

By the Committee on Criminal Justice; and 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.
6 934.01, F.S.; revising and providing legislative
7 findings; amending s. 934.02, F.S.; redefining the
8 term "oral communication"; defining the terms
9 "microphone-enabled household device" and "portable
10 electronic communication device"; amending s. 934.21,
11 F.S.; providing criminal penalties for the intentional
12 and unlawful accessing without authorization of
13 certain devices and obtaining wire, oral, or
14 electronic communications stored within those devices;
15 conforming cross-references; amending s. 934.42, F.S.;
16 authorizing an investigative or law enforcement
17 officer to apply to a judge of competent jurisdiction
18 for a warrant, rather than an order, authorizing the
19 acquisition of cellular-site location data, precise
20 global positioning satellite location data, or
21 historical global positioning satellite location data;
22 requiring an application for a warrant to include a
23 statement of a reasonable period of time that a mobile
24 tracking device may be used, not to exceed a specified
25 limit; authorizing a court to grant extensions not
26 individually exceeding a specified limit, for good
27 cause; deleting a provision requiring a certification
28 to be included in the application for an order;
29 requiring the warrant to command the officer to

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30 complete an installation authorized by the warrant
31 within a certain timeframe; providing requirements for
32 the return of the warrant to the judge and service of
33 a copy of the warrant on the person who was tracked or
34 whose property was tracked; authorizing a court to
35 delay the notice requirement for a certain time upon
36 request by the law enforcement agency; requiring that
37 the standards established by Florida courts for the
38 installation, use, or monitoring of mobile tracking
39 devices apply to the installation, use, or monitoring
40 of certain devices; redefining the term "tracking
41 device"; authorizing any investigative or law
42 enforcement officer who is specially designated by
43 certain persons and who makes specified determinations
44 to install or use a mobile tracking device under
45 certain circumstances; providing requirements for the
46 installation and use of the mobile tracking devices;
47 providing criminal penalties; providing an effective
48 date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Section 934.01, Florida Statutes, is amended to
53 read:

54 934.01 Legislative findings.—On the basis of its own
55 investigations and of published studies, the Legislature makes
56 the following findings:

57 (1) Wire communications are normally conducted through the
58 use of facilities which form part of an intrastate network. The

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59 same facilities are used for interstate and intrastate
60 communications.

61 (2) In order to protect effectively the privacy of wire,
62 ~~and oral,~~ and electronic communications, to protect the
63 integrity of court and administrative proceedings, and to
64 prevent the obstruction of intrastate commerce, it is necessary
65 for the Legislature to define the circumstances and conditions
66 under which the interception of wire, ~~and oral,~~ and electronic
67 communications may be authorized and to prohibit any
68 unauthorized interception of such communications and the use of
69 the contents thereof in evidence in courts and administrative
70 proceedings.

71 (3) Organized criminals make extensive use of wire, ~~and~~
72 oral, and electronic communications in their criminal
73 activities. The interception of such communications to obtain
74 evidence of the commission of crimes or to prevent their
75 commission is an indispensable aid to law enforcement and the
76 administration of justice.

77 (4) To safeguard the privacy of innocent persons, the
78 interception of wire, ~~or~~ oral, or electronic communications when
79 none of the parties to the communication has consented to the
80 interception should be allowed only when authorized by a court
81 of competent jurisdiction and should remain under the control
82 and supervision of the authorizing court. Interception of wire,
83 ~~and oral,~~ and electronic communications should further be
84 limited to certain major types of offenses and specific
85 categories of crime with assurance that the interception is
86 justified and that the information obtained thereby will not be
87 misused.

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88 (5) To safeguard the privacy of innocent persons, the
89 Legislature recognizes that the subjective expectation of
90 privacy in precision location data that society is now prepared
91 to accept is objectively reasonable. As such, the law
92 enforcement collection of the precise location of a person,
93 cellular phone, or portable electronic communication device
94 without the consent of the person or owner of the cellular phone
95 or portable electronic communication device should be allowed
96 only when authorized by a warrant issued by a court of competent
97 jurisdiction and should remain under the control and supervision
98 of the authorizing court.

