

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 92.605, F.S.; including a reference to chapter 934,
7 F.S., in provisions concerning production of certain
8 business records; requiring that law enforcement
9 adhere to the requirements of chapter 934, F.S., in
10 order to obtain content of electronic communications;
11 amending s. 934.01, F.S.; providing legislative
12 findings; amending s. 934.02, F.S.; providing
13 definitions; amending ss. 934.03, 934.07, 934.08, and
14 934.09, F.S.; conforming provisions to changes made by
15 the act; amending s. 934.10, F.S.; conforming
16 provisions to changes made by the act; revising
17 provisions concerning when a judge may authorize
18 interception; amending s. 934.21, F.S.; conforming
19 provisions to changes made by the act; prohibiting
20 unlawful access to communications stored in specified
21 devices; providing penalties; amending s. 934.42,
22 F.S.; requiring that law enforcement obtain a warrant
23 to acquire certain location information; providing
24 procedures for such warrants; providing limited
25 exceptions in certain circumstances; providing an

26 | effective date.

27 |

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

29 |

30 | Section 1. Subsection (9) of section 92.605, Florida
31 | Statutes, is amended to read:

32 | 92.605 Production of certain records by Florida businesses
33 | and out-of-state corporations.—

34 | (9) In any criminal case, the content of any electronic
35 | communication may be obtained under this section only by court
36 | order or by the issuance of a search warrant, as provided in
37 | chapter 934, unless otherwise required by ~~provided under~~ the
38 | Electronic Communications Privacy Act or other provision of law.

39 | Section 2. Section 934.01, Florida Statutes, is amended to
40 | read:

41 | 934.01 Legislative findings.—On the basis of its own
42 | investigations and of published studies, the Legislature makes
43 | the following findings:

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

48 | (2) In order to protect effectively the privacy of wire,
49 | ~~and~~ oral, and electronic communications, to protect the
50 | integrity of court and administrative proceedings, and to

51 prevent the obstruction of intrastate commerce, it is necessary
52 for the Legislature to define the circumstances and conditions
53 under which the interception of wire, ~~and~~ oral, and electronic
54 communications may be authorized and to prohibit any
55 unauthorized interception of such communications and the use of
56 the contents thereof in evidence in courts and administrative
57 proceedings.

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

64 (4) To safeguard the privacy of innocent persons, the
65 interception of wire, ~~or~~ oral, or electronic communications when
66 none of the parties to the communication has consented to the
67 interception should be allowed only when authorized by a court
68 of competent jurisdiction and should remain under the control
69 and supervision of the authorizing court. Interception of wire, ~~and~~
70 oral, and electronic communications should further be
71 limited to certain major types of offenses and specific
72 categories of crime with assurance that the interception is
73 justified and that the information obtained thereby will not be
74 misused.

75 (5) To safeguard the privacy of innocent persons, the

76 | Legislature recognizes that the subjective expectation of
77 | privacy in precision location data that society is now prepared
78 | to accept is objectively reasonable. As such, the law
79 | enforcement collection of the precise location of a person, cell
80 | phone, or portable electronic communication device without the
81 | consent of the person or owner of the cell phone or portable
82 | electronic communication device should be allowed only when
83 | authorized by a warrant issued by a court of competent
84 | jurisdiction and should remain under the control and supervision
85 | of the authorizing court.

86 | (6) The Legislature recognizes that the use of portable
87 | electronic communication devices is growing at a rapidly
88 | increasing rate. These devices can store, and encourage the
89 | storing of, an almost limitless amount of personal and private
90 | information. Often linked to the Internet, these devices are
91 | commonly used to access personal and business information and
92 | databases in computers and servers that can be located anywhere
93 | in the world. The user of a portable electronic communication
94 | device has a reasonable and justifiable expectation of privacy
95 | in the information that these devices contain.

96 | (7) The Legislature recognizes that the use of household
97 | electronic devices, including microphone-enabled household
98 | devices, is growing at a rapidly increasing rate. These devices
99 | often contain microphones that listen for and respond to
100 | environmental triggers. These household devices are generally

101 connected to and communicate through the Internet resulting in
102 the storage of and accessibility to daily household information
103 in a device itself or in a remote computing service. Persons
104 should not have to choose between using household technological
105 enhancements and conveniences or preserving the right to privacy
106 in one's home.

