support of the
799 application.

800 (3) Upon such application, the judge may authorize a
801 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
802 authorizing or approving interception of wire, oral, or
803 electronic communications within the territorial jurisdiction of
804 the court in which the judge is sitting, and outside such
805 jurisdiction but within the State of Florida in the case of a
806 mobile interception device authorized by the judge within such
807 jurisdiction, if the judge determines on the basis of the facts
808 submitted by the applicant that:

809 (a) There is probable cause for belief that an individual
810 is committing, has committed, or is about to commit an offense
811 as provided in s. 934.07.

812 (b) There is probable cause for belief that particular

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813 communications concerning that offense will be obtained through
814 such interception.

815 (c) Normal investigative procedures have been tried and
816 have failed or reasonably appear to be unlikely to succeed if
817 tried or to be too dangerous.

818 (d) Except as provided in subsection (11), there is
819 probable cause for belief that the facilities from which, or the
820 place where, the wire, oral, or electronic communications are to
821 be intercepted are being used, or are about to be used, in
822 connection with the commission of such offense, or are leased
823 to, listed in the name of, or commonly used by such person.

824 (4) Each warrant ~~order~~ authorizing or approving the
825 interception of any wire, oral, or electronic communication
826 shall specify:

827 (a) The identity of the person, if known, whose
828 communications are to be intercepted.

829 (b) The nature and location of the communications
830 facilities as to which, or the place where, authority to
831 intercept is granted.

832 (c) A particular description of the type of communication
833 sought to be intercepted and a statement of the particular
834 offense to which it relates.

835 (d) The identity of the agency authorized to intercept the
836 communications and of the person authorizing the application.

837 (e) The period of time during which such interception is
838 authorized, including a statement as to whether or not the
839 interception shall automatically terminate when the described
840 communication has been first obtained.

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842 A warrant ~~An order~~ authorizing the interception of a wire, oral,
843 or electronic communication shall, upon the request of the
844 applicant, direct that a provider of wire or electronic
845 communication service, landlord, custodian, or other person
846 shall furnish the applicant forthwith all information,
847 facilities, and technical assistance necessary to accomplish the
848 interception unobtrusively and with a minimum of interference
849 with the services that such service provider, landlord,
850 custodian, or person is according the person whose
851 communications are to be intercepted. The obligation of a
852 provider of wire, oral, or electronic communication service
853 under such a warrant ~~an order~~ may include, but is not limited
854 to, conducting an in-progress trace during an interception, or
855 providing other assistance to support the investigation as may
856 be specified in the warrant ~~order~~. Any provider of wire or
857 electronic communication service, landlord, custodian, or other
858 person furnishing such facilities or technical assistance shall
859 be compensated therefor by the applicant for reasonable expenses
860 incurred in providing such facilities or assistance.

861 (5) No warrant ~~order~~ entered under this section may
862 authorize or approve the interception of any wire, oral, or
863 electronic communication for any period longer than is necessary
864 to achieve the objective of the authorization or in any event
865 longer than 30 days. Such 30-day period begins on the day on
866 which the agent or officer of the law enforcement agency first
867 begins to conduct an interception under the warrant ~~order~~ or 10
868 days after the warrant is approved ~~order is entered~~, whichever
869 occurs earlier. Extensions of a warrant ~~an order~~ may be granted
870 but only upon application for an extension made in accordance

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871 with subsection (1) and upon the court making the findings
872 required by subsection (3). The period of extension shall be no
873 longer than the authorizing judge deems necessary to achieve the
874 purposes for which it was granted and in no event for longer
875 than 30 days. Every warrant ~~order~~ and extension thereof shall
876 contain a provision that the authorization to intercept shall be
877 executed as soon as practicable, shall be conducted in such a
878 way as to minimize the interception of communications not
879 otherwise subject to interception under ss. 934.03-934.09, and
880 must terminate upon attainment of the authorized objective or in
881 any event in 30 days. If the intercepted communication is in
882 code or foreign language and an expert in that foreign language
883 or code is not reasonably available during the interception
884 period, minimization may be accomplished as soon as practicable
885 after such interception. An interception under ss. 934.03-934.09
886 may be conducted in whole or in part by government personnel or
887 by an individual operating under a contract with the government,
888 acting under the supervision of an agent or officer of the law
889 enforcement agency authorized to conduct the interception.