99 (6) The Legislature recognizes that the use of portable
100 electronic communication devices is growing at a rapidly
101 increasing rate. These devices can store, and encourage the
102 storing of, an almost limitless amount of personal and private
103 information. Often linked to the Internet, these devices are
104 commonly used to access personal and business information and
105 databases in computers and servers that can be located anywhere
106 in the world. The user of a portable electronic communication
107 device has a reasonable and justifiable expectation of privacy
108 in the information that these devices contain.

109 (7) The Legislature recognizes that the use of household
110 electronic devices, including microphone-enabled household
111 devices, is growing at a rapidly increasing rate. These devices
112 often contain microphones that listen for and respond to
113 environmental triggers. These household devices are generally
114 connected to and communicate through the Internet, resulting in
115 the storage of and accessibility to daily household information
116 in a device itself or in a remote computing service. Persons

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117 should not have to choose between using household technological
118 enhancements and conveniences or preserving the right to privacy
119 in one's home.

120 Section 2. Subsection (2) of section 934.02, Florida
121 Statutes, is amended, and subsections (27) and (28) are added to
122 that section, to read:

123 934.02 Definitions.—As used in this chapter:

124 (2) "Oral communication" means any oral communication
125 uttered by a person exhibiting an expectation that such
126 communication is not subject to interception under circumstances
127 justifying such expectation, including the use of a microphone-
128 enabled household device, and does not mean any public oral
129 communication uttered at a public meeting or any electronic
130 communication.

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

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

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

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

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

141 (28) "Portable electronic communication device" means an
142 object capable of being easily transported or conveyed by a
143 person which is capable of creating, receiving, accessing, or
144 storing electronic data or communications and which communicates
145 with, by any means, another device, entity, or individual.

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146 Section 3. Section 934.21, Florida Statutes, is amended to
147 read:

148 934.21 Unlawful access to stored communications;
149 penalties.—

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

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

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

156
157 and thereby obtains, alters, or prevents authorized access to a
158 wire or electronic communication while it is in electronic
159 storage in such system shall be punished as provided in
160 subsection (3) ~~(2)~~.

161 (2) Except as provided in subsection (4), whoever
162 intentionally and unlawfully accesses without authorization a
163 cellular phone, portable electronic communication device, or
164 microphone-enabled household device and thereby obtains wire,
165 oral, or electronic communications stored within the cellular
166 phone, portable electronic communication device, or microphone-
167 enabled household device shall be punished as provided in
168 subsection (3).

169 (3) ~~(2)~~ The punishment for an offense under subsection (1)
170 or subsection (2) is as follows:

171 (a) If the offense is committed for purposes of commercial
172 advantage, malicious destruction or damage, or private
173 commercial gain, the person ~~is~~:

174 1. In the case of a first offense under this subsection,

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175 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
176 as provided in s. 775.082, s. 775.083, or s. 934.41.

177 2. In the case of any subsequent offense under this
178 subsection, commits ~~guilty of~~ a felony of the third degree,
179 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
180 s. 934.41.

181 (b) In any other case, the person commits ~~is guilty of~~ a
182 misdemeanor of the second degree, punishable as provided in s.
183 775.082 or s. 775.083.

184 ~~(4)-(3)~~ Subsections ~~subsection~~ (1) and (2) ~~do~~ ~~does~~ not apply
185 with respect to conduct authorized:

186 (a) By the person or entity providing a wire, oral, or
187 electronic communications service, including through cellular
188 phones, portable electronic communication devices, or
189 microphone-enabled household devices;

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

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

195 (d) For accessing for a legitimate business purpose
196 information that is not personally identifiable or that has been
197 collected in a way that prevents identification of the user of
198 the device.