107 Section 3. Subsection (2) of section 934.02, Florida
108 Statutes, is amended, and subsections (27) and (28) are added to
109 that section, to read:

110 934.02 Definitions.—As used in this chapter:

111 (2) "Oral communication" means any oral communication
112 uttered by a person exhibiting an expectation that such
113 communication is not subject to interception under circumstances
114 justifying such expectation, including the use of a microphone-
115 enabled household device, and does not mean any public oral
116 communication uttered at a public meeting or any electronic
117 communication.

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

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

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

124 (c) That communicates with, by any means, another entity
125 or individual; and

126 (d) That contains a microphone designed to listen for and
127 respond to environmental cues.

128 (28) "Portable electronic communication device" means an
129 object capable of being easily transported or conveyed by a
130 person which is capable of creating, receiving, accessing, or
131 storing electronic data or communications and that communicates
132 with, by any means, another device, entity, or individual.

133 Section 4. Paragraph (a) of subsection (2) of section
134 934.03, Florida Statutes, is amended to read:

135 934.03 Interception and disclosure of wire, oral, or
136 electronic communications prohibited.-

137 (2) (a) 1. It is lawful under this section and ss. 934.04-
138 934.09 for an operator of a switchboard, or an officer,
139 employee, or agent of a provider of wire or electronic
140 communication service whose facilities are used in the
141 transmission of a wire or electronic communication, to
142 intercept, disclose, or use that communication in the normal
143 course of his or her employment while engaged in any activity
144 which is a necessary incident to the rendition of his or her
145 service or to the protection of the rights or property of the
146 provider of that service, except that a provider of wire
147 communication service to the public shall not utilize service
148 observing or random monitoring except for mechanical or service
149 quality control checks.

150 2. Notwithstanding any other law, a provider of wire,

151 oral, or electronic communication service, or an officer,
152 employee, or agent thereof, or landlord, custodian, or other
153 person, may provide information, facilities, or technical
154 assistance to a person authorized by law to intercept wire,
155 oral, or electronic communications if such provider, or an
156 officer, employee, or agent thereof, or landlord, custodian, or
157 other person, has been provided with:

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

160 b. A certification in writing by a person specified in s.
161 934.09(7) that no warrant or court order is required by law,
162 that all statutory requirements have been met, and that the
163 specified assistance is required, setting forth the period of
164 time during which the provision of the information, facilities,
165 or technical assistance is authorized and specifying the
166 information, facilities, or technical assistance required; or

167 c. A warrant issued by a judge of competent jurisdiction
168 as required by law.

169 3. A provider of wire, oral, or electronic communication
170 service, or an officer, employee, or agent thereof, or landlord,
171 custodian, or other person may not disclose the existence of any
172 interception or the device used to accomplish the interception
173 with respect to which the person has been served with a warrant
174 or furnished an order under this section and ss. 934.04-934.09,
175 except as may otherwise be required by legal process and then

176 only after prior notice to the Governor, the Attorney General,
 177 the statewide prosecutor, or a state attorney, as may be
 178 appropriate. Any such disclosure renders such person liable for
 179 the civil damages provided under s. 934.10, and such person may
 180 be prosecuted under s. 934.43. An action may not be brought
 181 against any provider of wire, oral, or electronic communication
 182 service, or an officer, employee, or agent thereof, or landlord,
 183 custodian, or other person for providing information,
 184 facilities, or assistance in accordance with the terms of a
 185 court order under this section and ss. 934.04-934.09.

186 Section 5. Subsection (1) and paragraph (b) of subsection
 187 (2) of section 934.07, Florida Statutes, are amended to read:

188 934.07 Authorization for interception of wire, oral, or
 189 electronic communications.—

190 (1) The Governor, the Attorney General, the statewide
 191 prosecutor, or any state attorney may authorize an application
 192 to a judge of competent jurisdiction for, and such judge may
 193 issue grant in conformity with ss. 934.03-934.09 a warrant as
 194 required by law or an order authorizing or approving the
 195 interception of, wire, oral, or electronic communications by:

