

By Senator Brandes

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1                                   A bill to be entitled  
2       An act relating to searches of cellular phones and  
3       other electronic devices; amending s. 933.02, F.S.;  
4       expanding the grounds for issuance of a search warrant  
5       to include content held within a cellular phone,  
6       portable electronic communication device, or  
7       microphone-enabled household device when such content  
8       constitutes evidence relevant to proving that a felony  
9       has been committed; amending s. 933.04, F.S.; adopting  
10      the constitutional protection against unreasonable  
11      interception of private communications by any means  
12      for purposes of obtaining a search warrant; amending  
13      s. 934.01, F.S.; revising and providing legislative  
14      findings; amending s. 934.02, F.S.; redefining the  
15      terms "oral communication" and "electronic  
16      communication"; defining the terms "microphone-enabled  
17      household device" and "portable electronic  
18      communication device"; amending s. 934.03, F.S.;  
19      authorizing specified persons to provide information,  
20      facilities, or technical assistance to a person  
21      authorized by law to intercept wire, oral, or  
22      electronic communications if such person has been  
23      provided with a search warrant issued by a judge of  
24      competent jurisdiction; prohibiting specified persons  
25      from disclosing the existence of any interception of a  
26      wire, oral, or electronic communication with respect  
27      to which the person has been served with a search  
28      warrant, rather than a court order; amending s.  
29      934.06, F.S.; prohibiting the use of certain

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30 communication content in any trial, hearing, or other  
31 proceeding which was obtained without a specified  
32 warrant; providing an exception; amending s. 934.07,  
33 F.S.; authorizing a judge to issue a search warrant,  
34 rather than grant a court order, in conformity with  
35 specified provisions; authorizing the Department of  
36 Law Enforcement to request a law enforcement agency  
37 that provided certain information to join the  
38 department in seeking a new search warrant; amending  
39 s. 934.09, F.S.; requiring that each application for a  
40 search warrant, rather than an order, authorizing or  
41 approving the interception of wire, oral, or  
42 electronic communications be made in writing and state  
43 the applicant's authority; revising the required  
44 information that each application for a search warrant  
45 must include; authorizing a judge to authorize a  
46 search warrant ex parte, rather than an ex parte  
47 order, based on the application under certain  
48 circumstances; specifying requirements for search  
49 warrants, rather than orders, issued under certain  
50 circumstances; authorizing an aggrieved person to move  
51 to suppress the contents of certain wire, oral, or  
52 electronic communications before, as well as during, a  
53 trial, hearing, or proceeding; providing for  
54 inadmissibility of certain evidence if a certain  
55 motion is granted; authorizing a judge of competent  
56 jurisdiction to authorize interception within this  
57 state under specified circumstances; amending s.  
58 934.10, F.S., and reenacting subsection (1), relating

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59 to civil remedies; providing that a good faith  
60 reliance on a search warrant, rather than a court  
61 order, subpoena, or legislative authorization, issued  
62 under certain provisions constitutes a complete  
63 defense against specified actions; amending s. 934.21,  
64 F.S.; revising the exceptions to conduct that  
65 constitutes unlawful access to stored communications;  
66 conforming a provision to changes made by the act;  
67 amending s. 934.42, F.S.; defining the terms  
68 "historical location data," "mobile tracking device,"  
69 and "real-time location tracking"; authorizing an  
70 investigative or law enforcement officer to apply to a  
71 judge of competent jurisdiction for a search warrant,  
72 rather than an order, authorizing real-time location  
73 tracking or acquisition of historical location data;  
74 requiring an application for a search warrant to  
75 include a statement setting forth a reasonable period  
76 of time the mobile tracking device may be used or the  
77 location data may be obtained in real time, not to  
78 exceed a specified limit; authorizing a court to  
79 grant, for good cause, extensions that do not  
80 individually exceed a specified limit; requiring an  
81 applicant seeking historical location data to specify  
82 a date range for the data sought; deleting a provision  
83 requiring a certification to be included in the  
84 application; requiring the court, if it finds probable  
85 cause and that the application contains the required  
86 statements, to grant a search warrant ex parte rather  
87 than entering an ex parte order; specifying that the

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88 search warrant may authorize real-time location  
89 tracking or acquisition of historical location data;  
90 providing that the search warrant may authorize the  
91 tracking as specified; requiring the search warrant to  
92 command the investigative or law enforcement officer  
93 to complete any initiation of the location tracking or  
94 execution of the search warrant for historical  
95 location data authorized by the search warrant within  
96 a certain timeframe; providing requirements for the  
97 return of the search warrant to the judge and for  
98 service of a copy of the search warrant on the person  
99 who was tracked or whose property was tracked;  
100 providing requirements for returning and serving a  
101 search warrant authorizing the acquisition of  
102 historical location data; authorizing a court, for  
103 good cause, to postpone the notice requirement for a  
104 specified time period; requiring that the standards  
105 established by Florida courts for the installation,  
106 use, or monitoring of mobile tracking devices and the  
107 acquisition of location data apply to the  
108 installation, use, or monitoring of any device and the  
109 acquisition of location data as authorized by certain  
110 provisions; deleting the definition of "tracking  
111 device"; authorizing any investigative or law  
112 enforcement officer who is specially designated by  
113 certain persons and who makes specified determinations  
114 to engage in real-time location tracking if a search  
115 warrant is obtained, as specified, after the tracking  
116 has occurred or begins to occur; specifying when real-

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117 time location tracking must terminate; reenacting s.  
118 934.22(2)(b), F.S., relating to voluntary disclosure  
119 of customer communications or records, to incorporate  
120 the amendments made to ss. 934.03 and 934.07, F.S., in  
121 references thereto; reenacting s. 934.27(1) and (4),  
122 F.S., relating to relief, damages, and defenses for  
123 certain civil actions, to incorporate the amendments  
124 made to ss. 934.09 and 934.21, F.S., in references  
125 thereto; reenacting ss. 934.23(6), 934.24(6) and (7),  
126 934.25(5), and 934.28, F.S., relating to required  
127 disclosures of customer communications or records, a  
128 subscriber or customer filing a motion for certain  
129 relief and customer notification, delayed notice, and  
130 the exclusivity of remedies and sanctions for certain  
131 violations, respectively, to incorporate the amendment  
132 made to s. 934.21, F.S., in references thereto;  
133 providing an effective date.

134

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

136

137 Section 1. Section 933.02, Florida Statutes, is amended to  
138 read:

139 933.02 Grounds for issuance of search warrant.—Upon proper  
140 affidavits being made, a search warrant may be issued under ~~the~~  
141 ~~provisions of~~ this chapter upon any of the following grounds:

142 (1) When the property shall have been stolen or embezzled  
143 in violation of law.†

144 (2) When any property shall have been used:

145 (a) As a means to commit any crime;

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146 (b) In connection with gambling, gambling implements and  
147 appliances; or

148 (c) In violation of s. 847.011 or other laws in reference  
149 to obscene prints and literature.~~†~~

150 (3) When any property, or when content held within a  
151 cellular phone, a portable electronic communication device as  
152 defined in s. 934.02(28), or a microphone-enabled household  
153 device as defined in s. 934.02(27), constitutes evidence  
154 relevant to proving that a felony has been committed.~~†~~

155 (4) When any property is being held or possessed:

156 (a) In violation of any of the laws prohibiting the  
157 manufacture, sale, and transportation of intoxicating liquors;

158 (b) In violation of the fish and game laws;

159 (c) In violation of the laws relative to food and drug; or

160 (d) In violation of the laws relative to citrus disease  
161 pursuant to s. 581.184.~~†~~~~or~~

162 (5) When the laws in relation to cruelty to animals, as  
163 provided in chapter 828, have been or are violated in any  
164 particular building or place.

