

By the Committees on Judiciary; and 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.; revising the exceptions to conduct that
12 constitutes unlawful access to stored communications;
13 amending s. 934.42, F.S.; authorizing an investigative
14 or law enforcement officer to apply to a judge of
15 competent jurisdiction for a warrant, rather than an
16 order, authorizing the acquisition of cellular-site
17 location data, precise global positioning satellite
18 location data, or historical global positioning
19 satellite location data; requiring an application for
20 a warrant to include a statement of a reasonable
21 period of time that a mobile tracking device may be
22 used, not to exceed a specified limit; authorizing a
23 court to grant extensions that do not individually
24 exceed a specified limit, for good cause; deleting a
25 provision requiring a certification to be included in
26 the application for an order; requiring the warrant to
27 command the officer to complete an installation
28 authorized by the warrant within a certain timeframe;
29 providing requirements for the return of the warrant

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

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Section 934.01, Florida Statutes, is amended to
49 read:

50 934.01 Legislative findings.—On the basis of its own
51 investigations and of published studies, the Legislature makes
52 the following findings:

53 (1) Wire communications are normally conducted through the
54 use of facilities which form part of an intrastate network. The
55 same facilities are used for interstate and intrastate
56 communications.

57 (2) In order to protect effectively the privacy of wire,
58 ~~and~~ oral, and electronic communications, to protect the

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59 integrity of court and administrative proceedings, and to
60 prevent the obstruction of intrastate commerce, it is necessary
61 for the Legislature to define the circumstances and conditions
62 under which the interception of wire, ~~and~~ oral, and electronic
63 communications may be authorized and to prohibit any
64 unauthorized interception of such communications and the use of
65 the contents thereof in evidence in courts and administrative
66 proceedings.

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

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

84 (5) To safeguard the privacy of innocent persons, the
85 Legislature recognizes that the subjective expectation of
86 privacy in precision location data that society is now prepared
87 to accept is objectively reasonable. As such, the law

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88 enforcement collection of the precise location of a person,
89 cellular phone, or portable electronic communication device
90 without the consent of the person or owner of the cellular phone
91 or portable electronic communication device should be allowed
92 only when authorized by a warrant issued by a court of competent
93 jurisdiction and should remain under the control and supervision
94 of the authorizing court.

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

105 (7) The Legislature recognizes that the use of household
106 electronic devices, including microphone-enabled household
107 devices, is growing at a rapidly increasing rate. These devices
108 often contain microphones that listen for and respond to
109 environmental triggers. These household devices are generally
110 connected to and communicate through the Internet, resulting in
111 the storage of and accessibility to daily household information
112 in a device itself or in a remote computing service. Persons
113 should not have to choose between using household technological
114 enhancements and conveniences or preserving the right to privacy
115 in one's home.

116 Section 2. Subsection (2) of section 934.02, Florida

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117 Statutes, is amended, and subsections (27) and (28) are added to
118 that section, to read:

119 934.02 Definitions.—As used in this chapter:

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

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

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

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

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

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

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

142 Section 3. Section 934.21, Florida Statutes, is amended to
143 read:

144 934.21 Unlawful access to stored communications;
145 penalties.—

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- 146 (1) Except as provided in subsection (3), whoever:
- 147 (a) Intentionally accesses without authorization a facility
- 148 through which an electronic communication service is provided,
- 149 or
- 150 (b) Intentionally exceeds an authorization to access such
- 151 facility,
- 152
- 153 and thereby obtains, alters, or prevents authorized access to a
- 154 wire or electronic communication while it is in electronic
- 155 storage in such system shall be punished as provided in
- 156 subsection (2).
- 157 (2) The punishment for an offense under subsection (1) is
- 158 as follows:
- 159 (a) If the offense is committed for purposes of commercial
- 160 advantage, malicious destruction or damage, or private
- 161 commercial gain, the person ~~is~~:
- 162 1. In the case of a first offense under this subsection,
- 163 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
- 164 as provided in s. 775.082, s. 775.083, or s. 934.41.
- 165 2. In the case of any subsequent offense under this
- 166 subsection, commits ~~guilty of~~ a felony of the third degree,
- 167 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
- 168 s. 934.41.
- 169 (b) In any other case, the person commits ~~is guilty of~~ a
- 170 misdemeanor of the second degree, punishable as provided in s.
- 171 775.082 or s. 775.083.
- 172 (3) Subsection (1) does not apply with respect to conduct
- 173 authorized:
- 174 (a) By the person or entity providing a wire, oral, or

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175 electronic communications service, including through cellular
176 phones, portable electronic communication devices, or
177 microphone-enabled household devices;

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

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

183 (d) In chapter 933; or

184 (e) For accessing for a legitimate business purpose
185 information that is not personally identifiable or that has been
186 collected in a way that prevents identification of the user of
187 the device.