196 (a) The Department of Law Enforcement or any law
 197 enforcement agency as defined in s. 934.02 having responsibility
 198 for the investigation of the offense as to which the application
 199 is made when such interception may provide or has provided
 200 evidence of the commission of the offense of murder, kidnapping,

201 aircraft piracy, arson, gambling, robbery, burglary, theft,
202 dealing in stolen property, criminal usury, bribery, or
203 extortion; any felony violation of ss. 790.161-790.166,
204 inclusive; any violation of s. 787.06; any violation of chapter
205 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing
206 Act; any violation of chapter 895; any violation of chapter 896;
207 any violation of chapter 815; any violation of chapter 847; any
208 violation of s. 827.071; any violation of s. 944.40; or any
209 conspiracy or solicitation to commit any violation of the laws
210 of this state relating to the crimes specifically enumerated in
211 this paragraph.

212 (b) The Department of Law Enforcement, together with other
213 assisting personnel as authorized and requested by the
214 department under s. 934.09(5), for the investigation of the
215 offense as to which the application is made when such
216 interception may provide or has provided evidence of the
217 commission of any offense that may be an act of terrorism or in
218 furtherance of an act of terrorism or evidence of any conspiracy
219 or solicitation to commit any such violation.

220 (2)

221 (b) Upon its receipt of information of the contents of an
222 intercepted communications from a law enforcement agency, the
223 Department of Law Enforcement shall promptly review the
224 information to determine whether the information relates to an
225 actual or anticipated act of terrorism as defined in this

226 section. If, after reviewing the contents of the intercepted
227 communications, there is probable cause that the contents of the
228 intercepted communications meet the criteria of paragraph
229 (1)(b), the Department of Law Enforcement may make application
230 for the interception of wire, oral, or electronic communications
231 consistent with paragraph (1)(b). The department may make an
232 independent new application for interception based on the
233 contents of the intercepted communications. Alternatively, the
234 department may request the law enforcement agency that provided
235 the information to join with the department in seeking a new
236 warrant as required by law or an amendment of the original
237 interception order, or may seek additional authority to continue
238 intercepting communications under the direction of the
239 department. In carrying out its duties under this section, the
240 department may use the provisions for an emergency interception
241 provided in s. 934.09(7) if applicable under statutory criteria.

242 Section 6. Subsection (5) of section 934.08, Florida
243 Statutes, is amended to read:

244 934.08 Authorization for disclosure and use of intercepted
245 wire, oral, or electronic communications.—

246 (5) When an investigative or law enforcement officer,
247 while engaged in intercepting wire, oral, or electronic
248 communications in the manner authorized herein, intercepts wire,
249 oral, or electronic communications relating to offenses other
250 than those specified in the warrant or order of authorization or

251 approval, the contents thereof and evidence derived therefrom
252 may be disclosed or used as provided in subsections (1) and (2).
253 Such contents and any evidence derived therefrom may be used
254 under subsection (3) when authorized or approved by a judge of
255 competent jurisdiction when such judge finds on subsequent
256 application that the contents were otherwise intercepted in
257 accordance with ~~the provisions of~~ this chapter. Such application
258 shall be made as soon as practicable.

259 Section 7. Section 934.09, Florida Statutes, is amended to
260 read:

261 934.09 Procedure for interception of wire, oral, or
262 electronic communications.—

263 (1) Each application for a warrant ~~an order~~ authorizing or
264 approving the interception of a wire, oral, or electronic
265 communication under ss. 934.03-934.09 shall be made in writing
266 upon oath or affirmation to a judge of competent jurisdiction
267 and shall state the applicant's authority to make such
268 application. Each application shall include the following
269 information:

270 (a) The identity of the investigative or law enforcement
271 officer making the application and the officer authorizing the
272 application.

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

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

278 2. Except as provided in subsection (11), a particular
279 description of the nature and location of the facilities from
280 which, or the place where, the communications are to be
281 intercepted.

282 3. A particular description of the type of communications
283 sought to be intercepted.

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

286 (c) A full and complete statement as to whether or not
287 other investigative procedures have been tried and failed or why
288 they reasonably appear to be unlikely to succeed if tried or to
289 be too dangerous.

290 (d) A statement of the period of time for which the
291 interception is required to be maintained and, if the nature of
292 the investigation is such that the authorization for
293 interception should not automatically terminate when the
294 described type of communication has been first obtained, a
295 particular description of facts establishing probable cause to
296 believe that additional communications of the same type will
297 occur thereafter.