165

166 This section also applies to any papers or documents used as a  
167 means of or in aid of the commission of any offense against the  
168 laws of the state.

169 Section 2. Section 933.04, Florida Statutes, is amended to  
170 read:

171 933.04 Affidavits.—The right of the people to be secure in  
172 their persons, houses, papers, and effects against unreasonable  
173 seizures and searches and against the unreasonable interception  
174 of private communications by any means may ~~shall~~ not be violated

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175 and a ~~no~~ search warrant may not ~~shall~~ be issued except upon  
176 probable cause, supported by oath or affirmation particularly  
177 describing the place to be searched and the person and thing to  
178 be seized.

179 Section 3. Section 934.01, Florida Statutes, is amended to  
180 read:

181 934.01 Legislative findings.—On the basis of its own  
182 investigations and of published studies, the Legislature makes  
183 the following findings:

184 (1) Wire communications are normally conducted through the  
185 use of facilities which form part of an intrastate network. The  
186 same facilities are used for interstate and intrastate  
187 communications.

188 (2) In order to protect effectively the privacy of wire,  
189 ~~and~~ oral, and electronic communications, to protect the  
190 integrity of court and administrative proceedings, and to  
191 prevent the obstruction of intrastate commerce, it is necessary  
192 for the Legislature to define the circumstances and conditions  
193 under which the interception of wire, ~~and~~ oral, and electronic  
194 communications may be authorized and to prohibit any  
195 unauthorized interception of such communications and the use of  
196 the contents thereof in evidence in courts and administrative  
197 proceedings.

198 (3) Organized criminals make extensive use of wire, ~~and~~  
199 oral, and electronic communications in their criminal  
200 activities. The interception of such communications to obtain  
201 evidence of the commission of crimes or to prevent their  
202 commission is an indispensable aid to law enforcement and the  
203 administration of justice.

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204 (4) To safeguard the privacy of innocent persons, the  
205 interception of wire, ~~or~~ oral, or electronic communications when  
206 none of the parties to the communication has consented to the  
207 interception should be allowed only when authorized by a court  
208 of competent jurisdiction and should remain under the control  
209 and supervision of the authorizing court. Interception of wire,  
210 ~~and~~ oral, and electronic communications should further be  
211 limited to certain major types of offenses and specific  
212 categories of crime with assurance that the interception is  
213 justified and that the information obtained thereby will not be  
214 misused.

215 (5) To safeguard the privacy of innocent persons, the  
216 Legislature recognizes the subjective expectation of privacy in  
217 real-time cell-site location data, real-time precise global  
218 positioning system location data, and historical precise global  
219 positioning system location data which society is now prepared  
220 to accept is objectively reasonable. As such, the law  
221 enforcement collection of the precise location of a person,  
222 cellular phone, or portable electronic communication device  
223 without the consent of the person or owner of the cellular phone  
224 or portable electronic communication device should be allowed  
225 only when authorized by a search warrant issued by a court of  
226 competent jurisdiction and should remain under the control and  
227 supervision of the authorizing court.

228 (6) The Legislature recognizes that the use of portable  
229 electronic communication devices is growing at a rapidly  
230 increasing rate. These devices can store, and encourage the  
231 storing of, an almost limitless amount of personal and private  
232 information. Often linked to the Internet, these devices are



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233 commonly used to access personal and business information and  
234 databases in computers and servers that can be located anywhere  
235 in the world. The user of a portable electronic communication  
236 device has a reasonable and justifiable expectation of privacy  
237 in the information that these devices contain.

238 (7) The Legislature recognizes that the use of household  
239 electronic devices, including microphone-enabled household  
240 devices, is growing rapidly. These devices often contain  
241 microphones that listen for and respond to environmental cues.  
242 These household devices are generally connected to and  
243 communicate through the Internet, resulting in the storage of  
244 and accessibility to daily household information in the device  
245 itself or in a remote computing service. Persons should not have  
246 to choose between using household technological enhancements and  
247 conveniences or preserving the right to privacy in their own  
248 homes.

249 Section 4. Subsections (2) and (12) of section 934.02,  
250 Florida Statutes, are amended, and subsections (27) and (28) are  
251 added to that section, to read:

252 934.02 Definitions.—As used in this chapter:

253 (2) "Oral communication" means any oral communication  
254 uttered by a person exhibiting an expectation that such  
255 communication is not subject to interception under circumstances  
256 justifying such expectation, including the use of a microphone-  
257 enabled household device, and does not mean any public oral  
258 communication uttered at a public meeting or any electronic  
259 communication.

260 (12) "Electronic communication" means any transfer of  
261 signs, signals, writing, images, sounds, data, or intelligence

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262 of any nature transmitted in whole or in part by a wire, a  
263 radio, a communication tower, a satellite, an electromagnetic, a  
264 photoelectronic, or a photooptical system that affects  
265 intrastate, interstate, or foreign commerce, but does not  
266 include:

267 (a) Any wire or oral communication;

268 (b) Any communication made through a tone-only paging  
269 device;

270 ~~(c) Any communication from an electronic or mechanical~~  
271 ~~device which permits the tracking of the movement of a person or~~  
272 ~~an object;~~ or

273 (c) ~~(d)~~ Electronic funds transfer information stored by a  
274 financial institution in a communications system used for the  
275 electronic storage and transfer of funds.

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

278 (a) Is capable of connecting to the Internet, directly or  
279 indirectly, or to another connected device;

280 (b) Is capable of creating, receiving, accessing,  
281 processing, or storing electronic data or communications;

282 (c) Communicates with, by any means, another device,  
283 entity, or individual; and

284 (d) Contains a microphone designed to listen for and  
285 respond to environmental cues.

286 (28) "Portable electronic communication device" means an  
287 object that may be easily transported or conveyed by a person;  
288 is capable of creating, receiving, accessing, processing, or  
289 storing electronic data or communications; and communicates  
290 with, by any means, another device, entity, or individual.

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291 Section 5. Subsection (2) of section 934.03, Florida  
292 Statutes, is amended to read:

293 934.03 Interception and disclosure of wire, oral, or  
294 electronic communications prohibited.-

295 (2) (a) 1. It is lawful under this section and ss. 934.04-  
296 934.09 for an operator of a switchboard, or an officer,  
297 employee, or agent of a provider of wire or electronic  
298 communication service whose facilities are used in the  
299 transmission of a wire or electronic communication, to  
300 intercept, disclose, or use that communication in the normal  
301 course of his or her employment while engaged in any activity  
302 which is a necessary incident to the rendition of his or her  
303 service or to the protection of the rights or property of the  
304 provider of that service, except that a provider of wire  
305 communication service to the public may not use ~~shall not~~  
306 ~~utilize~~ service observing or random monitoring except for  
307 mechanical or service quality control checks.

