

By the Committees on Rules; Judiciary; and Criminal Justice; and
Senator Brandes

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1 A bill to be entitled
2 An act relating to security of communications;
3 amending s. 934.01, F.S.; revising and providing
4 legislative findings; amending s. 934.02, F.S.;
5 redefining the term "oral communication"; defining the
6 terms "microphone-enabled household device" and
7 "portable electronic communication device"; amending
8 s. 934.21, F.S.; revising the exceptions to conduct
9 that constitute unlawful access to stored
10 communications; conforming a provision to changes made
11 by the act; amending s. 934.23, F.S.; defining the
12 term "investigative or law enforcement officer" and
13 specifying that an exception to such definition is
14 that in any criminal investigation a law enforcement
15 agency must request a prosecutor obtain a subpoena for
16 information obtainable by a subpoena; requiring a
17 warrant for any content of a stored communications;
18 deleting provisions relating to obtaining content of
19 stored communications, with required subscriber
20 notice, by obtaining a court order for disclosure or
21 using a subpoena; deleting provisions relating to any
22 electronic communication held or maintained in a
23 remote computing service; deleting a provision on not
24 providing notice applicable to a subpoena for basic
25 subscriber information; repealing s. 934.24, F.S.;
26 deleting provisions relating to backup protection for
27 content of stored communication; deleting provisions
28 authorizing a subscriber to seek a court order to
29 quash such subpoena or vacate such court order for

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30 disclosure; amending 934.25, F.S., deleting provisions
31 relating to delaying subscriber notice when such
32 notice is required for obtaining contents of stored
33 communications pursuant to a court order for
34 disclosure or subpoena; deleting references to
35 subscriber notice or delay of such notice in
36 provisions relating to nondisclosure of a warrant,
37 court order, or subpoena for stored communications;
38 defining the term "adverse result"; creating s.
39 934.255, F.S.; defining the terms "adverse result,"
40 "child," "investigative or law enforcement officer,"
41 "sexual abuse of child," and "supervisory official";
42 specifying an exception to the definition of the term
43 "investigative or law enforcement officer" is that in
44 any criminal investigation a law enforcement agency
45 must request a prosecutor obtain a subpoena for
46 information obtainable by a subpoena; authorizing an
47 investigative or law enforcement officer conducting an
48 investigation into specified matters to subpoena
49 certain persons or entities for the production of
50 records, documents, or other tangible things and
51 testimony; authorizing an investigative or law
52 enforcement officer conducting an investigation into
53 specified matters to subpoena certain person or
54 entities for subscriber or customer information
55 relevant to stored communications; specifying
56 requirements for the issuance of a subpoena;
57 authorizing a subpoenaed person to petition a court
58 for an order modifying or setting aside a prohibition

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59 on disclosure; authorizing, under certain
60 circumstances, an investigative or law enforcement
61 officer to retain subpoenaed records, documents, or
62 other tangible objects; prohibiting the disclosure of
63 a subpoena for a specified period if the disclosure
64 might result in an adverse result; providing
65 exceptions; requiring an investigative or law
66 enforcement officer to maintain a true copy of a
67 written certification required for nondisclosure;
68 authorizing an investigative or law enforcement
69 officer to apply to a court for an order prohibiting
70 certain entities from notifying any person of the
71 existence of a subpoena under certain circumstances;
72 authorizing an investigative or law enforcement
73 officer to petition a court to compel compliance with
74 a subpoena; authorizing a court to punish a person who
75 does not comply with a subpoena as indirect criminal
76 contempt; providing criminal penalties; precluding a
77 cause of action against certain entities or persons
78 for providing information, facilities, or assistance
79 in accordance with terms of a subpoena; providing for
80 preservation of evidence pending issuance of legal
81 process; providing that certain entities or persons
82 shall be held harmless from any claim and civil
83 liability resulting from disclosure of specified
84 information; providing for reasonable compensation for
85 reasonable expenses incurred in providing assistance;
86 requiring that a subpoenaed witness be paid certain
87 fees and mileage; amending s. 934.42, F.S.;