298 (e) A full and complete statement of the facts concerning
299 all previous applications known to the individual authorizing
300 and making the application, made to any judge for authorization

301 to intercept, or for approval of interceptions of, wire, oral,
302 or electronic communications involving any of the same persons,
303 facilities, or places specified in the application, and the
304 action taken by the judge on each such application.

305 (f) When the application is for the extension of a warrant
306 ~~an order~~, a statement setting forth the results thus far
307 obtained from the interception or a reasonable explanation of
308 the failure to obtain such results.

309 (2) The judge may require the applicant to furnish
310 additional testimony or documentary evidence in support of the
311 application.

312 (3) Upon such application, the judge may authorize a
313 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
314 authorizing or approving interception of wire, oral, or
315 electronic communications within the territorial jurisdiction of
316 the court in which the judge is sitting, and outside such
317 jurisdiction but within the State of Florida in the case of a
318 mobile interception device authorized by the judge within such
319 jurisdiction, if the judge determines on the basis of the facts
320 submitted by the applicant that:

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

324 (b) There is probable cause for belief that particular
325 communications concerning that offense will be obtained through

326 such interception.

327 (c) Normal investigative procedures have been tried and
328 have failed or reasonably appear to be unlikely to succeed if
329 tried or to be too dangerous.

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

336 (4) Each warrant ~~order~~ authorizing or approving the
337 interception of any wire, oral, or electronic communication
338 shall specify:

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

341 (b) The nature and location of the communications
342 facilities as to which, or the place where, authority to
343 intercept is granted.

344 (c) A particular description of the type of communication
345 sought to be intercepted and a statement of the particular
346 offense to which it relates.

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

349 (e) The period of time during which such interception is
350 authorized, including a statement as to whether ~~or not~~ the

351 interception shall automatically terminate when the described
352 communication has been first obtained.

353

354 A warrant ~~An order~~ authorizing the interception of a wire, oral,
355 or electronic communication shall, upon the request of the
356 applicant, direct that a provider of wire or electronic
357 communication service, landlord, custodian, or other person
358 shall furnish the applicant forthwith all information,
359 facilities, and technical assistance necessary to accomplish the
360 interception unobtrusively and with a minimum of interference
361 with the services that such service provider, landlord,
362 custodian, or person is according the person whose
363 communications are to be intercepted. The obligation of a
364 provider of wire, oral, or electronic communication service
365 under such a warrant ~~an order~~ may include, but is not limited
366 to, conducting an in-progress trace during an interception, or
367 providing other assistance to support the investigation as may
368 be specified in the warrant ~~order~~. Any provider of wire or
369 electronic communication service, landlord, custodian, or other
370 person furnishing such facilities or technical assistance shall
371 be compensated therefor by the applicant for reasonable expenses
372 incurred in providing such facilities or assistance.

373 (5) No warrant ~~order~~ entered under this section may
374 authorize or approve the interception of any wire, oral, or
375 electronic communication for any period longer than is necessary

376 to achieve the objective of the authorization or in any event
377 longer than 30 days. Such 30-day period begins on the day on
378 which the agent or officer of the law enforcement agency first
379 begins to conduct an interception under the warrant ~~order~~ or 10
380 days after the warrant is approved ~~order is entered~~, whichever
381 occurs earlier. Extensions of a warrant ~~an order~~ may be granted
382 but only upon application for an extension made in accordance
383 with subsection (1) and upon the court making the findings
384 required by subsection (3). The period of extension shall be no
385 longer than the authorizing judge deems necessary to achieve the
386 purposes for which it was granted and in no event for longer
387 than 30 days. Every warrant ~~order~~ and extension thereof shall
388 contain a provision that the authorization to intercept shall be
389 executed as soon as practicable, shall be conducted in such a
390 way as to minimize the interception of communications not
391 otherwise subject to interception under ss. 934.03-934.09, and
392 must terminate upon attainment of the authorized objective or in
393 any event in 30 days. If the intercepted communication is in
394 code or foreign language and an expert in that foreign language
395 or code is not reasonably available during the interception
396 period, minimization may be accomplished as soon as practicable
397 after such interception. An interception under ss. 934.03-934.09
398 may be conducted in whole or in part by government personnel or
399 by an individual operating under a contract with the government,
400 acting under the supervision of an agent or officer of the law

401 enforcement agency authorized to conduct the interception.