308 2. Notwithstanding any other law, a provider of wire, oral,  
309 or electronic communication service, or an officer, employee, or  
310 agent thereof, or landlord, custodian, or other person, may  
311 provide information, facilities, or technical assistance to a  
312 person authorized by law to intercept wire, oral, or electronic  
313 communications if such provider, or an officer, employee, or  
314 agent thereof, or landlord, custodian, or other person, has been  
315 provided with:

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

318 ~~b.~~ A certification in writing by a person specified in s.  
319 934.09(7) that a search ~~no~~ warrant or court order is not

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320 required by law, that all statutory requirements have been met,  
321 and that the specified assistance is required, setting forth the  
322 period of time during which the provision of the information,  
323 facilities, or technical assistance is authorized and specifying  
324 the information, facilities, or technical assistance required;  
325 or

326 b. A search warrant issued by a judge of competent  
327 jurisdiction as required by law.

328 3. A provider of wire, oral, or electronic communication  
329 service, or an officer, employee, or agent thereof, or landlord,  
330 custodian, or other person may not disclose the existence of any  
331 interception or the device used to accomplish the interception  
332 with respect to which the person has been served with a search  
333 warrant ~~furnished an order under this section and ss. 934.04-~~  
334 ~~934.09~~, except as may otherwise be required by legal process and  
335 then only after prior notice to the Governor, the Attorney  
336 General, the statewide prosecutor, or a state attorney, as may  
337 be appropriate. Any such disclosure renders such person liable  
338 for the civil damages provided under s. 934.10, and such person  
339 may be prosecuted under s. 934.43. An action may not be brought  
340 against any provider of wire, oral, or electronic communication  
341 service, or an officer, employee, or agent thereof, or landlord,  
342 custodian, or other person for providing information,  
343 facilities, or assistance in accordance with the terms of a  
344 search warrant ~~court order under this section and ss. 934.04-~~  
345 ~~934.09~~.

346 (b) It is lawful under this section and ss. 934.04-934.09  
347 for an officer, employee, or agent of the Federal Communications  
348 Commission, in the normal course of his or her employment and in

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349 discharge of the monitoring responsibilities exercised by the  
350 commission in the enforcement of 47 U.S.C. chapter 5, to  
351 intercept a wire, oral, or electronic communication transmitted  
352 by radio or to disclose or use the information thereby obtained.

353 (c) It is lawful under this section and ss. 934.04-934.09  
354 for an investigative or law enforcement officer or a person  
355 acting under the direction of an investigative or law  
356 enforcement officer to intercept a wire, oral, or electronic  
357 communication when such person is a party to the communication  
358 or one of the parties to the communication has given prior  
359 consent to such interception and the purpose of such  
360 interception is to obtain evidence of a criminal act.

361 (d) It is lawful under this section and ss. 934.04-934.09  
362 for a person to intercept a wire, oral, or electronic  
363 communication when all of the parties to the communication have  
364 given prior consent to such interception.

365 (e) It is unlawful to intercept any wire, oral, or  
366 electronic communication for the purpose of committing any  
367 criminal act.

368 (f) It is lawful under this section and ss. 934.04-934.09  
369 for an employee of a telephone company to intercept a wire  
370 communication for the sole purpose of tracing the origin of such  
371 communication when the interception is requested by the  
372 recipient of the communication and the recipient alleges that  
373 the communication is obscene, harassing, or threatening in  
374 nature. The individual conducting the interception shall notify  
375 local police authorities within 48 hours after the time of the  
376 interception.

377 (g) It is lawful under this section and ss. 934.04-934.09

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378 for an employee of:

379 1. An ambulance service licensed pursuant to s. 401.25, a  
380 fire station employing firefighters as defined by s. 633.102, a  
381 public utility, a law enforcement agency as defined by s.  
382 934.02(10), or any other entity with published emergency  
383 telephone numbers;

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

386 3. The central abuse hotline operated pursuant to s. 39.201  
387

388 to intercept and record incoming wire communications; however,  
389 such employee may intercept and record incoming wire  
390 communications on designated "911" telephone numbers and  
391 published nonemergency telephone numbers staffed by trained  
392 dispatchers at public safety answering points only. It is also  
393 lawful for such employee to intercept and record outgoing wire  
394 communications to the numbers from which such incoming wire  
395 communications were placed when necessary to obtain information  
396 required to provide the emergency services being requested. For  
397 the purpose of this paragraph, the term "public utility" has the  
398 same meaning as provided in s. 366.02 and includes a person,  
399 partnership, association, or corporation now or hereafter owning  
400 or operating equipment or facilities in the state for conveying  
401 or transmitting messages or communications by telephone or  
402 telegraph to the public for compensation.

403 (h) It is lawful ~~shall not be unlawful~~ under this section  
404 and ss. 934.04-934.09 for any person:

405 1. To intercept or access an electronic communication made  
406 through an electronic communication system that is configured so

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407 that such electronic communication is readily accessible to the  
408 general public.

409 2. To intercept any radio communication which is  
410 transmitted:

411 a. By any station for the use of the general public, or  
412 that relates to ships, aircraft, vehicles, or persons in  
413 distress;

414 b. By any governmental, law enforcement, civil defense,  
415 private land mobile, or public safety communications system,  
416 including any police or fire communications system, readily  
417 accessible to the general public;

418 c. By a station operating on an authorized frequency within  
419 the bands allocated to the amateur, citizens band, or general  
420 mobile radio services; or

421 d. By any marine or aeronautical communications system.

422 3. To engage in any conduct which:

423 a. Is prohibited by s. 633 of the Communications Act of  
424 1934; or

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

427 4. To intercept any wire or electronic communication the  
428 transmission of which is causing harmful interference to any  
429 lawfully operating station of consumer electronic equipment to  
430 the extent necessary to identify the source of such  
431 interference.

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

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436 such system.

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

439 a. To a broadcasting station for purposes of retransmission  
440 to the general public; or

441 b. As an audio subcarrier intended for redistribution to  
442 facilities open to the public, but not including data  
443 transmissions or telephone calls, when such interception is not  
444 for the purposes of direct or indirect commercial advantage or  
445 private financial gain.

446 7. To intercept and privately view a private satellite  
447 video communication that is not scrambled or encrypted or to  
448 intercept a radio communication that is transmitted on  
449 frequencies allocated under subpart D of part 74 of the rules of  
450 the Federal Communications Commission that is not scrambled or  
451 encrypted, if such interception is not for a tortious or illegal  
452 purpose or for purposes of direct or indirect commercial  
453 advantage or private commercial gain.

454 (i) It is lawful ~~shall not be unlawful~~ under this section  
455 and ss. 934.04-934.09:

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

458 2. For a provider of electronic communication service to  
459 record the fact that a wire or electronic communication was  
460 initiated or completed in order to protect such provider,  
461 another provider furnishing service toward the completion of the  
462 wire or electronic communication, or a user of that service,  
463 from fraudulent, unlawful, or abusive use of such service.

464 (j) It is lawful ~~not unlawful~~ under this section and ss.



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465 934.04-934.09 for a person acting under color of law to  
466 intercept the wire or electronic communications of a computer  
467 trespasser which are transmitted to, through, or from a  
468 protected computer if:

469 1. The owner or operator of the protected computer  
470 authorizes the interception of the communications of the  
471 computer trespasser;

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

474 3. The person acting under color of law has reasonable  
475 grounds to believe that the contents of the communications of  
476 the computer trespasser will be relevant to the investigation;  
477 and

478 4. The interception does not acquire communications other  
479 than those transmitted to, through, or from the computer  
480 trespasser.