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88 authorizing an investigative or law enforcement
89 officer to apply to a judge of competent jurisdiction
90 for a warrant, rather than an order, authorizing the
91 acquisition of cellular-site location data, precise
92 global positioning satellite location data, or
93 historical global positioning satellite location data;
94 requiring an application for a warrant to include a
95 statement of a reasonable period of time that a mobile
96 tracking device may be used, not to exceed a specified
97 limit; authorizing a court to grant extensions that do
98 not individually exceed a specified limit, for good
99 cause; deleting a provision requiring a certification
100 to be included in the application for an order;
101 requiring the warrant to command the officer to
102 complete an installation authorized by the warrant
103 within a certain timeframe; providing requirements for
104 the return of the warrant to the judge and service of
105 a copy of the warrant on the person who was tracked or
106 whose property was tracked; authorizing a court, for
107 good cause, to postpone the notice requirement for a
108 specified time period; requiring that the standards
109 established by Florida courts for the installation,
110 use, or monitoring of mobile tracking devices apply to
111 the installation, use, or monitoring of certain
112 devices; redefining the term "tracking device";
113 authorizing any investigative or law enforcement
114 officer who is specially designated by certain persons
115 and who makes specified determinations to install or
116 use a mobile tracking device under certain

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117 circumstances; providing requirements for the
118 installation and use of such mobile tracking devices;
119 amending s. 934.26, F.S.; conforming a provision to
120 changes made by the act; providing an effective date.
121

122 Be It Enacted by the Legislature of the State of Florida:
123

124 Section 1. Section 934.01, Florida Statutes, is amended to
125 read:

126 934.01 Legislative findings.—On the basis of its own
127 investigations and of published studies, the Legislature makes
128 the following findings:

129 (1) Wire communications are normally conducted through the
130 use of facilities which form part of an intrastate network. The
131 same facilities are used for interstate and intrastate
132 communications.

133 (2) In order to protect effectively the privacy of wire,
134 ~~and~~ oral, and electronic communications, to protect the
135 integrity of court and administrative proceedings, and to
136 prevent the obstruction of intrastate commerce, it is necessary
137 for the Legislature to define the circumstances and conditions
138 under which the interception of wire, ~~and~~ oral, and electronic
139 communications may be authorized and to prohibit any
140 unauthorized interception of such communications and the use of
141 the contents thereof in evidence in courts and administrative
142 proceedings.

143 (3) Organized criminals make extensive use of wire, ~~and~~
144 oral, and electronic communications in their criminal
145 activities. The interception of such communications to obtain

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146 evidence of the commission of crimes or to prevent their
147 commission is an indispensable aid to law enforcement and the
148 administration of justice.

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

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

171 (6) The Legislature recognizes that the use of portable
172 electronic communication devices is growing at a rapidly
173 increasing rate. These devices can store, and encourage the
174 storing of, an almost limitless amount of personal and private

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175 information. Often linked to the Internet, these devices are
176 commonly used to access personal and business information and
177 databases in computers and servers that can be located anywhere
178 in the world. The user of a portable electronic communication
179 device has a reasonable and justifiable expectation of privacy
180 in the information that these devices contain.

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

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

195 934.02 Definitions.—As used in this chapter:

196 (2) "Oral communication" means any oral communication
197 uttered by a person exhibiting an expectation that such
198 communication is not subject to interception under circumstances
199 justifying such expectation, including the use of a microphone-
200 enabled household device, and does not mean any public oral
201 communication uttered at a public meeting or any electronic
202 communication.

203 (27) "Microphone-enabled household device" means a device,

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204 sensor, or other physical object within a residence:

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

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

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

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

213 (28) "Portable electronic communication device" means an
214 object capable of being easily transported or conveyed by a
215 person which is capable of creating, receiving, accessing, or
216 storing electronic data or communications and which communicates
217 with, by any means, another device, entity, or individual.

218 Section 3. Section 934.21, Florida Statutes, is amended to
219 read:

220 934.21 Unlawful access to stored communications;
221 penalties.—

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

223 (a) Intentionally accesses without authorization a facility
224 through which an electronic communication service is provided,
225 or

226 (b) Intentionally exceeds an authorization to access such
227 facility,

228
229 and thereby obtains, alters, or prevents authorized access to a
230 wire or electronic communication while it is in electronic
231 storage in such system shall be punished as provided in
232 subsection (2).

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233 (2) The punishment for an offense under subsection (1) is
234 as follows:

235 (a) If the offense is committed for purposes of commercial
236 advantage, malicious destruction or damage, or private
237 commercial gain, the person ~~is~~:

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

241 2. In the case of any subsequent offense under this
242 subsection, commits ~~guilty of~~ a felony of the third degree,
243 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
244 s. 934.41.