402 (6) Whenever a warrant ~~an order~~ authorizing interception
403 is granted ~~entered~~ pursuant to ss. 934.03-934.09, the warrant
404 ~~order~~ may require reports to be made to the judge who issued the
405 warrant ~~order~~ showing what progress has been made toward
406 achievement of the authorized objective and the need for
407 continued interception. Such reports shall be made at such
408 intervals as the judge may require.

409 (7) Notwithstanding any other provision of this chapter,
410 any investigative or law enforcement officer specially
411 designated by the Governor, the Attorney General, the statewide
412 prosecutor, or a state attorney acting under this chapter, who
413 reasonably determines that:

414 (a) An emergency exists that:

415 1. Involves immediate danger of death or serious physical
416 injury to any person, the danger of escape of a prisoner, or
417 conspiratorial activities threatening the security interest of
418 the nation or state; and

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

422 (b) There are grounds upon which a warrant ~~an order~~ could
423 be entered under this chapter to authorize such interception

424

425 may intercept such wire, oral, or electronic communication if an

426 application for a warrant ~~an order~~ approving the interception is
427 made in accordance with this section within 48 hours after the
428 interception has occurred or begins to occur. In the absence of
429 a warrant ~~an order~~, such interception shall immediately
430 terminate when the communication sought is obtained or when the
431 application for the warrant ~~order~~ is denied, whichever is
432 earlier. If such application for approval is denied, or in any
433 other case in which the interception is terminated without a
434 warrant ~~an order~~ having been issued, the contents of any wire,
435 oral, or electronic communication intercepted shall be treated
436 as having been obtained in violation of s. 934.03(4), and an
437 inventory shall be served as provided for in paragraph (8)(e) on
438 the person named in the application.

439 (8)(a) The contents of any wire, oral, or electronic
440 communication intercepted by any means authorized by ss. 934.03-
441 934.09 shall, if possible, be recorded on tape or wire or other
442 comparable device. The recording of the contents of any wire,
443 oral, or electronic communication under this subsection shall be
444 kept in such a way as will protect the recording from editing or
445 other alterations. Immediately upon the expiration of the ~~period~~
446 ~~of the~~ warrant ~~order~~, or extensions thereof, such recordings
447 shall be made available to the judge approving the warrant
448 ~~issuing such order~~ and sealed under his or her directions.
449 Custody of the recordings shall be wherever the judge orders.
450 They shall not be destroyed except upon an order of the issuing

451 or denying judge, or that judge's successor in office, and in
452 any event shall be kept for 10 years. Duplicate recordings may
453 be made for use or disclosure pursuant to ~~the provisions of s.~~
454 934.08(1) and (2) for investigations, or for purposes of
455 discovery as required by law.

456 (b) The presence of the seal provided for by this
457 subsection, or a satisfactory explanation for the absence
458 thereof, shall be a prerequisite for the use or disclosure of
459 the contents of any wire, oral, or electronic communication or
460 evidence derived therefrom under s. 934.08(3), as required by
461 federal law.

462 (c) Applications made and warrants ~~orders~~ granted under
463 ss. 934.03-934.09 shall be sealed by the judge. Custody of the
464 applications and warrants ~~orders~~ shall be wherever the judge
465 directs. As required by ~~federal~~ law, such applications and
466 warrants ~~orders~~ shall be disclosed for purposes of discovery or
467 ~~only~~ upon a showing of good cause before a judge of competent
468 jurisdiction and shall not be destroyed except on order of the
469 issuing or denying judge, or that judge's successor in office,
470 and in any event shall be kept for 10 years.

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

473 (e) Within a reasonable time but not later than 90 days
474 after the termination of the period of a warrant ~~an order~~ or
475 extensions thereof, the issuing or denying judge shall cause to

476 be served on the persons named in the warrant ~~order~~ or the
477 application, and such other parties to intercepted
478 communications as the judge may determine in his or her
479 discretion to be in the interest of justice, an inventory which
480 shall include notice of:

481 1. The fact of the approval of the warrant ~~entry of the~~
482 ~~order~~ or the application.