481 (k) It is lawful under this section and ss. 934.04-934.09  
482 for a child under 18 years of age to intercept and record an  
483 oral communication if the child is a party to the communication  
484 and has reasonable grounds to believe that recording the  
485 communication will capture a statement by another party to the  
486 communication that the other party intends to commit, is  
487 committing, or has committed an unlawful sexual act or an  
488 unlawful act of physical force or violence against the child.

489 Section 6. Section 934.06, Florida Statutes, is amended to  
490 read:

491 934.06 Prohibition of use as evidence of intercepted wire  
492 or oral communications; content of cellular phone, microphone-  
493 enabled household device, or portable electronic communication

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494 device; exceptions ~~exception~~.—Whenever any wire or oral  
495 communication has been intercepted, or when the content of a  
496 cellular phone, microphone-enabled household device, or portable  
497 electronic communication device is obtained without a search  
498 warrant supported by probable cause, no part of the contents of  
499 such communication or content and no evidence derived therefrom  
500 may be received in evidence in any trial, hearing, or other  
501 proceeding in or before any court, grand jury, department,  
502 officer, agency, regulatory body, legislative committee, or  
503 other authority of the state, or a political subdivision  
504 thereof, if the disclosure of that information would be in  
505 violation of this chapter. The prohibition of use as evidence  
506 provided in this section does not apply in cases of prosecution  
507 for criminal interception in violation of ~~the provisions of this~~  
508 chapter, or in cases where the content of a cellular phone,  
509 microphone-enabled household device, or portable electronic  
510 communication device is lawfully obtained under circumstances  
511 where a search warrant is not required.

512 Section 7. Subsections (1) and (2) of section 934.07,  
513 Florida Statutes, are amended to read:

514 934.07 Authorization for interception of wire, oral, or  
515 electronic communications.—

516 (1) The Governor, the Attorney General, the statewide  
517 prosecutor, or any state attorney may authorize an application  
518 to a judge of competent jurisdiction for, and such judge may  
519 issue a search warrant as required by law ~~grant in conformity~~  
520 ~~with ss. 934.03–934.09 an order~~ authorizing or approving the  
521 interception of, wire, oral, or electronic communications by:

522 (a) The Department of Law Enforcement or any law

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523 enforcement agency as defined in s. 934.02 having responsibility  
524 for the investigation of the offense as to which the application  
525 is made when such interception may provide or has provided  
526 evidence of the commission of the offense of murder, kidnapping,  
527 aircraft piracy, arson, gambling, robbery, burglary, theft,  
528 dealing in stolen property, criminal usury, bribery, or  
529 extortion; any felony violation of ss. 790.161-790.166,  
530 inclusive; any violation of s. 787.06; any violation of chapter  
531 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing  
532 Act; any violation of chapter 895; any violation of chapter 896;  
533 any violation of chapter 815; any violation of chapter 847; any  
534 violation of s. 827.071; any violation of s. 944.40; or any  
535 conspiracy or solicitation to commit any violation of the laws  
536 of this state relating to the crimes specifically enumerated in  
537 this paragraph.

538 (b) The Department of Law Enforcement, together with other  
539 assisting personnel as authorized and requested by the  
540 department under s. 934.09(5), for the investigation of the  
541 offense as to which the application is made when such  
542 interception may provide or has provided evidence of the  
543 commission of any offense that may be an act of terrorism or in  
544 furtherance of an act of terrorism or evidence of any conspiracy  
545 or solicitation to commit any such violation.

546 (2) (a) If, during the course of an interception of  
547 communications by a law enforcement agency as authorized under  
548 paragraph (1) (a), the law enforcement agency finds that the  
549 intercepted communications may provide or have provided evidence  
550 of the commission of any offense that may be an act of terrorism  
551 or in furtherance of an act of terrorism, or evidence of any

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552 conspiracy or solicitation to commit any such violation, the law  
553 enforcement agency shall promptly notify the Department of Law  
554 Enforcement and apprise the department of the contents of the  
555 intercepted communications. The agency notifying the department  
556 may continue its previously authorized interception with  
557 appropriate minimization, as applicable, and may otherwise  
558 assist the department as provided in this section.

559 (b) Upon its receipt of information of the contents of an  
560 intercepted communications from a law enforcement agency, the  
561 Department of Law Enforcement shall promptly review the  
562 information to determine whether the information relates to an  
563 actual or anticipated act of terrorism as defined in this  
564 section. If, after reviewing the contents of the intercepted  
565 communications, there is probable cause that the contents of the  
566 intercepted communications meet the criteria of paragraph  
567 (1)(b), the Department of Law Enforcement may make application  
568 for the interception of wire, oral, or electronic communications  
569 consistent with paragraph (1)(b). The department may make an  
570 independent new application for interception based on the  
571 contents of the intercepted communications. Alternatively, the  
572 department may request the law enforcement agency that provided  
573 the information to join with the department in seeking a new  
574 search warrant as required by law or an amendment of the  
575 original interception search warrant ~~order~~, or may seek  
576 additional authority to continue intercepting communications  
577 under the direction of the department. In carrying out its  
578 duties under this section, the department may use the provisions  
579 for an emergency interception provided in s. 934.09(7) if  
580 applicable under statutory criteria.

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581 Section 8. Section 934.09, Florida Statutes, is amended to  
582 read:

583 934.09 Procedure for interception of wire, oral, or  
584 electronic communications.—

585 (1) Each application for a search warrant ~~an order~~  
586 authorizing or approving the interception of a wire, oral, or  
587 electronic communication under ss. 934.03-934.09 shall be made  
588 in writing upon oath or affirmation to a judge of competent  
589 jurisdiction and shall state the applicant's authority to make  
590 such application. Each application shall include the following  
591 information:

592 (a) The identity of the investigative or law enforcement  
593 officer making the application and the officer authorizing the  
594 application.

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

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

601 2. Except as provided in subsection (1), a particular  
602 description of the nature and location of the facilities from  
603 which, or the place where, the communications are to be  
604 intercepted.

605 3. A particular description of the type of communications  
606 sought to be intercepted.

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

609 (c) A full and complete statement as to whether or not

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610 other investigative procedures have been tried and failed or why  
611 they reasonably appear to be unlikely to succeed if tried or to  
612 be too dangerous.

613 (d) A statement of the period of time for which the  
614 interception is required to be maintained and, if the nature of  
615 the investigation is such that the authorization for  
616 interception should not automatically terminate when the  
617 described type of communication has been first obtained, a  
618 particular description of facts establishing probable cause to  
619 believe that additional communications of the same type will  
620 occur thereafter.

621 (e) A full and complete statement of the facts concerning  
622 all previous applications known to the individual authorizing  
623 and making the application, made to any judge for authorization  
624 to intercept, or for approval of interceptions of, wire, oral,  
625 or electronic communications involving any of the same persons,  
626 facilities, or places specified in the application, and the  
627 action taken by the judge on each such application.

628 (f) When the application is for the extension of a search  
629 warrant ~~an order~~, a statement setting forth the results thus far  
630 obtained from the interception or a reasonable explanation of  
631 the failure to obtain such results.

632 (2) The judge may require the applicant to furnish  
633 additional testimony or documentary evidence in support of the  
634 application.

635 (3) Upon such application, the judge may authorize a search  
636 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,  
637 authorizing or approving interception of wire, oral, or  
638 electronic communications within the territorial jurisdiction of

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639 the court in which the judge is sitting, and outside such  
640 jurisdiction but within the State of Florida in the case of a  
641 mobile interception device authorized by the judge within such  
642 jurisdiction, if the judge determines on the basis of the facts  
643 submitted by the applicant that:

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

647 (b) There is probable cause for belief that particular  
648 communications concerning that offense will be obtained through  
649 such interception.

