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DATE: December 4, 2001

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

BILL #: SB 12-C

RELATING TO: Communications Interception

SPONSOR(S): Senator Brown-Waite and others

TIED BILL(S):

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

- (1) SECURITY, SELECT
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends § 934.07, F.S., providing that a judge may, upon proper application by the Florida 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 or solicitation to commit any such violation. The bill defines the term "terrorism" for purposes of wire interceptions.

Section 934.07, F.S., contains a list of criminal offenses for which authorization for an interception of wire, oral or electronic communications may be sought from a judge. The bill amends this list, adding the offense of aircraft piracy and solicitation of any of the existing listed criminal offenses.

The bill amends § 934.09, F.S., to provide an exemption from the requirement that an application for an interception of communication 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 statewide, both within and outside its jurisdiction, if the interception involves investigations of acts of terrorism and the original interception occurred within the court's jurisdiction.

Subject to sunset provisions provided in the bill, this legislation takes effect upon becoming a law.

II. 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 does not support 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.

By potentially exposing more individuals to wiretaps by law enforcement, this bill does not support the principle of Individual Freedom.

B. PRESENT SITUATION:

Section 934.07, F.S.

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 § 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 chapters 815 (computer-related crimes), 847 (obscenity), 893 (drug abuse prevention and control), 895 (Florida RICO Act), 896 (offenses related to financial transactions); any violation of the provisions of the Florida Anti-Fencing Act; any violation of § 827.071 (sexual performance by a child), § 944.40 (escapes); or any conspiracy to commit any violation of the laws of this state relating to such offenses.

Section 934.09, F.S.

Section 934.09(1), F.S., sets forth the procedures by which communications may be intercepted. This section requires an application for a court order authorizing or approving the interception of a wire, oral, or electronic communication under §§ 934.03--934.09, F.S., must 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 in the application 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 authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting. The order may extend statewide 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 § 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 § 934.09(11), 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 section 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 within the state.

C. EFFECT OF PROPOSED CHANGES:

The bill amends § 934.07, F.S., by adding "aircraft piracy" to the list of criminal offenses for which authorization for an interception of wire, oral or electronic communications may be sought from a judge. Solicitation of the various criminal offenses listed in § 934.07(a) is also added to this list.

Section 934.07(b) is amended 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 or solicitation to commit any such violation.

The bill defines "terrorism" as an activity that :

- involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or federal law; or
- Involves a violation of s. 815.06 (offenses against computer users); and
- is intended to:
 - intimidate, injure, or coerce a civilian population;
 - influence the policy of a government by intimidation or coercion; or
 - affect the conduct of government through destruction of property, assassination, murder, or kidnapping, or aircraft piracy.

This definition is patterned after the federal definition.¹

The bill also amends § 934.09, F.S., to provide an additional 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 covers 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.

¹ See Title 18 U.S.C. § 3077 and the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) signed into law on October 26, 2001. The latter defines "domestic terrorism" in Title 18 USC § 2331 as follows:

- (5) the term 'domestic terrorism' means activities that--
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended--
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. . . .

The bill also provides that, limited to investigations into acts of terrorism, a court may authorize continued communications interception within the state, both within and outside its jurisdiction, if the original interception occurred within the authorizing court's jurisdiction. This provides express statutory authority for continued interception.²

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

D. SECTION-BY-SECTION ANALYSIS:

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

III. 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

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend funds or to take actions requiring expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

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