245 (b) In any other case, the person commits ~~is guilty of~~ a
246 misdemeanor of the second degree, punishable as provided in s.
247 775.082 or s. 775.083.

248 (3) Subsection (1) does not apply with respect to conduct
249 authorized:

250 (a) By the person or entity providing a wire, oral, or
251 electronic communications service, including through cellular
252 phones, portable electronic communication devices, or
253 microphone-enabled household devices;

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

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

259 (d) In chapter 933; or

260 (e) For accessing for a legitimate business purpose
261 information that is not personally identifiable or that has been

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262 collected in a way that prevents identification of the user of
263 the device.

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

266 934.23 Required disclosure of customer communications or
267 records.—

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

269 (a) "A court of competent jurisdiction" means a court that
270 has jurisdiction over the investigation or that is otherwise
271 authorized by law.

272 (b) "Investigative or law enforcement officer" has the same
273 meaning as s. 934.02(6), except that in any criminal
274 investigation, if a law enforcement agency seeks disclosure of
275 information obtainable by a subpoena under this section, the
276 agency must request that a state attorney, an assistant state
277 attorney, the statewide prosecutor, or an assistant statewide
278 prosecutor obtain such subpoena.

279 (2)~~(1)~~ An investigative or law enforcement officer may
280 require the disclosure by a provider of electronic communication
281 service or remote computing service of the contents of a wire or
282 electronic communication that is ~~has been~~ in electronic storage
283 in an electronic communications system or remote computing
284 system ~~for 180 days or less~~ only pursuant to a warrant issued by
285 the judge of a court of competent jurisdiction. ~~As used in this~~
286 ~~section, the term "a court of competent jurisdiction" means a~~
287 ~~court that has jurisdiction over the investigation or that is~~
288 ~~otherwise authorized by law. An investigative or law enforcement~~
289 ~~officer may require the disclosure by a provider of electronic~~
290 ~~communication services of the contents of a wire or electronic~~

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291 ~~communication that has been in electronic storage in an~~
292 ~~electronic communications system for more than 180 days by the~~
293 ~~means available under subsection (2).~~

294 ~~(2) An investigative or law enforcement officer may require~~
295 ~~a provider of remote computing service to disclose the contents~~
296 ~~of any wire or electronic communication to which this subsection~~
297 ~~is made applicable by subsection (3):~~

298 ~~(a) Without required notice to the subscriber or customer~~
299 ~~if the investigative or law enforcement officer obtains a~~
300 ~~warrant issued by the judge of a court of competent~~
301 ~~jurisdiction; or~~

302 ~~(b) With prior notice, or with delayed notice pursuant to~~
303 ~~s. 934.25, from the investigative or law enforcement officer to~~
304 ~~the subscriber or customer if the investigative or law~~
305 ~~enforcement officer:~~

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

307 ~~2. Obtains a court order for such disclosure under~~
308 ~~subsection (5).~~

309 (3) Subsection (2) is applicable with respect to any
310 electronic communication that is held or maintained on a remote
311 computing service:

312 (a) On behalf of a subscriber or customer of such service
313 and received by means of electronic transmission from, or
314 created by means of computer processing of communications
315 received by means of electronic transmission from, a subscriber
316 or customer of such service.

317 (b) Solely for the purposes of providing storage or
318 computer processing services to a subscriber or customer, if the
319 provider is not authorized to access the contents of any such

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320 communication for purposes of providing any service other than
321 storage or computer processing.

322 (4) (a) An investigative or law enforcement officer may
323 require a provider of electronic communication service or remote
324 computing service to disclose a record or other information
325 pertaining to a subscriber or customer of such service, not
326 including the contents of a communication, only when the
327 investigative or law enforcement officer:

328 1. Obtains a warrant issued by the judge of a court of
329 competent jurisdiction;

330 2. Obtains a court order for such disclosure under
331 subsection (5);

332 3. Has the consent of the subscriber or customer to such
333 disclosure; or

334 4. Seeks information under paragraph (b).

335 (b) A provider of electronic communication service or
336 remote computing service shall disclose to an investigative or
337 law enforcement officer the name; address; local and long-
338 distance telephone connection records, or records of session
339 times or durations; length of service, including the starting
340 date of service; types of services used; telephone or instrument
341 number or other subscriber number or identity, including any
342 temporarily assigned network address; and means and source of
343 payment, including any credit card or bank account number of a
344 subscriber to or customer of such service when the governmental
345 entity uses a subpoena or obtains such information in the manner
346 specified in paragraph (a) for obtaining information under that
347 paragraph.