890 (6) Whenever a warrant ~~an order~~ authorizing interception is
891 granted ~~entered~~ pursuant to ss. 934.03-934.09, the warrant ~~order~~
892 may require reports to be made to the judge who issued the
893 warrant ~~order~~ showing what progress has been made toward
894 achievement of the authorized objective and the need for
895 continued interception. Such reports shall be made at such
896 intervals as the judge may require.

897 (7) Notwithstanding any other provision of this chapter,
898 any investigative or law enforcement officer specially
899 designated by the Governor, the Attorney General, the statewide

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900 prosecutor, or a state attorney acting under this chapter, who
901 reasonably determines that:

902 (a) An emergency exists that:

903 1. Involves immediate danger of death or serious physical
904 injury to any person, the danger of escape of a prisoner, or
905 conspiratorial activities threatening the security interest of
906 the nation or state; and

907 2. Requires that a wire, oral, or electronic communication
908 be intercepted before a warrant ~~an order~~ authorizing such
909 interception can, with due diligence, be obtained; and

910 (b) There are grounds upon which a warrant ~~an order~~ could
911 be entered under this chapter to authorize such interception

912
913 may intercept such wire, oral, or electronic communication if an
914 application for a warrant ~~an order~~ approving the interception is
915 made in accordance with this section within 48 hours after the
916 interception has occurred or begins to occur. In the absence of
917 a warrant ~~an order~~, such interception shall immediately
918 terminate when the communication sought is obtained or when the
919 application for the warrant ~~order~~ is denied, whichever is
920 earlier. If such application for approval is denied, or in any
921 other case in which the interception is terminated without a
922 warrant ~~an order~~ having been issued, the contents of any wire,
923 oral, or electronic communication intercepted shall be treated
924 as having been obtained in violation of s. 934.03(4), and an
925 inventory shall be served as provided for in paragraph (8)(e) on
926 the person named in the application.

927 (8)(a) The contents of any wire, oral, or electronic
928 communication intercepted by any means authorized by ss. 934.03-

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929 934.09 shall, if possible, be recorded on tape or wire or other
930 comparable device. The recording of the contents of any wire,
931 oral, or electronic communication under this subsection shall be
932 kept in such a way as will protect the recording from editing or
933 other alterations. Immediately upon the expiration of the period
934 of the warrant order, or extensions thereof, such recordings
935 shall be made available to the judge approving the warrant
936 ~~issuing such order~~ and sealed under his or her directions.
937 Custody of the recordings shall be wherever the judge orders.
938 They shall not be destroyed except upon an order of the issuing
939 or denying judge, or that judge's successor in office, and in
940 any event shall be kept for 10 years. Duplicate recordings may
941 be made for use or disclosure pursuant to the provisions of s.
942 934.08(1) and (2) for investigations, or for purposes of
943 discovery as required by law.

944 (b) The presence of the seal provided for by this
945 subsection, or a satisfactory explanation for the absence
946 thereof, shall be a prerequisite for the use or disclosure of
947 the contents of any wire, oral, or electronic communication or
948 evidence derived therefrom under s. 934.08(3), as required by
949 federal law.

950 (c) Applications made and warrants orders granted under ss.
951 934.03-934.09 shall be sealed by the judge. Custody of the
952 applications and warrants orders shall be wherever the judge
953 directs. As required by ~~federal~~ law, such applications and
954 warrants orders shall be disclosed only for purposes of
955 discovery or upon a showing of good cause before a judge of
956 competent jurisdiction and shall not be destroyed except on
957 order of the issuing or denying judge, or that judge's successor

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958 in office, and in any event shall be kept for 10 years.

959 (d) Any violation of the provisions of this subsection may
960 be punished as contempt of the issuing or denying judge.

961 (e) Within a reasonable time but not later than 90 days
962 after the termination of the period of a warrant ~~an order~~ or
963 extensions thereof, the issuing or denying judge shall cause to
964 be served on the persons named in the warrant ~~order~~ or the
965 application, and such other parties to intercepted
966 communications as the judge may determine in his or her
967 discretion to be in the interest of justice, an inventory which
968 shall include notice of:

969 1. The fact of the approval of the warrant ~~entry of the~~
970 ~~order~~ or the application.

971 2. The date of the approval of the warrant ~~entry~~ and the
972 period of authorized, approved, or disapproved interception, or
973 the denial of the application.