483 2. The date of the approval of the warrant ~~entry~~ and the
484 period of authorized, approved, or disapproved interception, or
485 the denial of the application.

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

488
489 The judge, upon the filing of a motion, may make available to
490 such person or the person's counsel for inspection such portions
491 of the intercepted communications, applications, and warrants
492 ~~orders~~ as the judge determines to be in the interest of justice.
493 On an ex parte showing of good cause to a judge of competent
494 jurisdiction, the serving of the inventory required by this
495 paragraph may be postponed.

496 (9) ~~As required by federal law,~~ The contents of any
497 intercepted wire, oral, or electronic communication or evidence
498 derived therefrom shall not be received in evidence or otherwise
499 disclosed in any trial, hearing, or other proceeding unless each
500 party, ~~not less than 10 days before the trial, hearing, or~~

501 ~~proceeding,~~ has been furnished with a copy of the warrant ~~court~~
 502 ~~order~~ and accompanying application under which the interception
 503 was authorized or approved. ~~This 10-day period may be waived by~~
 504 ~~the judge if he or she finds that it was not possible to furnish~~
 505 ~~the party with the above information 10 days before the trial,~~
 506 ~~hearing, or proceeding and that the party will not be prejudiced~~
 507 ~~by the delay in receiving such information.~~

508 (10) (a) Any aggrieved person prior to or in any trial,
 509 hearing, or proceeding in or before any court, department,
 510 officer, agency, regulatory body, or other authority may move to
 511 suppress the contents of any intercepted wire, oral, or
 512 electronic communication, or evidence derived therefrom, on the
 513 grounds that:

- 514 1. The communication was unlawfully intercepted;
- 515 2. The warrant ~~order of authorization or approval~~ under
 516 which it was intercepted is insufficient on its face; or
- 517 3. The interception was not made in conformity with the
 518 warrant ~~order of authorization or approval~~.

519 (b) Except as otherwise provided in the applicable Florida
 520 Rules of Criminal Procedure, in a criminal matter:

521 1. Such motion shall be made before the trial, hearing, or
 522 proceeding unless there was no opportunity to make such motion
 523 or the person was not aware of the grounds of the motion.

524 2. If the motion is granted, the contents of the
 525 intercepted wire or oral communication, or evidence derived

526 therefrom, shall be treated as having been obtained in violation
527 of ss. 934.03-934.09 and shall not be admissible as evidence.

528 3. The judge, upon the filing of such motion by the
529 aggrieved person, may make available to the aggrieved person or
530 his or her counsel for inspection such portions of the
531 intercepted communication or evidence derived therefrom as the
532 judge determines to be in the interest of justice.

533 (c) ~~(b)~~ In addition to any other right to appeal, the state
534 shall have the right to appeal from an order granting a motion
535 to suppress made under paragraph (a) or the denial of an
536 application for a warrant ~~an order of approval~~ if the attorney
537 shall certify to the judge or other official granting such
538 motion or denying such application that the appeal is not taken
539 for purposes of delay. Such appeal shall be taken within 30 days
540 after the date the order was entered and shall be diligently
541 prosecuted.

542 (d) ~~(e)~~ The remedies and sanctions described in ss. 934.03-
543 934.10 with respect to the interception of electronic
544 communications are the only judicial remedies and sanctions for
545 violations of those sections involving such communications.

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

550 (a) In the case of an application with respect to the

551 interception of an oral communication:

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

555 2. The application contains a full and complete statement
556 as to why such specification is not practical and identifies the
557 person committing the offense and whose communications are to be
558 intercepted.

559 3. The judge finds that such specification is not
560 practical.

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

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

566 2. The application identifies the person believed to be
567 committing the offense and whose communications are to be
568 intercepted and the applicant makes a showing that there is
569 probable cause to believe that the person's actions could have
570 the effect of thwarting interception from a specified facility
571 or that the person whose communications are to be intercepted
572 has removed, or is likely to remove, himself or herself to
573 another judicial circuit within the state.

574 3. The judge finds that such showing has been adequately
575 made.

576 4. The warrant ~~order~~ authorizing or approving the
577 interception is limited to interception only for such time as it
578 is reasonable to presume that the person identified in the
579 application is or was reasonably proximate to the instrument
580 through which such communication will be or was transmitted.