348 ~~(c) An investigative or law enforcement officer who~~

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349 ~~receives records or information under this subsection is not~~
350 ~~required to provide notice to a subscriber or customer.~~

351 (5) A court order for disclosure under ~~subsection (2),~~
352 ~~subsection (3), or~~ subsection (4) shall issue only if the
353 investigative or law enforcement officer offers specific and
354 articulable facts showing that there are reasonable grounds to
355 believe that a record or other information pertaining to a
356 subscriber or customer of an electronic communication service or
357 remote computing service ~~the contents of a wire or electronic~~
358 ~~communication or the records of other information sought~~ are
359 relevant and material to an ongoing criminal investigation. A
360 court issuing an order pursuant to this section, on a motion
361 made promptly by the service provider, may quash or modify such
362 order if the information or records requested are unusually
363 voluminous in nature or compliance with such order otherwise
364 would cause an undue burden on such provider.

365 (6) No cause of action shall lie in any court against any
366 provider of wire or electronic communication service, its
367 officers, employees, agents, or other specified persons for
368 providing information, facilities, or assistance in accordance
369 with the terms of a court order, warrant, subpoena, or
370 certification under ss. 934.21-934.28.

371 (7) (a) A provider of wire or electronic communication
372 services or a remote computing service, upon the request of an
373 investigative or law enforcement officer, shall take all
374 necessary steps to preserve records and other evidence in its
375 possession pending the issuance of a court order or other
376 process.

377 (b) Records referred to in paragraph (a) shall be retained

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378 for a period of 90 days, which shall be extended for an
379 additional 90 days upon a renewed request by an investigative or
380 law enforcement officer.

381 (8) A provider of electronic communication service, a
382 remote computing service, or any other person who furnished
383 assistance pursuant to this section shall be held harmless from
384 any claim and civil liability resulting from the disclosure of
385 information pursuant to this section and shall be reasonably
386 compensated for reasonable expenses incurred in providing such
387 assistance.

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

389 Section 6. Section 934.25, Florida Statutes, is amended to
390 read:

391 934.25 Nondisclosure by service provider ~~Delayed notice.~~-

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

394 ~~(a) Where a court order is sought, include in the~~
395 ~~application a request for an order delaying the notification~~
396 ~~required under s. 934.23(2) for a period not to exceed 90 days,~~
397 ~~which request the court shall grant if it determines that there~~
398 ~~is reason to believe that notification of the existence of the~~
399 ~~court order may have an adverse result described in subsection~~
400 ~~(2).~~

401 ~~(b) Where a subpoena is obtained, delay the notification~~
402 ~~required under s. 934.23(2) for a period not to exceed 90 days~~
403 ~~upon the execution of a written certification of a supervisory~~
404 ~~official that there is reason to believe that notification of~~
405 ~~the existence of the subpoena may have an adverse result~~
406 ~~described in subsection (2).~~

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

409 ~~(a) Endangering the life or physical safety of an~~
410 ~~individual.~~

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

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

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

414 ~~(e) Seriously jeopardizing an investigation or unduly~~
415 ~~delaying a trial.~~

416 ~~(3) The investigative or law enforcement officer shall~~
417 ~~maintain a true copy of a certification obtained under paragraph~~
418 ~~(1)(b).~~

419 ~~(4) Extensions of the delay of notification provided in s.~~
420 ~~934.23(2) of up to 90 days each may be granted by the court upon~~
421 ~~application, or by certification by an investigative or law~~
422 ~~enforcement officer, but only in accordance with subsection (6).~~

423 ~~(5) Upon the expiration of the period of delay of~~
424 ~~notification under subsection (1) or subsection (4), the~~
425 ~~investigative or law enforcement officer must serve upon or~~
426 ~~deliver by registered or first-class mail to the subscriber or~~
427 ~~customer a copy of the process or request together with notice~~
428 ~~which:~~

429 ~~(a) States with reasonable specificity the nature of the~~
430 ~~law enforcement inquiry, and~~

431 ~~(b) Informs the subscriber or customer:~~

432 ~~1. That information maintained for such subscriber or~~
433 ~~customer by the service provider named in the process or request~~
434 ~~was supplied to or requested by the investigative or law~~
435 ~~enforcement officer and the date on which such information was~~

