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1 A bill to be entitled
2 An act relating to the search of the content,
3 information, and communications of cellular phones,
4 portable electronic communication devices, and
5 microphone-enabled household devices; amending s.
6 934.01, F.S.; revising and providing legislative
7 findings; amending s. 934.02, F.S.; redefining the
8 term "oral communication"; defining the terms
9 "microphone-enabled household device" and "portable
10 electronic communication device"; amending s. 934.21,
11 F.S.; revising the exceptions to conduct that
12 constitute unlawful access to stored communications;
13 conforming a provision to changes made by the act;
14 amending s. 934.42, F.S.; defining the terms "mobile
15 tracking device," "real-time location tracking," and
16 "historical location data"; authorizing an
17 investigative or law enforcement officer to apply to a
18 judge of competent jurisdiction for a warrant, rather
19 than an order, authorizing real-time location tracking
20 or acquisition of historical location data; requiring
21 an application for a warrant to include a statement of
22 a reasonable period of time that the mobile tracking
23 device may be used or the location data may be
24 obtained in real-time, not to exceed a specified
25 limit; authorizing a court to grant extensions that do
26 not individually exceed a specified limit, for good
27 cause; deleting a provision requiring a certification
28 to be included in the application; providing that the
29 court, if it finds probable cause and finds the

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30 required statements in the application, must grant a
31 warrant; specifying the warrant may authorize real-
32 time location tracking or acquisition of historical
33 location data; providing the warrant may authorize the
34 use of the mobile tracking device as specified;
35 requiring the warrant to command the officer to
36 complete any installation authorized by the warrant
37 within a certain timeframe; providing requirements for
38 the return of the warrant to the judge and service of
39 a copy of the warrant on the person who was tracked or
40 whose property was tracked; specifying how a warrant
41 authorizing historical location data must be returned
42 and served; authorizing a court, for good cause, to
43 postpone the notice requirement for a specified time
44 period; deleting the definition of "tracking device";
45 requiring that the standards established by Florida
46 courts for the installation, use, or monitoring of
47 mobile tracking devices and the acquisition of
48 location data apply to the installation, use, or
49 monitoring of any devices and the acquisition of
50 location data as authorized; authorizing any
51 investigative or law enforcement officer who is
52 specially designated by certain persons and who makes
53 specified determinations to engage in real-time
54 location tracking if a warrant is later obtained as
55 specified; provides requirements for engaging in real-
56 time location tracking; specifying when real-time
57 location tracking must terminate; providing an
58 effective date.

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

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

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

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

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

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

(4) To safeguard the privacy of innocent persons, the

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88 interception of wire, ~~or~~ oral, or electronic communications when
89 none of the parties to the communication has consented to the
90 interception should be allowed only when authorized by a court
91 of competent jurisdiction and should remain under the control
92 and supervision of the authorizing court. Interception of wire,
93 ~~and~~ oral, and electronic communications should further be
94 limited to certain major types of offenses and specific
95 categories of crime with assurance that the interception is
96 justified and that the information obtained thereby will not be
97 misused.

98 (5) To safeguard the privacy of innocent persons, the
99 Legislature recognizes that the subjective expectation of
100 privacy in real-time cell-site location data, real-time precise
101 global positioning system location data, and historical precise
102 global positioning system location data that society is now
103 prepared to accept is objectively reasonable. As such, the law
104 enforcement collection of the precise location of a person,
105 cellular phone, or portable electronic communication device
106 without the consent of the person or owner of the cellular phone
107 or portable electronic communication device should be allowed
108 only when authorized by a warrant issued by a court of competent
109 jurisdiction and should remain under the control and supervision
110 of the authorizing court.

111 (6) The Legislature recognizes that the use of portable
112 electronic communication devices is growing at a rapidly
113 increasing rate. These devices can store, and encourage the
114 storing of, an almost limitless amount of personal and private
115 information. Often linked to the Internet, these devices are
116 commonly used to access personal and business information and

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117 databases in computers and servers that can be located anywhere
118 in the world. The user of a portable electronic communication
119 device has a reasonable and justifiable expectation of privacy
120 in the information that these devices contain.