974 3. The fact that during the period wire, oral, or
975 electronic communications were or were not intercepted.

976
977 The judge, upon the filing of a motion, may make available to
978 such person or the person's counsel for inspection such portions
979 of the intercepted communications, applications, and warrants
980 ~~orders~~ as the judge determines to be in the interest of justice.
981 On an ex parte showing of good cause to a judge of competent
982 jurisdiction, the serving of the inventory required by this
983 paragraph may be postponed.

984 (9) ~~As required by federal law,~~ The contents of any
985 intercepted wire, oral, or electronic communication or evidence
986 derived therefrom shall not be received in evidence or otherwise

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987 disclosed in any trial, hearing, or other proceeding unless each
988 party, ~~not less than 10 days before the trial, hearing, or~~
989 ~~proceeding,~~ has been furnished with a copy of the warrant ~~court~~
990 ~~order~~ and accompanying application under which the interception
991 was authorized or approved. ~~This 10-day period may be waived by~~
992 ~~the judge if he or she finds that it was not possible to furnish~~
993 ~~the party with the above information 10 days before the trial,~~
994 ~~hearing, or proceeding and that the party will not be prejudiced~~
995 ~~by the delay in receiving such information.~~

996 (10) (a) An ~~Any~~ aggrieved person before or in any trial,
997 hearing, or proceeding in or before any court, department,
998 officer, agency, regulatory body, or other authority may move to
999 suppress the contents of any intercepted wire, oral, or
1000 electronic communication, or evidence derived therefrom, on the
1001 grounds that:

- 1002 1. The communication was unlawfully intercepted;
1003 2. The warrant ~~order of authorization or approval~~ under
1004 which it was intercepted is insufficient on its face; or
1005 3. The interception was not made in conformity with the
1006 warrant ~~order of authorization or approval~~.

1007 (b) Except as otherwise provided in the applicable Florida
1008 Rules of Criminal Procedure, in a criminal matter:

1009 1. Such motion shall be made before the trial, hearing, or
1010 proceeding unless there was no opportunity to make such motion
1011 or the person was not aware of the grounds of the motion.

1012 2. If the motion is granted, the contents of the
1013 intercepted wire or oral communication, or evidence derived
1014 therefrom, shall be treated as having been obtained in violation
1015 of ss. 934.03-934.09 and are not admissible as evidence.

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1016 3. The judge, upon the filing of such motion by the
1017 aggrieved person, may make available to the aggrieved person or
1018 his or her counsel for inspection such portions of the
1019 intercepted communication or evidence derived therefrom as the
1020 judge determines to be in the interest of justice.

1021 (c)~~(b)~~ In addition to any other right to appeal, the state
1022 shall have the right to appeal from an order granting a motion
1023 to suppress made under paragraph (a) or the denial of an
1024 application for a warrant ~~an order of approval~~ if the attorney
1025 shall certify to the judge or other official granting such
1026 motion or denying such application that the appeal is not taken
1027 for purposes of delay. Such appeal shall be taken within 30 days
1028 after the date the order was entered and shall be diligently
1029 prosecuted.

1030 (d)~~(e)~~ The remedies and sanctions described in ss. 934.03-
1031 934.10 with respect to the interception of electronic
1032 communications are the only judicial remedies and sanctions for
1033 violations of those sections involving such communications.

1034 (11) The requirements of subparagraph (1) (b)2. and
1035 paragraph (3) (d) relating to the specification of the facilities
1036 from which, or the place where, the communication is to be
1037 intercepted do not apply if:

1038 (a) In the case of an application with respect to the
1039 interception of an oral communication:

1040 1. The application is by an agent or officer of a law
1041 enforcement agency and is approved by the Governor, the Attorney
1042 General, the statewide prosecutor, or a state attorney.

1043 2. The application contains a full and complete statement
1044 as to why such specification is not practical and identifies the

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1045 person committing the offense and whose communications are to be
1046 intercepted.

1047 3. The judge finds that such specification is not
1048 practical.

1049 (b) In the case of an application with respect to a wire or
1050 electronic communication:

1051 1. The application is by an agent or officer of a law
1052 enforcement agency and is approved by the Governor, the Attorney
1053 General, the statewide prosecutor, or a state attorney.