650 (c) Normal investigative procedures have been tried and  
651 have failed or reasonably appear to be unlikely to succeed if  
652 tried or to be too dangerous.

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

659 (4) Each search warrant ~~order~~ authorizing or approving the  
660 interception of any wire, oral, or electronic communication  
661 shall specify:

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

664 (b) The nature and location of the communications  
665 facilities as to which, or the place where, authority to  
666 intercept is granted.

667 (c) A particular description of the type of communication

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668 sought to be intercepted and a statement of the particular  
669 offense to which it relates.

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

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

676

677 A search warrant ~~An order~~ authorizing the interception of a  
678 wire, oral, or electronic communication shall, upon the request  
679 of the applicant, direct that a provider of wire or electronic  
680 communication service, landlord, custodian, or other person  
681 shall furnish the applicant forthwith all information,  
682 facilities, and technical assistance necessary to accomplish the  
683 interception unobtrusively and with a minimum of interference  
684 with the services that such service provider, landlord,  
685 custodian, or person is according the person whose  
686 communications are to be intercepted. The obligation of a  
687 provider of wire, oral, or electronic communication service  
688 under such a search warrant ~~an order~~ may include, but is not  
689 limited to, conducting an in-progress trace during an  
690 interception, or providing other assistance to support the  
691 investigation as may be specified in the search warrant ~~order~~.  
692 Any provider of wire or electronic communication service,  
693 landlord, custodian, or other person furnishing such facilities  
694 or technical assistance shall be compensated therefor by the  
695 applicant for reasonable expenses incurred in providing such  
696 facilities or assistance.



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697           (5) A search warrant ~~No order~~ entered under this section  
698 may not authorize or approve the interception of any wire, oral,  
699 or electronic communication for any period longer than is  
700 necessary to achieve the objective of the authorization or in  
701 any event longer than 30 days. Such 30-day period begins on the  
702 day on which the agent or officer of the law enforcement agency  
703 first begins to conduct an interception under the search warrant  
704 ~~order~~ or 10 days after the search warrant is approved ~~order is~~  
705 ~~entered~~, whichever occurs earlier. Extensions of a search  
706 warrant ~~an order~~ may be granted but only upon application for an  
707 extension made in accordance with subsection (1) and upon the  
708 court making the findings required by subsection (3). The period  
709 of extension shall be no longer than the authorizing judge deems  
710 necessary to achieve the purposes for which it was granted and  
711 in no event for longer than 30 days. Every search warrant ~~order~~  
712 and extension thereof shall contain a provision that the  
713 authorization to intercept shall be executed as soon as  
714 practicable, shall be conducted in such a way as to minimize the  
715 interception of communications not otherwise subject to  
716 interception under ss. 934.03-934.09, and must terminate upon  
717 attainment of the authorized objective or in any event in 30  
718 days. If the intercepted communication is in code or foreign  
719 language and an expert in that foreign language or code is not  
720 reasonably available during the interception period,  
721 minimization may be accomplished as soon as practicable after  
722 such interception. An interception under ss. 934.03-934.09 may  
723 be conducted in whole or in part by government personnel or by  
724 an individual operating under a contract with the government,  
725 acting under the supervision of an agent or officer of the law

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726 enforcement agency authorized to conduct the interception.

727 (6) Whenever a search warrant ~~an order~~ authorizing  
728 interception is granted ~~entered~~ pursuant to ss. 934.03-934.09,  
729 the search warrant ~~order~~ may require reports to be made to the  
730 judge who issued the search warrant ~~order~~ showing what progress  
731 has been made toward achievement of the authorized objective and  
732 the need for continued interception. Such reports shall be made  
733 at such intervals as the judge may require.

734 (7) Notwithstanding any other provision of this chapter,  
735 any investigative or law enforcement officer specially  
736 designated by the Governor, the Attorney General, the statewide  
737 prosecutor, or a state attorney acting under this chapter, who  
738 reasonably determines that:

739 (a) An emergency exists that:

740 1. Involves immediate danger of death or serious physical  
741 injury to any person, the danger of escape of a prisoner, or  
742 conspiratorial activities threatening the security interest of  
743 the nation or state; and

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

747 (b) There are grounds upon which a search warrant ~~an order~~  
748 could be entered under this chapter to authorize such  
749 interception,

750  
751 may intercept such wire, oral, or electronic communication if an  
752 application for a search warrant ~~an order~~ approving the  
753 interception is made in accordance with this section within 48  
754 hours after the interception has occurred or begins to occur. In

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755 the absence of a search warrant ~~an order~~, such interception  
756 shall immediately terminate when the communication sought is  
757 obtained or when the application for the search warrant ~~order~~ is  
758 denied, whichever is earlier. If such application for approval  
759 is denied, or in any other case in which the interception is  
760 terminated without a search warrant ~~an order~~ having been issued,  
761 the contents of any wire, oral, or electronic communication  
762 intercepted shall be treated as having been obtained in  
763 violation of s. 934.03(4), and an inventory shall be served as  
764 provided for in paragraph (8)(e) on the person named in the  
765 application.

766 (8)(a) The contents of any wire, oral, or electronic  
767 communication intercepted by any means authorized by ss. 934.03-  
768 934.09 shall, if possible, be recorded on tape or wire or other  
769 comparable device. The recording of the contents of any wire,  
770 oral, or electronic communication under this subsection shall be  
771 kept in such a way as will protect the recording from editing or  
772 other alterations. Immediately upon the expiration of the period  
773 of the search warrant ~~order~~, or extensions thereof, such  
774 recordings shall be made available to the judge approving the  
775 search warrant ~~issuing such order~~ and sealed under his or her  
776 directions. Custody of the recordings shall be wherever the  
777 judge orders. They may ~~shall~~ not be destroyed except upon an  
778 order of the issuing or denying judge, or that judge's successor  
779 in office, and in any event shall be kept for 10 years.  
780 Duplicate recordings may be made for use or disclosure pursuant  
781 to ~~the provisions of~~ s. 934.08(1) and (2) for investigations, or  
782 for purposes of discovery as required by law.

783 (b) The presence of the seal provided for by this

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784 subsection, or a satisfactory explanation for the absence  
785 thereof, shall be a prerequisite for the use or disclosure of  
786 the contents of any wire, oral, or electronic communication or  
787 evidence derived therefrom under s. 934.08(3), as required by  
788 federal law.

789 (c) Applications made and search warrants ~~orders~~ granted  
790 under ss. 934.03-934.09 shall be sealed by the judge. Custody of  
791 the applications and search warrants ~~orders~~ shall be wherever  
792 the judge directs. As required by ~~federal~~ law, such applications  
793 and search warrants ~~orders~~ shall be disclosed only for purposes  
794 of discovery or upon a showing of good cause before a judge of  
795 competent jurisdiction and may ~~shall~~ not be destroyed except on  
796 order of the issuing or denying judge, or that judge's successor  
797 in office, and in any event shall be kept for 10 years.