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436 ~~so supplied or requested.~~

437 ~~2. That notification of such subscriber or customer was~~
438 ~~delayed.~~

439 ~~3. What investigative or law enforcement officer or what~~
440 ~~court made the certification or determination pursuant to which~~
441 ~~that delay was made.~~

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

443 ~~(1)-(6) An investigative or law enforcement officer acting~~
444 ~~under s. 934.23, when not required to notify the subscriber or~~
445 ~~customer under s. 934.23(2)(a), or to the extent that such~~
446 ~~notice may be delayed pursuant to subsection (1), may apply to a~~
447 ~~court for an order commanding a provider of electronic~~
448 ~~communication service or remote computing service to whom a~~
449 ~~warrant, subpoena, or court order is directed, for such period~~
450 ~~as the court deems appropriate, not to notify any other person~~
451 ~~of the existence of such warrant, subpoena, or court order. The~~
452 ~~court shall enter such order if it determines that there is~~
453 ~~reason to believe that notification of the existence of the~~
454 ~~warrant, subpoena, or court order will result in an adverse~~
455 ~~result.~~

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

458 ~~(a) Endangering the life or physical safety of an~~
459 ~~individual.~~

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

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

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

463 ~~(e) Seriously jeopardizing an investigation or unduly~~
464 ~~delaying a trial.~~

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465 ~~(7) As used in paragraph (1)(b), the term "supervisory~~
466 ~~official" means the person in charge of an investigating or law~~
467 ~~enforcement agency's or entity's headquarters or regional~~
468 ~~office; the state attorney of the circuit from which the subject~~
469 ~~subpoena has been issued; the statewide prosecutor; or an~~
470 ~~assistant state attorney or assistant statewide prosecutor~~
471 ~~specifically designated by the state attorney or statewide~~
472 ~~prosecutor to make such written certification.~~

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

476 Section 7. Section 934.255, Florida Statutes, is created to
477 read:

478 934.255 Subpoenas in investigations of sexual offenses.-

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

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

481 1. Endangering the life or physical safety of an
482 individual.

483 2. Fleeing from prosecution.

484 3. Destroying or tampering with evidence.

485 4. Intimidating potential witnesses.

486 5. Seriously jeopardizing an investigation or unduly
487 delaying a trial.

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

489 (c) "Investigative or law enforcement officer" has the same
490 meaning as s. 934.02(6), except that in any criminal
491 investigation, if a law enforcement agency seeks disclosure of
492 information obtainable by a subpoena under this section, the
493 agency must request a state attorney, an assistant state

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494 attorney, the statewide prosecutor, or an assistant statewide
495 prosecutor obtain such subpoena.

496 (d) "Sexual abuse of a child" means a criminal offense
497 based on any conduct described in s. 39.01(71).

498 (e) "Supervisory official" means the person in charge of an
499 investigating or a law enforcement agency's or entity's
500 headquarters or regional office, the state attorney of the
501 circuit from which the subpoena has been issued, the statewide
502 prosecutor, or an assistant state attorney or assistant
503 statewide prosecutor specifically designated by the state
504 attorney or statewide prosecutor.

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

507 (a) Allegations of the sexual abuse of a child or an
508 individual's suspected commission of a crime listed in s.
509 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
510 production of records, documents, or other tangible objects and
511 the testimony of the subpoena recipient concerning the
512 production and authenticity of such records, documents, or
513 objects, except as provided in paragraph (b).

514 (b) Allegations of the sexual abuse of a child may use a
515 subpoena to require a provider of electronic communication
516 services or remote computing services to disclose a record or
517 other information pertaining to a subscriber or customer of such
518 service as described in s. 934.23(4)(b).

519 (c) A subpoena issued under paragraph (a) must describe the
520 records, documents, or other tangible objects required to be
521 produced, and must prescribe a date by which such records,
522 documents, or other tangible objects must be produced.

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523 (3) At any time before the date prescribed in a subpoena
524 issued under paragraph (2) (a) for production of records,
525 documents, or other tangible objects or the date prescribed in a
526 subpoena issued under paragraph (2) (b) for production of a
527 record or other information, a person or entity receiving such
528 subpoena may, before a judge of competent jurisdiction, petition
529 for an order modifying or setting aside the prohibition of
530 disclosure issued under subsection (5).