1054 2. The application identifies the person believed to be
1055 committing the offense and whose communications are to be
1056 intercepted and the applicant makes a showing that there is
1057 probable cause to believe that the person's actions could have
1058 the effect of thwarting interception from a specified facility
1059 or that the person whose communications are to be intercepted
1060 has removed, or is likely to remove, himself or herself to
1061 another judicial circuit within the state.

1062 3. The judge finds that such showing has been adequately
1063 made.

1064 4. The warrant ~~order~~ authorizing or approving the
1065 interception is limited to interception only for such time as it
1066 is reasonable to presume that the person identified in the
1067 application is or was reasonably proximate to the instrument
1068 through which such communication will be or was transmitted.

1069
1070 ~~Consistent with this paragraph, a judge of competent~~
1071 ~~jurisdiction may authorize interception within this state,~~
1072 ~~whether the interception is within or outside the court's~~
1073 ~~jurisdiction, if the application for the interception makes a~~

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1074 ~~showing that some activity or conspiracy believed to be related~~
1075 ~~to, or in furtherance of, the criminal predicate for the~~
1076 ~~requested interception has occurred or will likely occur, or the~~
1077 ~~communication to be intercepted or expected to be intercepted is~~
1078 ~~occurring or will likely occur, in whole or in part, within the~~
1079 ~~jurisdiction of the court where the order is being sought.~~

1080 (12) If an interception of a communication is to be carried
1081 out pursuant to subsection (11), such interception may not begin
1082 until the facilities from which, or the place where, the
1083 communication is to be intercepted is ascertained by the person
1084 implementing the interception order. A provider of wire or
1085 electronic communications service that has received an order as
1086 provided under paragraph (11) (b) may petition the court to
1087 modify or quash the order on the ground that the interception
1088 cannot be performed in a timely or reasonable fashion. The
1089 court, upon notice to the state, shall decide such a petition
1090 expeditiously.

1091 (13) Consistent with this section, a judge of competent
1092 jurisdiction may authorize interception within this state,
1093 whether the interception is within or outside the court's
1094 jurisdiction, if the application for the interception makes a
1095 showing that some activity or conspiracy believed to be related
1096 to, or in furtherance of, the criminal predicate for the
1097 requested interception has occurred or will likely occur, or the
1098 communication to be intercepted or expected to be intercepted is
1099 occurring or will likely occur, in whole or in part, within the
1100 jurisdiction of the court where the warrant is being sought.

1101 Section 8. Subsection (2) of section 934.10, Florida
1102 Statutes, is amended, and subsection (1) of that section is

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1103 republished, to read:

1104 934.10 Civil remedies.—

1105 (1) Any person whose wire, oral, or electronic
 1106 communication is intercepted, disclosed, or used in violation of
 1107 ss. 934.03-934.09 shall have a civil cause of action against any
 1108 person or entity who intercepts, discloses, or uses, or procures
 1109 any other person or entity to intercept, disclose, or use, such
 1110 communications and shall be entitled to recover from any such
 1111 person or entity which engaged in that violation such relief as
 1112 may be appropriate, including:

1113 (a) Preliminary or equitable or declaratory relief as may
 1114 be appropriate;

1115 (b) Actual damages, but not less than liquidated damages
 1116 computed at the rate of \$100 a day for each day of violation or
 1117 \$1,000, whichever is higher;

1118 (c) Punitive damages; and

1119 (d) A reasonable attorney's fee and other litigation costs
 1120 reasonably incurred.

1121 (2) A good faith reliance on:

1122 (a) A warrant, court order, subpoena, or legislative
 1123 authorization as provided in ss. 934.03-934.09;~~IT~~

1124 (b) A request of an investigative or law enforcement
 1125 officer under s. 934.09(7);~~IT~~ or

1126 (c) A good faith determination that Florida or federal law,
 1127 other than 18 U.S.C. s. 2511(2) (d), authorized ~~permitted~~ the
 1128 conduct complained of,

1129
 1130 constitutes ~~shall constitute~~ a complete defense to any civil or
 1131 criminal, or administrative action arising out of such conduct

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1132 under the laws of this state.

1133 Section 9. Section 934.21, Florida Statutes, is amended to
1134 read:

1135 934.21 Unlawful access to stored communications;
1136 penalties.—

1137 (1) Except as provided in subsection (4)~~(3)~~, whoever:

1138 (a) Intentionally accesses without authorization a facility
1139 through which an electronic communication service is provided,
1140 or

1141 (b) Intentionally exceeds an authorization to access such
1142 facility,

1143
1144 and thereby obtains, alters, or prevents authorized access to a
1145 wire or electronic communication while it is in electronic
1146 storage in such system shall be punished as provided in
1147 subsection (3) ~~(2)~~.