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

800 (e) Within a reasonable time but not later than 90 days  
801 after the termination of the period of a search warrant ~~an order~~  
802 or extensions thereof, the issuing or denying judge shall cause  
803 to be served on the persons named in the search warrant ~~order~~ or  
804 the application, and such other parties to intercepted  
805 communications as the judge may determine in his or her  
806 discretion to be in the interest of justice, an inventory which  
807 shall include notice of:

808 1. The fact of the approval of the search warrant ~~entry of~~  
809 ~~the order~~ or the application.

810 2. The date of the approval of the search warrant ~~entry~~ and  
811 the period of authorized, approved, or disapproved interception,  
812 or the denial of the application.

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

815  
816 The judge, upon the filing of a motion, may make available to  
817 such person or the person's counsel for inspection such portions  
818 of the intercepted communications, applications, and search  
819 warrants ~~orders~~ as the judge determines to be in the interest of  
820 justice. On an ex parte showing of good cause to a judge of  
821 competent jurisdiction, the serving of the inventory required by  
822 this paragraph may be postponed.

823           (9) ~~As required by federal law,~~ The contents of any  
824 intercepted wire, oral, or electronic communication or evidence  
825 derived therefrom may ~~shall~~ not be received in evidence or  
826 otherwise disclosed in any trial, hearing, or other proceeding  
827 unless each party, not less than 10 days before the trial,  
828 hearing, or proceeding, has been furnished with a copy of the  
829 search warrant ~~court order~~ and accompanying application under  
830 which the interception was authorized or approved. This 10-day  
831 period may be waived by the judge if he or she finds that it was  
832 not possible to furnish the party with the above information 10  
833 days before the trial, hearing, or proceeding and that the party  
834 will not be prejudiced by the delay in receiving such  
835 information.

836           (10) (a) An ~~Any~~ aggrieved person before or in any trial,  
837 hearing, or proceeding in or before any court, department,  
838 officer, agency, regulatory body, or other authority may move to  
839 suppress the contents of any intercepted wire, oral, or  
840 electronic communication, or evidence derived therefrom, on the  
841 grounds that:

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- 842 1. The communication was unlawfully intercepted;
- 843 2. The search warrant ~~order of authorization or approval~~
- 844 under which it was intercepted is insufficient on its face; or
- 845 3. The interception was not made in conformity with the
- 846 search warrant ~~order of authorization or approval~~.
- 847 (b) Except as otherwise provided in the applicable Florida
- 848 Rules of Criminal Procedure, in a criminal matter:
- 849 1. Such motion shall be made before the trial, hearing, or
- 850 proceeding unless there was no opportunity to make such motion
- 851 or the person was not aware of the grounds of the motion.
- 852 2. If the motion is granted, the contents of the
- 853 intercepted wire or oral communication, or evidence derived
- 854 therefrom, shall be treated as having been obtained in violation
- 855 of ss. 934.03-934.09 and are not admissible as evidence.
- 856 3. The judge, upon the filing of such motion by the
- 857 aggrieved person, may make available to the aggrieved person or
- 858 his or her counsel for inspection such portions of the
- 859 intercepted communication or evidence derived therefrom as the
- 860 judge determines to be in the interest of justice.
- 861 (c) ~~(b)~~ In addition to any other right to appeal, the state
- 862 shall have the right to appeal from an order granting a motion
- 863 to suppress made under paragraph (a) or the denial of an
- 864 application for a search warrant ~~an order of approval~~ if the
- 865 attorney shall certify to the judge or other official granting
- 866 such motion or denying such application that the appeal is not
- 867 taken for purposes of delay. Such appeal shall be taken within
- 868 30 days after the date the order was entered and shall be
- 869 diligently prosecuted.
- 870 (d) ~~(e)~~ The remedies and sanctions described in ss. 934.03-

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871 934.10 with respect to the interception of electronic  
872 communications are the only judicial remedies and sanctions for  
873 violations of those sections involving such communications.

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

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

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

883 2. The application contains a full and complete statement  
884 as to why such specification is not practical and identifies the  
885 person committing the offense and whose communications are to be  
886 intercepted.

887 3. The judge finds that such specification is not  
888 practical.

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

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

894 2. The application identifies the person believed to be  
895 committing the offense and whose communications are to be  
896 intercepted and the applicant makes a showing that there is  
897 probable cause to believe that the person's actions could have  
898 the effect of thwarting interception from a specified facility  
899 or that the person whose communications are to be intercepted

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900 has removed, or is likely to remove, himself or herself to  
901 another judicial circuit within the state.

902 3. The judge finds that such showing has been adequately  
903 made.

904 4. The search warrant ~~order~~ authorizing or approving the  
905 interception is limited to interception only for such time as it  
906 is reasonable to presume that the person identified in the  
907 application is or was reasonably proximate to the instrument  
908 through which such communication will be or was transmitted.

909  
910 ~~Consistent with this paragraph, a judge of competent~~  
911 ~~jurisdiction may authorize interception within this state,~~  
912 ~~whether the interception is within or outside the court's~~  
913 ~~jurisdiction, if the application for the interception makes a~~  
914 ~~showing that some activity or conspiracy believed to be related~~  
915 ~~to, or in furtherance of, the criminal predicate for the~~  
916 ~~requested interception has occurred or will likely occur, or the~~  
917 ~~communication to be intercepted or expected to be intercepted is~~  
918 ~~occurring or will likely occur, in whole or in part, within the~~  
919 ~~jurisdiction of the court where the order is being sought.~~

920 (12) If an interception of a communication is to be carried  
921 out pursuant to subsection (11), such interception may not begin  
922 until the facilities from which, or the place where, the  
923 communication is to be intercepted is ascertained by the person  
924 implementing the interception search warrant ~~order~~. A provider  
925 of wire or electronic communications service that has received a  
926 search warrant ~~an order~~ as provided under paragraph (11)(b) may  
927 petition the court to modify or quash the search warrant ~~order~~  
928 on the ground that the interception cannot be performed in a



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929 timely or reasonable fashion. The court, upon notice to the  
930 state, shall decide such a petition expeditiously.

931 (13) Consistent with this section, a judge of competent  
932 jurisdiction may authorize interception within this state,  
933 whether the interception is within or outside the court's  
934 jurisdiction, if the application for the interception makes a  
935 showing that some activity or conspiracy believed to be related  
936 to, or in furtherance of, the criminal predicate for the  
937 requested interception has occurred or will likely occur, or the  
938 communication to be intercepted or expected to be intercepted is  
939 occurring or will likely occur, in whole or in part, within the  
940 jurisdiction of the court where the search warrant is being  
941 sought.

942 Section 9. Subsection (2) of section 934.10, Florida  
943 Statutes, is amended, and subsection (1) of that section is  
944 reenacted, to read:

945 934.10 Civil remedies.—

946 (1) Any person whose wire, oral, or electronic  
947 communication is intercepted, disclosed, or used in violation of  
948 ss. 934.03-934.09 shall have a civil cause of action against any  
949 person or entity who intercepts, discloses, or uses, or procures  
950 any other person or entity to intercept, disclose, or use, such  
951 communications and shall be entitled to recover from any such  
952 person or entity which engaged in that violation such relief as  
953 may be appropriate, including:

954 (a) Preliminary or equitable or declaratory relief as may  
955 be appropriate;

956 (b) Actual damages, but not less than liquidated damages  
957 computed at the rate of \$100 a day for each day of violation or

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958 \$1,000, whichever is higher;

959 (c) Punitive damages; and

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

962 (2) A good faith reliance on any of the following  
963 constitutes a complete defense to any civil, criminal, or  
964 administrative action arising out of such conduct under the laws  
965 of this state:

966 (a) A search warrant ~~court order, subpoena, or legislative~~  
967 ~~authorization~~ as provided for in ss. 934.03-934.09;T

968 (b) A request of an investigative or law enforcement  
969 officer under s. 934.09(7);T or

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

973  
974 ~~shall constitute a complete defense to any civil or criminal, or~~  
975 ~~administrative action arising out of such conduct under the laws~~  
976 ~~of this state.~~

977 Section 10. Section 934.21, Florida Statutes, is amended to  
978 read:

979 934.21 Unlawful access to stored communications;  
980 penalties.—

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

982 (a) Intentionally accesses without authorization a facility  
983 through which an electronic communication service is provided,  
984 or

985 (b) Intentionally exceeds an authorization to access such  
986 facility,

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987

988 and thereby obtains, alters, or prevents authorized access to a  
989 wire or electronic communication while it is in electronic  
990 storage in such system shall be punished as provided in  
991 subsection (2).