121 (7) The Legislature recognizes that the use of household
122 electronic devices, including microphone-enabled household
123 devices, is growing at a rapidly increasing rate. These devices
124 often contain microphones that listen for and respond to
125 environmental cues. These household devices are generally
126 connected to and communicate through the Internet, resulting in
127 the storage of and accessibility to daily household information
128 in a device itself or in a remote computing service. Persons
129 should not have to choose between using household technological
130 enhancements and conveniences or preserving the right to privacy
131 in one's home.

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

135 934.02 Definitions.—As used in this chapter:

136 (2) "Oral communication" means any oral communication
137 uttered by a person exhibiting an expectation that such
138 communication is not subject to interception under circumstances
139 justifying such expectation, including the use of a microphone-
140 enabled household device, and does not mean any public oral
141 communication uttered at a public meeting or any electronic
142 communication.

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

145 (a) Capable of connecting to the Internet, directly or

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146 indirectly, or to another connected device;

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

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

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

153 (28) "Portable electronic communication device" means an
154 object capable of being easily transported or conveyed by a
155 person which is capable of creating, receiving, accessing, or
156 storing electronic data or communications and which communicates
157 with, by any means, another device, entity, or individual.

158 Section 3. Section 934.21, Florida Statutes, is amended to
159 read:

160 934.21 Unlawful access to stored communications;
161 penalties.—

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

163 (a) Intentionally accesses without authorization a facility
164 through which an electronic communication service is provided,
165 or

166 (b) Intentionally exceeds an authorization to access such
167 facility,

168
169 and thereby obtains, alters, or prevents authorized access to a
170 wire or electronic communication while it is in electronic
171 storage in such system shall be punished as provided in
172 subsection (2).

173 (2) The punishment for an offense under subsection (1) is
174 as follows:

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175 (a) If the offense is committed for purposes of commercial
176 advantage, malicious destruction or damage, or private
177 commercial gain, the person ~~is~~:

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

181 2. In the case of any subsequent offense under this
182 subsection, commits ~~guilty of~~ a felony of the third degree,
183 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
184 s. 934.41.

185 (b) In any other case, the person commits ~~is guilty of~~ a
186 misdemeanor of the second degree, punishable as provided in s.
187 775.082 or s. 775.083.

188 (3) Subsection (1) does not apply with respect to conduct
189 authorized:

190 (a) By the person or entity providing a wire, oral, or
191 electronic communications service, including through cellular
192 phones, portable electronic communication devices, or
193 microphone-enabled household devices;

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

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

199 (d) In chapter 933; or

200 (e) For accessing for a legitimate business purpose
201 information that is not personally identifiable or that has been
202 collected in a way that prevents identification of the user of
203 the device.

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204 Section 4. Section 934.42, Florida Statutes, is amended to
205 read:

206 934.42 Mobile tracking device and location tracking
207 authorization.—

208 (1) As used in this section:

209 (a) "Mobile tracking device" means an electronic or
210 mechanical device which permits the tracking of the movement of
211 a person or object.

212 (b) "Real-time location tracking" means:

213 1. Installation and use of a mobile tracking device on the
214 object to be tracked;

215 2. Acquisition of real-time cell-site location data; or

216 3. Acquisition of real-time precise global positioning
217 system location data.

218 (c) "Historical location data" means the acquisition of
219 historical precise global positioning system location data in
220 the possession of a provider.

221 (2) ~~(1)~~ An investigative or law enforcement officer may make
222 application to a judge of competent jurisdiction for a warrant
223 ~~an order~~ authorizing or approving real-time location tracking
224 ~~the installation and use of a mobile tracking device or the~~
225 acquisition of historical location data in the possession of the
226 provider.

227 (3) ~~(2)~~ An application under subsection (2) ~~(1)~~ of this
228 section must include:

229 (a) A statement of the identity of the applicant and the
230 identity of the law enforcement agency conducting the
231 investigation.