1148 (2) Except as provided in subsection (4), a person who
1149 intentionally and unlawfully accesses without authorization a
1150 cellular phone, portable electronic communication device, or
1151 microphone-enabled household device and thereby obtains wire,
1152 oral, or electronic communications stored within the cellular
1153 phone, portable electronic communication device, or microphone-
1154 enabled household device shall be punished as provided in
1155 subsection (3).

1156 (3)~~(2)~~ The punishment for an offense under subsection (1)
1157 or subsection (2) is as follows:

1158 (a) If the offense is committed for purposes of commercial
1159 advantage, malicious destruction or damage, or private
1160 commercial gain, the person ~~is~~:

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1161 1. In the case of a first offense under this subsection,
1162 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
1163 as provided in s. 775.082, s. 775.083, or s. 934.41.

1164 2. In the case of any subsequent offense under this
1165 subsection, commits ~~guilty of~~ a felony of the third degree,
1166 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
1167 s. 934.41.

1168 (b) In any other case, the person commits ~~is guilty of~~ a
1169 misdemeanor of the second degree, punishable as provided in s.
1170 775.082 or s. 775.083.

1171 (4) ~~(3)~~ Subsection (1) does not apply with respect to
1172 conduct authorized:

1173 (a) By the person or entity providing a wire or electronic
1174 communications service;

1175 (b) By a user of a wire or electronic communications
1176 service with respect to a communication of or intended for that
1177 user; or

1178 (c) In s. 934.09, s. 934.23, or s. 934.24.

1179 Section 10. Section 934.42, Florida Statutes, is reordered
1180 and amended to read:

1181 934.42 Mobile tracking device and location tracking
1182 authorization.—

1183 (2) ~~(1)~~ An investigative or law enforcement officer may make
1184 application to a judge of competent jurisdiction for a warrant
1185 ~~an order~~ authorizing or approving the installation and use of a
1186 mobile tracking device or the acquisition of cellular-site
1187 location data, precise global positioning satellite location
1188 data, or historical global positioning satellite data.

1189 (3) ~~(2)~~ An application under subsection (2) ~~(1)~~ of this

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1190 ~~section~~ must include:

1191 (a) A statement of the identity of the applicant and the
1192 identity of the law enforcement agency conducting the
1193 investigation.

1194 (b) A statement setting forth a reasonable length of time
1195 that the mobile tracking device may be used. The time may not
1196 exceed 45 days after the date the warrant was issued. The court
1197 may, for good cause, grant one or more extensions for a
1198 reasonable period not to exceed 45 days each ~~A certification by~~
1199 ~~the applicant that the information likely to be obtained is~~
1200 ~~relevant to an ongoing criminal investigation being conducted by~~
1201 ~~the investigating agency.~~

1202 (c) A statement of the offense to which the information
1203 likely to be obtained relates.

1204 (d) A statement whether it may be necessary to use and
1205 monitor the mobile tracking device outside the jurisdiction of
1206 the court from which authorization is being sought.

1207 ~~(4) (3)~~ Upon application made as provided under subsection
1208 (3) (2), the court, if it finds probable cause, ~~that the~~
1209 ~~certification~~ and the statements required by subsection (3) (2)
1210 have been made in the application, shall grant a warrant ~~enter~~
1211 ~~an ex parte order~~ authorizing the installation and use of a
1212 mobile tracking device. Such warrant ~~order~~ may authorize the use
1213 of the device within the jurisdiction of the court and outside
1214 that jurisdiction but within the State of Florida if the device
1215 is installed within the jurisdiction of the court. The warrant
1216 must command the officer to complete any installation authorized
1217 by the warrant within a specified timeframe after issuance, to
1218 be no longer than 10 calendar days.

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1219 (5)~~(4)~~ A court may not require greater specificity or
1220 additional information beyond that which is required by law and
1221 this section as a requisite for issuing a warrant ~~an order~~.

1222 (6) Within 10 days after the use of the tracking device has
1223 ended, the officer executing the warrant must return it to the
1224 judge designated in the warrant. The officer may do so by
1225 reliable electronic means.