188 Section 4. Section 934.42, Florida Statutes, is amended to
189 read:

190 934.42 Mobile tracking device and location tracking
191 authorization.—

192 (1) An investigative or law enforcement officer may make
193 application to a judge of competent jurisdiction for a warrant
194 ~~an order~~ authorizing or approving the installation and use of a
195 mobile tracking device.

196 (2) An application under subsection (1) ~~of this section~~
197 must include:

198 (a) A statement of the identity of the applicant and the
199 identity of the law enforcement agency conducting the
200 investigation.

201 (b) A statement setting forth a reasonable period of time
202 that the tracking device may be used or the location data may be
203 obtained in real-time, not to exceed 45 days from the date the

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204 warrant is issued. The court may, for good cause, grant one or
205 more extensions for a reasonable period of time, not to exceed
206 45 days each ~~certification by the applicant that the information~~
207 ~~likely to be obtained is relevant to an ongoing criminal~~
208 ~~investigation being conducted by the investigating agency.~~

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

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

214 (3) Upon application made as provided under subsection (2),
215 the court, if it finds probable cause, ~~that the certification~~
216 ~~and finds that the~~ statements required by subsection (2) have
217 been made in the application, shall grant a warrant ~~enter an ex~~
218 ~~parte order~~ authorizing the installation and use of a mobile
219 tracking device. Such warrant ~~order~~ may authorize the use of the
220 device within the jurisdiction of the court and outside that
221 jurisdiction but within the State of Florida if the device is
222 installed within the jurisdiction of the court. The warrant must
223 command the officer to complete any installation authorized by
224 the warrant within a specified period of time not to exceed 10
225 calendar days.

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

229 (5) Within 10 days after the time period specified in
230 paragraph (2) (b) has ended, the officer executing a warrant must
231 return the warrant to the issuing judge. When the warrant is
232 authorizing historical global positioning satellite location

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233 data, the officer executing the warrant must return the warrant
234 to the issuing judge within 10 days after receipt of the
235 records. The officer may do so by reliable electronic means.

236 (6) Within 10 days after the time period specified in
237 paragraph (2) (b) has ended, the officer executing a warrant must
238 serve a copy of the warrant on the person who, or whose
239 property, was tracked. Service may be accomplished by delivering
240 a copy to the person who, or whose property, was tracked or by
241 leaving a copy at the person's residence or usual place of abode
242 with an individual of suitable age and discretion who resides at
243 that location and by mailing a copy to the person's last known
244 address. Upon a showing of good cause to a court of competent
245 jurisdiction, the court may grant one or more postponements of
246 this notice for a period of 90 days each.

247 (7)-(5) The standards established by Florida courts and the
248 United States Supreme Court for the installation, use, or ~~and~~
249 monitoring of mobile tracking devices shall apply to the
250 installation, use, or monitoring ~~and use~~ of any device as
251 authorized by this section.

252 (8)-(6) As used in this section, the term "mobile tracking
253 device" or a "tracking device" means an electronic or mechanical
254 device that allows ~~which permits~~ the tracking of the movement of
255 a person or object, including a cellular phone or a portable
256 electronic communication device, and may be used to obtain real-
257 time cellular-site location data, precise global positioning
258 satellite location data, or historical global positioning
259 satellite location data.

260 (9) (a) Notwithstanding any other provision of this chapter,
261 any investigative or law enforcement officer specially

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262 designated by the Governor, the Attorney General, the statewide
263 prosecutor, or a state attorney acting pursuant to this chapter
264 who reasonably determines that:

265 1. An emergency exists which:

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

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

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

273
274 may install or use a mobile tracking device if, within 48 hours
275 after the installation or use has occurred or begins to occur, a
276 warrant approving the installation or use is issued in
277 accordance with this section.

278 (b) In the absence of an authorizing warrant, such
279 installation or use must immediately terminate when the
280 information sought is obtained, when the application for the
281 warrant is denied, or when 48 hours have lapsed since the
282 installation or use of the mobile tracking device began,
283 whichever is earlier.

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