

STORAGE NAME: h0109Ba.sec.doc
DATE: October 29, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 109-B
RELATING TO: Interception of Communications
SPONSOR(S): Representative(s) Goodlette & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SELECT COMMITTEE ON SECURITY YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 109-B amends s. 934.07, F.S., providing that a judge may, upon proper application by the Department of Law Enforcement, authorize the interception of wire, oral, or electrical communications when such interception may provide, or has provided, evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy to commit any such violation. The bill defines the term "terrorism" for purposes of chapter 934, F.S.

The bill amends s, 934.09, F.S., to provide an exemption from the requirement that an application for an intercept must identify the facilities from which, or the place where, the communication is to be intercepted. This exemption is for situations where the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state. This exemption sunsets on July 1, 2004.

The bill also provides that a court may authorize continued interception within the state, both within and outside its jurisdiction, if the interception involves investigations of acts of terrorism and the original interception occurred within its jurisdiction.

Subject to sunset provisions provided in the bill, HB 109-B takes effect upon becoming a law.

The bill has been amended. Please refer to Section VI, Amendments or Committee Substitute Changes.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill contravenes the principle of Less Government by adding new offenses to the list whereby law enforcement can request a judicial order authorizing an individual's communications to be intercepted. The bill also expands a judge's authority to authorize wiretaps taps for investigations of acts of terrorism statewide.

This bill contravenes the principle of Individual Freedom by potentially exposing more individuals to be the subject of wiretaps taps for law enforcement investigations.

B. PRESENT SITUATION:

Section 934.07

Section 934.07, F.S., provides that the Governor, the Attorney General, the Statewide Prosecutor, or any State Attorney may authorize an application to a judge of competent jurisdiction for an order authorizing the interception of wire, oral, or electronic communications by the Department of Law Enforcement or any law enforcement agency (as defined in s. 934.02, F.S.) having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of the following offenses: murder, kidnapping, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any violation of chapter 893, F.S.; any violation of the provisions of the Florida Anti-Fencing Act; any violation of chapter 895, F.S.; any violation of chapter 896, F.S.; any violation of chapter 815, F.S.; any violation of chapter 847, F.S.; any violation of s. 827.071, F.S.; any violation of s. 944.40, F.S.; or any conspiracy to commit any violation of the laws of this state relating to such offenses.

Section 934.09

Section 934.09(1), F.S., provides that each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under ss. 934.03-934.09, F.S., shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Among the information the statute specifies must be included is a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted. Section 934.09(11), F.S., contains exemptions to this requirement.

Section 934.09(3), F.S., provides that upon application for an interception, the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting, and outside such jurisdiction but within the State of Florida in the case of a mobile interception device authorized by the judge within such jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

- (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in s. 934.07, F.S.
- (b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.
- (c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.
- (d) Except as provided in subsection (11), F.S. there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

Section 934.09(11), F.S., provides that the requirements of subparagraph (1)(b)2. and paragraph (3)(d) of that statute relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

- (a) In the case of an application with respect to the interception of an oral communication:
 - 1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.
 - 2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.
 - 3. The judge finds that such specification is not practical.
- (b) In the case of an application with respect to a wire or electronic communication:
 - 1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.
 - 2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility.
 - 3. The judge finds that such showing has been adequately made.
 - 4. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

Section 934, F.S., does not specifically address whether a court authorizing an original intercept can authorize continued interception when the person whose communication is subject to interception leaves the jurisdiction of the court. This is an important issue because criminals/terrorists are frequently on the move or relocate to a different part of the state.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 934.07, F.S., to provide that the Governor, the Attorney General, the Statewide Prosecutor, or any State Attorney may authorize an application to a judge of competent jurisdiction for the interception of wire, oral, or electronic communication by the Department of Law Enforcement for the investigation of the offense when such interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy to commit any such violation.

The bill defines "terrorism" as an activity that :

- o Involves a violent act or act dangerous to human life which is a violation of the criminal laws of this state or of the United States; and
- o Appears to be intended to:
 - (1) Intimidate, injure, or coerce a civilian population;
 - (2) Influence the policy of a government by intimidation or coercion; or
 - (3) Affect the conduct of government through destruction of property, assassination, murder, or kidnapping.

This definition is patterned after the federal definition in Title 18 U.S.C. § 3077.

The bill also amends s. 934.09, F.S., to provide an additional exemption from the requirement that an application for an intercept identify the facilities from which, or the place where, the communication is to be intercepted. This exemption is that the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

The bill also provides that, limited to investigations of acts of terrorism, the court may authorize continued interception within this state, both within and outside its jurisdiction, if the original interception occurred within its jurisdiction. This provides statutory authority specific to the issue of continued interception.¹

Subject to the July 1, 2004 sunset provision, the bill takes effect upon becoming a law.

¹ This provision of the bill appears to codify the reasoning in State v. McCormick, 719 So.2d 1220 (Fla. 5th DCA 1998)

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Section 934.07, F.S., contains an enumerated list of criminal offenses for which authorization for an interception of wire, oral or electronic communications may be sought from a judge. Amendment 1 adds aircraft piracy to that list of offenses.

Amendment 2 adds the inchoate crime of solicitation to the current enumerated criminal offenses in s. 934.07, F.S., for which authorization for an interception communications may be sought from a judge. It also adds solicitation of any offense that may be an act of terrorism or in furtherance of an act of terrorism to that list.

Amendment 3 clarifies the intent requirement in the definition of terrorism by eliminating the language "appears to be intended to." This language is replaced with "is intended to." The amendment also adds the offense of aircraft piracy to the list of criminal offenses in subsection (2)(c), which qualify the conduct as terrorism if it is designed to affect the conduct of government.

All three amendments were adopted at the October 29, 2001 committee meeting and are traveling with the bill.

VI. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

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