1226 (7) Within 10 days after the use of the tracking device has
1227 ended, the officer executing a tracking-device warrant must
1228 serve a copy of the warrant on the person who was tracked or
1229 whose property was tracked. Service may be accomplished by
1230 delivering a copy to the person who, or whose property, was
1231 tracked; or by leaving a copy at the person's residence or usual
1232 place of abode with an individual of suitable age and discretion
1233 who resides at that location and by mailing a copy to the
1234 person's last known address. Upon request by the law enforcement
1235 agency, the court may delay notice for a period of 90 days as
1236 provided in s. 934.25.

1237 (8)~~(5)~~ The standards established by Florida courts and the
1238 United States Supreme Court for the installation, use, or and
1239 monitoring of mobile tracking devices shall ~~shall~~ apply to the
1240 installation, use, or monitoring and use ~~and use~~ of any device as
1241 authorized by this section.

1242 (1)~~(6)~~ As used in this section, the term "mobile tracking
1243 device" or a "tracking device" means an electronic or mechanical
1244 device, including a cellular phone or a portable electronic
1245 communication device, which allows ~~permits~~ the tracking of the
1246 movement of a person or object and may be used to access
1247 cellular-site location data, precise global positioning

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1248 satellite location data, and historical global positioning
1249 satellite data.

1250 (9) (a) Notwithstanding any other provision of this chapter,
1251 any investigative or law enforcement officer specially
1252 designated by the Governor, the Attorney General, the statewide
1253 prosecutor, or a state attorney acting pursuant to this chapter
1254 who reasonably determines that:

1255 1. An emergency exists which:

1256 a. Involves immediate danger of death or serious physical
1257 injury to any person or the danger of escape of a prisoner; and

1258 b. Requires the installation or use of a mobile tracking
1259 device before a warrant authorizing such installation or use
1260 can, with due diligence, be obtained; and

1261 2. There are grounds upon which a warrant could be issued
1262 under this chapter to authorize such installation or use,

1263
1264 may install or use a mobile tracking device if, within 48 hours
1265 after the installation or use has occurred or begins to occur, a
1266 warrant approving the installation or use is issued in
1267 accordance with this section.

1268 (b) In the absence of an authorizing warrant, such
1269 installation or use shall immediately terminate when the
1270 information sought is obtained, when the application for the
1271 warrant is denied, or when 48 hours have lapsed since the
1272 installation or use of the mobile tracking device began,
1273 whichever is earlier.

1274 (c) The knowing installation or use by any investigative or
1275 law enforcement officer of a mobile tracking device pursuant to
1276 paragraph (a) without application for the authorizing warrant

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1277 within 48 hours after the installation or use begins is a
1278 violation of this subsection.

1279 (d) A person who violates this subsection commits a
1280 misdemeanor of the first degree, punishable as provided in s.
1281 775.082, s. 775.083, or s. 775.084.

1282 Section 11. For the purpose of incorporating the amendments
1283 made by this act to sections 934.03 and 934.07, Florida
1284 Statutes, in a reference thereto, paragraph (b) of subsection
1285 (2) of section 934.22, Florida Statutes, is reenacted to read:
1286 934.22 Voluntary disclosure of customer communications or
1287 records.—

1288 (2) A provider described in subsection (1) may divulge the
1289 contents of a communication:

1290 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,
1291 or s. 934.23.

1292 Section 12. For the purpose of incorporating the amendments
1293 made by this act to sections 934.09 and 934.21, Florida
1294 Statutes, in references thereto, subsections (1) and (4) of
1295 section 934.27, Florida Statutes, are reenacted to read:

1296 934.27 Civil action: relief; damages; defenses.—

1297 (1) Except as provided in s. 934.23(5), any provider of
1298 electronic communication service, or subscriber or customer
1299 thereof, aggrieved by any violation of ss. 934.21-934.28 in
1300 which the conduct constituting the violation is engaged in with
1301 a knowing or intentional state of mind may, in a civil action,
1302 recover from the person or entity which engaged in that
1303 violation such relief as is appropriate.

1304 (4) A good faith reliance on any of the following is a
1305 complete defense to any civil or criminal action brought under

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1306 ss. 934.21-934.28:

1307 (a) A court warrant or order, a subpoena, or a statutory
1308 authorization, including, but not limited to, a request of an
1309 investigative or law enforcement officer to preserve records or
1310 other evidence, as provided in s. 934.23(7).