992 (2) The punishment for an offense under subsection (1) is  
993 as follows:

994 (a) If the offense is committed for purposes of commercial  
995 advantage, malicious destruction or damage, or private  
996 commercial gain, the person ~~is~~:

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

1000 2. In the case of any subsequent offense under this  
1001 subsection, commits ~~guilty of~~ a felony of the third degree,  
1002 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or  
1003 s. 934.41.

1004 (b) In any other case, the person commits ~~is guilty of~~ a  
1005 misdemeanor of the second degree, punishable as provided in s.  
1006 775.082 or s. 775.083.

1007 (3) Subsection (1) does not apply with respect to conduct  
1008 authorized:

1009 (a) By the person or entity providing a wire, an oral, or  
1010 an electronic communications service, including through cellular  
1011 phones, microphone-enabled household devices, or portable  
1012 electronic communication devices;

1013 (b) By a user of a wire, an oral, or an electronic  
1014 communications service, including through cellular phones,  
1015 microphone-enabled household devices, or portable electronic

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1016 communication devices, with respect to a communication of or  
 1017 intended for that user; ~~or~~  
 1018 (c) In s. 934.09, s. 934.23, or s. 934.24;  
 1019 (d) In chapter 933; or  
 1020 (e) For accessing for a legitimate business purpose  
 1021 information that is not personally identifiable or that has been  
 1022 collected in a way that prevents identification of the user of  
 1023 the device.

1024 Section 11. Section 934.42, Florida Statutes, is amended to  
 1025 read:

1026 934.42 Mobile tracking device and location tracking  
 1027 authorization.—

1028 (1) As used in this section, the term:

1029 (a) "Historical location data" means historical precise  
 1030 global positioning system location data in the possession of a  
 1031 provider.

1032 (b) "Mobile tracking device" means an electronic or a  
 1033 mechanical device that tracks the movement of a person or an  
 1034 object.

1035 (c) "Real-time location tracking" means the:

- 1036 1. Installation and use of a mobile tracking device on the  
 1037 object to be tracked;
- 1038 2. Acquisition of real-time cell-site location data; or
- 1039 3. Acquisition of real-time precise global positioning  
 1040 system location data.

1041 (2) ~~(1)~~ An investigative or law enforcement officer may make  
 1042 application to a judge of competent jurisdiction for a search  
 1043 warrant ~~an order~~ authorizing or approving real-time location  
 1044 tracking or the acquisition of historical location data in the

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1045 possession of the provider ~~the installation and use of a mobile~~  
1046 ~~tracking device.~~

1047 (3)~~(2)~~ An application under subsection (2) ~~(1)~~ ~~of this~~  
1048 ~~section~~ must include:

1049 (a) A statement of the identity of the applicant and the  
1050 identity of the law enforcement agency conducting the  
1051 investigation.

1052 (b) A statement setting forth a reasonable period of time  
1053 during which the mobile tracking device may be used or the  
1054 location data may be obtained in real time, not to exceed 45  
1055 days from the date on which the search warrant is issued. The  
1056 court may, for good cause, grant one or more extensions for a  
1057 reasonable period of time, not to exceed 45 days each. When  
1058 seeking historical location data, the applicant must specify a  
1059 date range for the data sought ~~certification by the applicant~~  
1060 ~~that the information likely to be obtained is relevant to an~~  
1061 ~~ongoing criminal investigation being conducted by the~~  
1062 ~~investigating agency.~~

1063 (c) A statement of the offense to which the information  
1064 likely to be obtained relates.

1065 (d) A statement as to whether it may be necessary to use  
1066 and monitor the mobile tracking device outside the jurisdiction  
1067 of the court from which authorization is being sought.

1068 (4)~~(3)~~ Upon application made as provided under subsection  
1069 (3) ~~(2)~~, the court, if it finds probable cause ~~that the~~  
1070 ~~certification~~ and finds that the statements required by  
1071 subsection (3) ~~(2)~~ have been made in the application, must grant  
1072 a search warrant ~~shall enter an ex parte order~~ authorizing real-  
1073 time location tracking or the acquisition of historical location

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1074 ~~data the installation and use of a mobile tracking device.~~ Such  
1075 search warrant order may authorize the location tracking use of  
1076 ~~the device~~ within the jurisdiction of the court and outside that  
1077 jurisdiction but within the State of Florida if the location  
1078 tracking device is initiated installed within the jurisdiction  
1079 of the court. The search warrant must command the investigative  
1080 or law enforcement officer to complete any initiation of the  
1081 location tracking or execution of the search warrant for  
1082 historical location data authorized by the search warrant within  
1083 a specified period of time not to exceed 10 calendar days.

1084 (5) ~~(4)~~ A court may not require greater specificity or  
1085 additional information beyond that which is required by law and  
1086 this section as a requisite for issuing a search warrant an  
1087 order.

1088 (6) Within 10 days after the timeframe specified in  
1089 paragraph (3)(b) has ended, the investigative or law enforcement  
1090 officer executing a search warrant must return the search  
1091 warrant to the issuing judge. When the search warrant is  
1092 authorizing the acquisition of historical location data, the  
1093 investigative or law enforcement officer executing the search  
1094 warrant must return the search warrant to the issuing judge  
1095 within 10 days after receipt of the records. The investigative  
1096 or law enforcement officer may do so by reliable electronic  
1097 means.

1098 (7) Within 10 days after the timeframe specified in  
1099 paragraph (3)(b) has ended, the investigative or law enforcement  
1100 officer executing a search warrant must serve a copy of the  
1101 search warrant on the person who, or whose property, was  
1102 tracked. When the search warrant is authorizing the acquisition

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1103 of historical location data, the investigative or law  
1104 enforcement officer executing the search warrant must serve a  
1105 copy of the search warrant on the person whose data was obtained  
1106 within 10 days after receipt of the records. Service may be  
1107 accomplished by delivering a copy to the person who, or whose  
1108 property, was tracked or whose data was obtained or by leaving a  
1109 copy at the person's residence or usual place of abode with an  
1110 individual of suitable age and discretion who resides at that  
1111 location and by mailing a copy to the person's last known  
1112 address. Upon a showing of good cause to a court of competent  
1113 jurisdiction, the court may grant one or more postponements of  
1114 this notice for a period of 90 days each.