199 Section 4. Section 934.42, Florida Statutes, is amended to
200 read:

201 934.42 Mobile tracking device and location tracking
202 authorization.—

203 (1) An investigative or law enforcement officer may make

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204 application to a judge of competent jurisdiction for a warrant
205 ~~an order~~ authorizing or approving the installation and use of a
206 mobile tracking device or the acquisition of cellular-site
207 location data, precise global positioning satellite location
208 data, or historical global positioning satellite location data.

209 (2) An application under subsection (1) ~~of this section~~
210 must include:

211 (a) A statement of the identity of the applicant and the
212 identity of the law enforcement agency conducting the
213 investigation.

214 (b) A statement setting forth a reasonable period of time
215 that the device may be used or the location data may be
216 obtained. The time must not exceed 45 days from the date the
217 warrant is issued. The court may, for good cause, grant one or
218 more extensions for a reasonable period of time, not to exceed
219 45 days each ~~certification by the applicant that the information~~
220 ~~likely to be obtained is relevant to an ongoing criminal~~
221 ~~investigation being conducted by the investigating agency.~~

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

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

227 (3) Upon application made as provided under subsection (2),
228 the court, if it finds probable cause, ~~that the certification~~
229 ~~and that the~~ statements required by subsection (2) have been
230 made in the application, shall grant a warrant ~~enter an~~ ex parte
231 ~~order~~ authorizing the installation and use of a mobile tracking
232 device. Such warrant ~~order~~ may authorize the use of the device

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233 within the jurisdiction of the court and outside that
234 jurisdiction but within the State of Florida if the device is
235 installed within the jurisdiction of the court. The warrant must
236 command the officer to complete any installation authorized by
237 the warrant within a specified period of time not to exceed 10
238 calendar days.

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

242 (5) Within 10 days after the time period specified in
243 paragraph (2) (b) has ended, the officer executing a warrant must
244 return the warrant to the issuing judge. The officer may do so
245 by reliable electronic means.

246 (6) Within 10 days after the time period specified in
247 paragraph (2) (b) has ended, the officer executing a warrant must
248 serve a copy of the warrant on the person who, or whose
249 property, was tracked. Service may be accomplished by delivering
250 a copy to the person who, or whose property, was tracked or by
251 leaving a copy at the person's residence or usual place of abode
252 with an individual of suitable age and discretion who resides at
253 that location and by mailing a copy to the person's last known
254 address. Upon request of the law enforcement agency, the court
255 may delay notice for a period of 90 days as provided in s.
256 934.25.

257 ~~(7)~~ ~~(5)~~ The standards established by Florida courts and the
258 United States Supreme Court for the installation, use, or ~~and~~
259 monitoring of mobile tracking devices shall apply to the
260 installation, use, or monitoring ~~and use~~ of any device as
261 authorized by this section.

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262 (8)~~(6)~~ As used in this section, the term "mobile tracking
263 device" or a "tracking device" means an electronic or mechanical
264 device, including a cellular phone or a portable electronic
265 communication device, which permits the tracking of the movement
266 of a person or object and may be used to access cellular-site
267 location data, precise global positioning satellite location
268 data, or historical global positioning satellite location data.

269 (9) (a) Notwithstanding any other provision of this chapter,
270 any investigative or law enforcement officer specially
271 designated by the Governor, the Attorney General, the statewide
272 prosecutor, or a state attorney acting pursuant to this chapter
273 who reasonably determines that:

274 1. An emergency exists which:

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

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

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

282
283 may install or use a mobile tracking device if, within 48 hours
284 after the installation or use has occurred or begins to occur, a
285 warrant approving the installation or use is issued in
286 accordance with this section.

287 (b) In the absence of an authorizing warrant, such
288 installation or use shall immediately terminate when the
289 information sought is obtained, when the application for the
290 warrant is denied, or when 48 hours have lapsed since the

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291 installation or use of the mobile tracking device began,
292 whichever is earlier.

293 (c) The knowing installation or use by any investigative or
294 law enforcement officer of a mobile tracking device pursuant to
295 paragraph (a) without application for the authorizing warrant
296 within 48 hours after the installation or use begins constitutes
297 a violation of this section.

298 Section 5. This act shall take effect July 1, 2018.