581
582 ~~Consistent with this paragraph, a judge of competent~~
583 ~~jurisdiction may authorize interception within this state,~~
584 ~~whether the interception is within or outside the court's~~
585 ~~jurisdiction, if the application for the interception makes a~~
586 ~~showing that some activity or conspiracy believed to be related~~
587 ~~to, or in furtherance of, the criminal predicate for the~~
588 ~~requested interception has occurred or will likely occur, or the~~
589 ~~communication to be intercepted or expected to be intercepted is~~
590 ~~occurring or will likely occur, in whole or in part, within the~~
591 ~~jurisdiction of the court where the order is being sought.~~

592 (12) If an interception of a communication is to be
593 carried out pursuant to subsection (11), such interception may
594 not begin until the facilities from which, or the place where,
595 the communication is to be intercepted is ascertained by the
596 person implementing the interception warrant ~~order~~. A provider
597 of wire or electronic communications service that has received a
598 warrant ~~an order~~ as provided under paragraph (11) (b) may
599 petition the court to modify or quash the warrant ~~order~~ on the
600 ground that the interception cannot be performed in a timely or

601 reasonable fashion. The court, upon notice to the state, shall
 602 decide such a petition expeditiously.

603 (13) Consistent with this section, a judge of competent
 604 jurisdiction may authorize interception within this state,
 605 whether the interception is within or outside the court's
 606 jurisdiction, if the application for the interception makes a
 607 showing that some activity or conspiracy believed to be related
 608 to, or in furtherance of, the criminal predicate for the
 609 requested interception has occurred or will likely occur, or the
 610 communication to be intercepted or expected to be intercepted is
 611 occurring or will likely occur, in whole or in part, within the
 612 jurisdiction of the court where the warrant is being sought.

613 Section 8. Paragraph (a) of subsection (2) of section
 614 934.10, Florida Statutes, is amended to read:

615 934.10 Civil remedies.—

616 (2) A good faith reliance on:

617 (a) A warrant, court order, subpoena, or legislative
 618 authorization as provided in ss. 934.03-934.09,

619
 620 shall constitute a complete defense to any civil or criminal, or
 621 administrative action arising out of such conduct under the laws
 622 of this state.

623 Section 9. Section 934.21, Florida Statutes, is amended to
 624 read:

625 934.21 Unlawful access to stored communications;

626 penalties.—

627 (1) Except as provided in subsection (4)~~(3)~~, whoever:

628 (a) Intentionally accesses without authorization a
629 facility through which an electronic communication service is
630 provided, or

631 (b) Intentionally exceeds an authorization to access such
632 facility,

633

634 and thereby obtains, alters, or prevents authorized access to a
635 wire or electronic communication while it is in electronic
636 storage in such system shall be punished as provided in
637 subsection (3)~~(2)~~.

638 (2) Except as provided in subsection (4), whoever
639 intentionally and unlawfully accesses without authorization a
640 cell phone, portable electronic communication device, or
641 microphone-enabled household device and thereby obtains wire,
642 oral, or electronic communications stored within the cell phone,
643 portable electronic communication device, or microphone-enabled
644 household device shall be punished as provided in subsection
645 (3).

646 (3)~~(2)~~ The punishment for an offense under subsection (1)
647 or subsection (2) is as follows:

648 (a) If the offense is committed for purposes of commercial
649 advantage, malicious destruction or damage, or private
650 commercial gain, the person ~~is~~:

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

654 2. In the case of any subsequent offense under this
655 subsection, commits ~~guilty of~~ a felony of the third degree,
656 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
657 s. 934.41.

658 (b) In any other case, the person commits ~~is guilty of~~ a
659 misdemeanor of the second degree, punishable as provided in s.
660 775.082 or s. 775.083.

661 ~~(4)(3)~~ Subsection (1) does not apply with respect to
662 conduct authorized:

663 (a) By the person or entity providing a wire or electronic
664 communications service;

665 (b) By a user of a wire or electronic communications
666 service with respect to a communication of or intended for that
667 user; or

668 (c) In s. 934.09, s. 934.23, or s. 934.24.