1115 (8) ~~(5)~~ The standards established by Florida courts and the  
1116 United States Supreme Court for the installation, use, or  
1117 monitoring of mobile tracking devices and the acquisition of  
1118 location data shall apply to the installation, use, or  
1119 monitoring and use of any device and the acquisition of location  
1120 data as authorized by this section.

1121 ~~(6) As used in this section, a "tracking device" means an~~  
1122 ~~electronic or mechanical device which permits the tracking of~~  
1123 ~~the movement of a person or object.~~

1124 (9) (a) Notwithstanding any other provision of this chapter,  
1125 any investigative or law enforcement officer specially  
1126 designated by the Governor, the Attorney General, the statewide  
1127 prosecutor, or a state attorney acting pursuant to this chapter  
1128 who reasonably determines that:

1129 1. An emergency exists which:

1130 a. Involves immediate danger of death or serious physical  
1131 injury to any person or the danger of escape of a prisoner; and

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1132        b. Requires real-time location tracking before a search  
1133 warrant authorizing such tracking can, with due diligence, be  
1134 obtained; and

1135        2. There are grounds upon which a search warrant could be  
1136 issued under this chapter to authorize such tracking,  
1137  
1138 may engage in real-time location tracking if, within 48 hours  
1139 after the tracking has occurred or begins to occur, a search  
1140 warrant approving the tracking is issued in accordance with this  
1141 section.

1142        (b) In the absence of an authorizing search warrant, such  
1143 tracking must immediately terminate when the information sought  
1144 is obtained, when the application for the search warrant is  
1145 denied, or when 48 hours have lapsed since the tracking began,  
1146 whichever is earlier.

1147        Section 12. For the purpose of incorporating the amendments  
1148 made by this act to sections 934.03 and 934.07, Florida  
1149 Statutes, in references thereto, paragraph (b) of subsection (2)  
1150 of section 934.22, Florida Statutes, is reenacted to read:

1151        934.22 Voluntary disclosure of customer communications or  
1152 records.—

1153        (2) A provider described in subsection (1) may divulge the  
1154 contents of a communication:

1155        (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,  
1156 or s. 934.23.

1157        Section 13. For the purpose of incorporating the amendments  
1158 made by this act to sections 934.09 and 934.21, Florida  
1159 Statutes, in references thereto, subsections (1) and (4) of  
1160 section 934.27, Florida Statutes, are reenacted to read:



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1161 934.27 Civil action: relief; damages; defenses.—

1162 (1) Except as provided in s. 934.23(5), any provider of  
1163 electronic communication service, or subscriber or customer  
1164 thereof, aggrieved by any violation of ss. 934.21-934.28 in  
1165 which the conduct constituting the violation is engaged in with  
1166 a knowing or intentional state of mind may, in a civil action,  
1167 recover from the person or entity which engaged in that  
1168 violation such relief as is appropriate.

1169 (4) A good faith reliance on any of the following is a  
1170 complete defense to any civil or criminal action brought under  
1171 ss. 934.21-934.28:

1172 (a) A court warrant or order, a subpoena, or a statutory  
1173 authorization, including, but not limited to, a request of an  
1174 investigative or law enforcement officer to preserve records or  
1175 other evidence, as provided in s. 934.23(7).

1176 (b) A request of an investigative or law enforcement  
1177 officer under s. 934.09(7).

1178 (c) A good faith determination that s. 934.03(3) permitted  
1179 the conduct complained of.

1180 Section 14. For the purpose of incorporating the amendment  
1181 made by this act to section 934.21, Florida Statutes, in a  
1182 reference thereto, subsection (6) of section 934.23, Florida  
1183 Statutes, is reenacted to read:

1184 934.23 Required disclosure of customer communications or  
1185 records.—

1186 (6) No cause of action shall lie in any court against any  
1187 provider of wire or electronic communication service, its  
1188 officers, employees, agents, or other specified persons for  
1189 providing information, facilities, or assistance in accordance

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1190 with the terms of a court order, warrant, subpoena, or  
1191 certification under ss. 934.21-934.28.

1192 Section 15. For the purpose of incorporating the amendment  
1193 made by this act to section 934.21, Florida Statutes, in  
1194 references thereto, subsections (6) and (7) of section 934.24,  
1195 Florida Statutes, are reenacted to read:

1196 934.24 Backup preservation; customer notification;  
1197 challenges by customer.-

1198 (6) Within 14 days after notice by the investigative or law  
1199 enforcement officer to the subscriber or customer under  
1200 subsection (2), the subscriber or customer may file a motion to  
1201 quash the subpoena or vacate the court order seeking contents of  
1202 electronic communications, with copies served upon the  
1203 investigative or law enforcement officer and with written notice  
1204 of such challenge to the service provider. A motion to vacate a  
1205 court order must be filed in the court which issued the order. A  
1206 motion to quash a subpoena must be filed in the circuit court in  
1207 the circuit from which the subpoena issued. Such motion or  
1208 application must contain an affidavit or sworn statement:

1209 (a) Stating that the applicant is a subscriber or customer  
1210 of the service from which the contents of electronic  
1211 communications maintained for her or him have been sought, and

1212 (b) Stating the applicant's reasons for believing that the  
1213 records sought are not relevant to a legitimate law enforcement  
1214 inquiry or that there has not been substantial compliance with  
1215 the provisions of ss. 934.21-934.28 in some other respect.

1216 (7) Except as otherwise obtained under paragraph (3) (a),  
1217 service must be made under this section upon an investigative or  
1218 law enforcement officer by delivering or mailing by registered

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1219 or certified mail a copy of the papers to the person, office, or  
1220 department specified in the notice which the subscriber or  
1221 customer has received pursuant to ss. 934.21-934.28. For the  
1222 purposes of this subsection, the term "delivering" shall be  
1223 construed in accordance with the definition of "delivery" as  
1224 provided in Rule 1.080, Florida Rules of Civil Procedure.

1225 Section 16. For the purpose of incorporating the amendment  
1226 made by this act to section 934.21, Florida Statutes, in a  
1227 reference thereto, subsection (5) of section 934.25, Florida  
1228 Statutes, is reenacted to read:

1229 934.25 Delayed notice.—

1230 (5) Upon the expiration of the period of delay of  
1231 notification under subsection (1) or subsection (4), the  
1232 investigative or law enforcement officer must serve upon or  
1233 deliver by registered or first-class mail to the subscriber or  
1234 customer a copy of the process or request together with notice  
1235 which:

1236 (a) States with reasonable specificity the nature of the  
1237 law enforcement inquiry, and

1238 (b) Informs the subscriber or customer:

1239 1. That information maintained for such subscriber or  
1240 customer by the service provider named in the process or request  
1241 was supplied to or requested by the investigative or law  
1242 enforcement officer and the date on which such information was  
1243 so supplied or requested.

1244 2. That notification of such subscriber or customer was  
1245 delayed.

1246 3. What investigative or law enforcement officer or what  
1247 court made the certification or determination pursuant to which

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1248 that delay was made.

1249 4. Which provision of ss. 934.21-934.28 allowed such delay.

1250 Section 17. For the purpose of incorporating the amendment  
1251 made by this act to section 934.21, Florida Statutes, in a  
1252 reference thereto, section 934.28, Florida Statutes, is  
1253 reenacted to read:

1254 934.28 Exclusivity of remedies and sanctions.—The remedies  
1255 and sanctions described in ss. 934.21-934.27 are the only  
1256 judicial remedies and sanctions for violation of those sections.

1257 Section 18. This act shall take effect July 1, 2021.