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

536 (5) (a) If a subpoena issued under subsection (2) is served
537 upon a recipient and accompanied by a written certification of a
538 supervisory official that there is reason to believe that
539 notification of the existence of the subpoena may have an
540 adverse result, the subpoena recipient is prohibited from
541 disclosing to any person for a period of 180 days the existence
542 of the subpoena.

543 (b) A recipient of a subpoena issued under subsection (2)
544 that is accompanied by a written certification issued pursuant
545 to this subsection is authorized to disclose information
546 otherwise subject to any applicable nondisclosure requirement to
547 persons as is necessary to comply with the subpoena, to an
548 attorney in order to obtain legal advice or assistance regarding
549 compliance with the subpoena, or to any other person as allowed
550 and specifically authorized by the investigative or law
551 enforcement officer who obtained the subpoena or the supervisory

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552 official who issued the written certification. The subpoena
553 recipient shall notify any person to whom disclosure of the
554 subpoena is made pursuant to this paragraph of the existence of,
555 and length of time associated with, the nondisclosure
556 requirement.

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

560 (d) At the request of the investigative or law enforcement
561 officer who obtained the subpoena or the supervisory official
562 who issued the written certification, the subpoena recipient
563 shall identify to the investigative or law enforcement officer
564 or supervisory official, before or at the time of compliance
565 with the subpoena, the name of any person to whom disclosure was
566 made under paragraph (b). If the investigative or law
567 enforcement officer or supervisory official makes such a
568 request, the subpoena recipient has an ongoing duty to disclose
569 the identity of any individuals notified of the subpoena's
570 existence throughout the nondisclosure period.

571 (e) The investigative or law enforcement officer shall
572 maintain a true copy of a written certification obtained under
573 this subsection.

574 (6) An investigative or law enforcement officer acting
575 under paragraph (2) (b) may apply to a court for an order
576 extending the nondisclosure period provided in subsection (5)
577 for a subpoena and commanding a provider of electronic
578 communication service or remote computing service to whom the
579 subpoena is directed, for such period as the court deems
580 appropriate, not to notify any person of the existence of such

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581 subpoena. The court shall enter such order if it determines that
582 there is reason to believe that notification of the existence of
583 the subpoena will result in an adverse result.

584 (7) In the case of contumacy by a person served a subpoena
585 issued under subsection (2), or his or her refusal to comply
586 with such a subpoena, the investigative or law enforcement
587 officer who sought the subpoena may petition a court of
588 competent jurisdiction to compel compliance. The court may
589 address the matter as indirect criminal contempt pursuant to
590 Rule 3.840, of the Florida Rules of Criminal Procedure. Any
591 prohibited disclosure of a subpoena issued under subsection (2)
592 for which a period of prohibition of disclosure provided in
593 subsection (5) or an extension thereof under subsection (6) is
594 in effect is punishable as provided in s. 934.43. However,
595 limited disclosure is authorized as provided in subsection (5).

596 (8) A cause of action may not lie in any court against any
597 provider of wire or electronic communication service, its
598 officers, employees, agents, or other specified persons for
599 providing information, facilities, or assistance in accordance
600 with the terms of a subpoena under this section.

601 (9) (a) A provider of wire or electronic communication
602 services or a remote computing service, upon the request of an
603 investigative or law enforcement officer, shall take all
604 necessary steps to preserve records and other evidence in its
605 possession pending the issuance of a court order or other
606 process.

607 (b) Records referred to in paragraph (a) shall be retained
608 for a period of 90 days, which shall be extended for an
609 additional 90 days upon a renewed request by an investigative or

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610 law enforcement officer.

611 (10) A provider of electronic communication service, a
612 remote computing service, or any other person who furnished
613 assistance pursuant to this section shall be held harmless from
614 any claim and civil liability resulting from the disclosure of
615 information pursuant to this section and shall be reasonably
616 compensated for reasonable expenses incurred in providing such
617 assistance. A witness who is subpoenaed to appear to testify
618 under subsection (2) and who complies with the subpoena must be
619 paid the same fees and mileage rate paid to a witness appearing
620 before a court of competent jurisdiction in this state.

621 Section 8. Section 934.42, Florida Statutes, is amended to
622 read:

623 934.42 Mobile tracking device and location tracking
624 authorization.—

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

629 (2) An application under subsection (1) ~~of this section~~
630 must include:

631 (a) A statement of the identity of the applicant and the
632 identity of the law enforcement agency conducting the
633 investigation.