669 Section 10. Section 934.42, Florida Statutes, is amended
670 to read:

671 934.42 Mobile tracking device and location tracking
672 authorization.—

673 (1) An investigative or law enforcement officer may make
674 application to a judge of competent jurisdiction for a warrant
675 ~~an order~~ authorizing or approving the installation and use of a

676 mobile tracking device or the acquisition of cell-site location
677 data, precise global positioning satellite location data, or
678 historical global positioning satellite location data.

679 (2) An application under subsection (1) ~~of this section~~
680 must include:

681 (a) A statement of the identity of the applicant and the
682 identity of the law enforcement agency conducting the
683 investigation.

684 (b) A statement setting forth a reasonable period of time
685 that the device may be used or the location data may be
686 obtained. The time must not exceed 45 days from the date the
687 warrant was issued. The court may, for good cause, grant one or
688 more extensions for a reasonable period of time not to exceed 45
689 days each ~~certification by the applicant that the information~~
690 ~~likely to be obtained is relevant to an ongoing criminal~~
691 ~~investigation being conducted by the investigating agency.~~

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

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

697 (3) Upon application made as provided under subsection
698 (2), the court, if it finds probable cause, ~~that the~~
699 ~~certification~~ and the statements required by subsection (2) have
700 been made in the application, shall grant a warrant ~~enter an ex~~

701 parte ~~order~~ authorizing the installation and use of a mobile
702 tracking device. Such warrant ~~order~~ may authorize the use of the
703 device within the jurisdiction of the court and outside that
704 jurisdiction but within the State of Florida if the device is
705 installed within the jurisdiction of the court. The warrant must
706 command the officer to complete any installation authorized by
707 the warrant within a specified period of time not to exceed 10
708 calendar days.

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

712 (5) Within 10 days after the time period specified in
713 paragraph (2) (b) has ended, the officer executing a warrant must
714 return the warrant to the issuing judge. The officer may do so
715 by reliable electronic means.

716 (6) Within 10 days after the time period specified in
717 paragraph (2) (b) has ended, the officer executing a warrant must
718 serve a copy of the warrant on the person who, or whose
719 property, was tracked. Service may be accomplished by delivering
720 a copy to the person who, or whose property, was tracked or by
721 leaving a copy at the person's residence or usual place of abode
722 with an individual of suitable age and discretion who resides at
723 that location and by mailing a copy to the person's last known
724 address. Upon request of the law enforcement agency, the court
725 may delay notice for a period of 90 days as provided in s.

726 934.25.

727 (7)~~(5)~~ The standards established by Florida courts and the
728 United States Supreme Court for the installation, use, or ~~and~~
729 monitoring of mobile tracking devices shall apply to the
730 installation, use, or monitoring ~~and use~~ of any device as
731 authorized by this section.

732 (8)~~(6)~~ As used in this section, the term "mobile tracking
733 device" or a "tracking device" means an electronic or mechanical
734 device, including a cell phone or a portable electronic
735 communication device, which permits the tracking of the movement
736 of a person or object and may be used to access cell-site
737 location data, precise global positioning satellite location
738 data, or historical global positioning satellite location data.

739 (9) (a) Notwithstanding any other provision of this
740 chapter, any investigative or law enforcement officer specially
741 designated by the Governor, the Attorney General, the statewide
742 prosecutor, or a state attorney acting pursuant to this chapter
743 who reasonably determines that:

744 1. An emergency exists which:

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

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

750 2. There are grounds upon which a warrant could be issued

751 under this chapter to authorize such installation or use,
752
753 may install or use a mobile tracking device if, within 48 hours
754 after the installation or use has occurred or begins to occur, a
755 warrant approving the installation or use is issued in
756 accordance with this section.

757 (b) In the absence of an authorizing warrant, such
758 installation or use shall immediately terminate when the
759 information sought is obtained, when the application for the
760 warrant is denied, or when 48 hours have lapsed since the
761 installation or use of the mobile tracking device began,
762 whichever is earlier.

763 (c) The knowing installation or use by any investigative
764 or law enforcement officer of a mobile tracking device pursuant
765 to paragraph (a) without application for the authorizing warrant
766 within 48 hours after the installation or use begins constitutes
767 a violation of this section.

768 Section 11. This act shall take effect July 1, 2018.