1311 (b) A request of an investigative or law enforcement
1312 officer under s. 934.09(7).

1313 (c) A good faith determination that s. 934.03(3) permitted
1314 the conduct complained of.

1315 Section 13. For the purpose of incorporating the amendment
1316 made by this act to section 934.21, Florida Statutes, in a
1317 reference thereto, subsection (6) of section 934.23, Florida
1318 Statutes, is reenacted to read:

1319 934.23 Required disclosure of customer communications or
1320 records.—

1321 (6) No cause of action shall lie in any court against any
1322 provider of wire or electronic communication service, its
1323 officers, employees, agents, or other specified persons for
1324 providing information, facilities, or assistance in accordance
1325 with the terms of a court order, warrant, subpoena, or
1326 certification under ss. 934.21-934.28.

1327 Section 14. For the purpose of incorporating the amendment
1328 made by this act to section 934.21, Florida Statutes, in
1329 references thereto, subsections (6) and (7) of section 934.24,
1330 Florida Statutes, are reenacted to read:

1331 934.24 Backup preservation; customer notification;
1332 challenges by customer.—

1333 (6) Within 14 days after notice by the investigative or law
1334 enforcement officer to the subscriber or customer under

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1335 subsection (2), the subscriber or customer may file a motion to
1336 quash the subpoena or vacate the court order seeking contents of
1337 electronic communications, with copies served upon the
1338 investigative or law enforcement officer and with written notice
1339 of such challenge to the service provider. A motion to vacate a
1340 court order must be filed in the court which issued the order. A
1341 motion to quash a subpoena must be filed in the circuit court in
1342 the circuit from which the subpoena issued. Such motion or
1343 application must contain an affidavit or sworn statement:

1344 (a) Stating that the applicant is a subscriber or customer
1345 of the service from which the contents of electronic
1346 communications maintained for her or him have been sought, and

1347 (b) Stating the applicant's reasons for believing that the
1348 records sought are not relevant to a legitimate law enforcement
1349 inquiry or that there has not been substantial compliance with
1350 the provisions of ss. 934.21-934.28 in some other respect.

1351 (7) Except as otherwise obtained under paragraph (3) (a),
1352 service must be made under this section upon an investigative or
1353 law enforcement officer by delivering or mailing by registered
1354 or certified mail a copy of the papers to the person, office, or
1355 department specified in the notice which the subscriber or
1356 customer has received pursuant to ss. 934.21-934.28. For the
1357 purposes of this subsection, the term "delivering" shall be
1358 construed in accordance with the definition of "delivery" as
1359 provided in Rule 1.080, Florida Rules of Civil Procedure.

1360 Section 15. For the purpose of incorporating the amendment
1361 made by this act to section 934.21, Florida Statutes, in a
1362 reference thereto, subsection (5) of section 934.25, Florida
1363 Statutes, is reenacted to read:

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1364 934.25 Delayed notice.—

1365 (5) Upon the expiration of the period of delay of
1366 notification under subsection (1) or subsection (4), the
1367 investigative or law enforcement officer must serve upon or
1368 deliver by registered or first-class mail to the subscriber or
1369 customer a copy of the process or request together with notice
1370 which:

1371 (a) States with reasonable specificity the nature of the
1372 law enforcement inquiry, and

1373 (b) Informs the subscriber or customer:

1374 1. That information maintained for such subscriber or
1375 customer by the service provider named in the process or request
1376 was supplied to or requested by the investigative or law
1377 enforcement officer and the date on which such information was
1378 so supplied or requested.

1379 2. That notification of such subscriber or customer was
1380 delayed.

1381 3. What investigative or law enforcement officer or what
1382 court made the certification or determination pursuant to which
1383 that delay was made.

1384 4. Which provision of ss. 934.21-934.28 allowed such delay.

1385 Section 16. For the purpose of incorporating the amendment
1386 made by this act to section 934.21, Florida Statutes, in a
1387 reference thereto, section 934.28, Florida Statutes, is
1388 reenacted to read:

1389 934.28 Exclusivity of remedies and sanctions.—The remedies
1390 and sanctions described in ss. 934.21-934.27 are the only
1391 judicial remedies and sanctions for violation of those sections.

1392 Section 17. This act shall take effect July 1, 2018.