634 (b) A statement setting forth a reasonable period of time
635 that the tracking device may be used or the location data may be
636 obtained in real-time, not to exceed 45 days from the date the
637 warrant is issued. The court may, for good cause, grant one or
638 more extensions for a reasonable period of time, not to exceed

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639 ~~45 days each certification by the applicant that the information~~
640 ~~likely to be obtained is relevant to an ongoing criminal~~
641 ~~investigation being conducted by the investigating agency.~~

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

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

647 (3) Upon application made as provided under subsection (2),
648 the court, if it finds probable cause, ~~that the certification~~
649 ~~and finds that the~~ statements required by subsection (2) have
650 been made in the application, shall grant a warrant ~~enter an ex~~
651 ~~parte order~~ authorizing the installation and use of a mobile
652 tracking device. Such warrant ~~order~~ may authorize the use of the
653 device within the jurisdiction of the court and outside that
654 jurisdiction but within the State of Florida if the device is
655 installed within the jurisdiction of the court. The warrant must
656 command the officer to complete any installation authorized by
657 the warrant within a specified period of time not to exceed 10
658 calendar days.

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

662 (5) Within 10 days after the time period specified in
663 paragraph (2) (b) has ended, the officer executing a warrant must
664 return the warrant to the issuing judge. When the warrant is
665 authorizing historical global positioning satellite location
666 data, the officer executing the warrant must return the warrant
667 to the issuing judge within 10 days after receipt of the

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668 records. The officer may do so by reliable electronic means.

669 (6) Within 10 days after the time period specified in
670 paragraph (2) (b) has ended, the officer executing a warrant must
671 serve a copy of the warrant on the person who, or whose
672 property, was tracked. Service may be accomplished by delivering
673 a copy to the person who, or whose property, was tracked or by
674 leaving a copy at the person's residence or usual place of abode
675 with an individual of suitable age and discretion who resides at
676 that location and by mailing a copy to the person's last known
677 address. Upon a showing of good cause to a court of competent
678 jurisdiction, the court may grant one or more postponements of
679 this notice for a period of 90 days each.

680 (7) ~~(5)~~ The standards established by Florida courts and the
681 United States Supreme Court for the installation, use, or ~~and~~
682 monitoring of mobile tracking devices shall apply to the
683 installation, use, or monitoring ~~and use~~ of any device as
684 authorized by this section.

685 (8) ~~(6)~~ As used in this section, the term "mobile tracking
686 device" or a "tracking device" means an electronic or mechanical
687 device that allows ~~which permits~~ the tracking of the movement of
688 a person or object, including a cellular phone or a portable
689 electronic communication device, and may be used to obtain real-
690 time cellular-site location data, precise global positioning
691 satellite location data, or historical global positioning
692 satellite location data.

693 (9) (a) Notwithstanding any other provision of this chapter,
694 any investigative or law enforcement officer specially
695 designated by the Governor, the Attorney General, the statewide
696 prosecutor, or a state attorney acting pursuant to this chapter

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697 who reasonably determines that:

698 1. An emergency exists which:

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

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

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

706

707 may install or use a mobile tracking device if, within 48 hours
708 after the installation or use has occurred or begins to occur, a
709 warrant approving the installation or use is issued in
710 accordance with this section.

711 (b) In the absence of an authorizing warrant, such
712 installation or use must immediately terminate when the
713 information sought is obtained, when the application for the
714 warrant is denied, or when 48 hours have lapsed since the
715 installation or use of the mobile tracking device began,
716 whichever is earlier.

717 Section 9. Subsection (1) of section 934.26, Florida
718 Statutes, is amended to read

719 934.26 Cost reimbursement.—

720 (1) Except as otherwise provided in subsection (3), a
721 governmental entity which obtains the contents of
722 communications, records, or other information under s. 934.22
723 or ~~s. 934.23, or s. 934.24~~ shall pay to the person or entity
724 assembling or providing such information a fee for reimbursement
725 for such costs as are reasonably necessary and which have been

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726 directly incurred in searching for, assembling, reproducing, or
727 otherwise providing such information. Such reimbursable costs
728 include any costs incurred due to necessary disruption of normal
729 operations of any electronic communication service or remote
730 computing service in which such information may be stored.

731 Section 10. This act shall take effect July 1, 2018.