232 (b) A statement setting forth a reasonable period of time

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233 that the mobile tracking device may be used or the location data
234 may be obtained in real-time, not to exceed 45 days from the
235 date the warrant is issued. The court may, for good cause, grant
236 one or more extensions for a reasonable period of time, not to
237 exceed 45 days each. When seeking historical location data, the
238 applicant must specify a data range for the data sought
239 ~~certification by the applicant that the information likely to be~~
240 ~~obtained is relevant to an ongoing criminal investigation being~~
241 ~~conducted by the investigating agency.~~

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

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

247 ~~(4)-(3)~~ Upon application made as provided under subsection
248 ~~(3)-(2)~~, the court, if it finds probable cause ~~that the~~
249 ~~certification~~ and finds that the statements required by
250 subsection ~~(3)-(2)~~ have been made in the application, shall grant
251 a warrant ~~enter an ex parte order~~ authorizing real-time location
252 tracking the installation and use of a mobile tracking device or
253 the acquisition of historical location data. Such warrant ~~order~~
254 may authorize the use of the mobile tracking device within the
255 jurisdiction of the court and outside that jurisdiction but
256 within the State of Florida if the mobile tracking device is
257 installed within the jurisdiction of the court. The warrant must
258 command the officer to complete any installation authorized by
259 the warrant within a specified period of time not to exceed 10
260 calendar days.

261 ~~(5)-(4)~~ A court may not require greater specificity or

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262 additional information beyond that which is required by law and
263 this section as a requisite for issuing a warrant ~~an order~~.

264 (6) Within 10 days after the time period specified in
265 paragraph (3)(b) has ended, the officer executing a warrant must
266 return the warrant to the issuing judge. When the warrant is
267 authorizing historical location data, the officer executing the
268 warrant must return the warrant to the issuing judge within 10
269 days after receipt of the records. The officer may do so by
270 reliable electronic means.

271 (7) Within 10 days after the time period specified in
272 paragraph (3)(b) has ended, the officer executing a warrant must
273 serve a copy of the warrant on the person who, or whose
274 property, was tracked. When the warrant is authorizing
275 historical location data, the officer executing the warrant must
276 serve a copy of the warrant on the person whose data was
277 obtained within 10 days after receipt of the records. Service
278 may be accomplished by delivering a copy to the person who, or
279 whose property, was tracked or data obtained or by leaving a
280 copy at the person's residence or usual place of abode with an
281 individual of suitable age and discretion who resides at that
282 location and by mailing a copy to the person's last known
283 address. Upon a showing of good cause to a court of competent
284 jurisdiction, the court may grant one or more postponements of
285 this notice for a period of 90 days each.

286 (8)~~(5)~~ The standards established by Florida courts and the
287 United States Supreme Court for the installation, use, or ~~and~~
288 monitoring of mobile tracking devices and the acquisition of
289 location data shall apply to the installation, use, or
290 monitoring ~~and use~~ of any device and the acquisition of location

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291 data as authorized by this section.

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

295 (9) (a) Notwithstanding any other provision of this chapter,
296 any investigative or law enforcement officer specially
297 designated by the Governor, the Attorney General, the statewide
298 prosecutor, or a state attorney acting pursuant to this chapter
299 who reasonably determines that:

300 1. An emergency exists which:

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

303 b. Requires real-time location tracking before a warrant
304 authorizing such tracking can, with due diligence, be obtained;
305 and

306 2. There are grounds upon which a warrant could be issued
307 under this chapter to authorize such tracking,

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309 may engage in real-time location tracking if, within 48 hours
310 after the tracking has occurred or begins to occur, a warrant
311 approving the tracking is issued in accordance with this
312 section.

313 (b) In the absence of an authorizing warrant, such tracking
314 must immediately terminate when the information sought is
315 obtained, when the application for the warrant is denied, or
316 when 48 hours have lapsed since the tracking began, whichever is
317 earlier.

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