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LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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



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11 use of facilities which form part of an intrastate network. The
12 same facilities are used for interstate and intrastate
13 communications.

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

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

30 (4) To safeguard the privacy of innocent persons, the
31 interception of wire, ~~or~~ oral, or electronic communications when
32 none of the parties to the communication has consented to the
33 interception should be allowed only when authorized by a court
34 of competent jurisdiction and should remain under the control
35 and supervision of the authorizing court. Interception of wire,
36 ~~and~~ oral, and electronic communications should further be
37 limited to certain major types of offenses and specific
38 categories of crime with assurance that the interception is
39 justified and that the information obtained thereby will not be



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40 misused.

41 (5) To safeguard the privacy of innocent persons, the
42 Legislature recognizes that the subjective expectation of
43 privacy in precision location data that society is now prepared
44 to accept is objectively reasonable. As such, the law
45 enforcement collection of the precise location of a person,
46 cellular phone, or portable electronic communication device
47 without the consent of the person or owner of the cellular phone
48 or portable electronic communication device should be allowed
49 only when authorized by a warrant issued by a court of competent
50 jurisdiction and should remain under the control and supervision
51 of the authorizing court.

52 (6) The Legislature recognizes that the use of portable
53 electronic communication devices is growing at a rapidly
54 increasing rate. These devices can store, and encourage the
55 storing of, an almost limitless amount of personal and private
56 information. Often linked to the Internet, these devices are
57 commonly used to access personal and business information and
58 databases in computers and servers that can be located anywhere
59 in the world. The user of a portable electronic communication
60 device has a reasonable and justifiable expectation of privacy
61 in the information that these devices contain.

62 (7) The Legislature recognizes that the use of household
63 electronic devices, including microphone-enabled household
64 devices, is growing at a rapidly increasing rate. These devices
65 often contain microphones that listen for and respond to
66 environmental triggers. These household devices are generally
67 connected to and communicate through the Internet resulting in
68 the storage of and accessibility to daily household information



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69 in a device itself or in a remote computing service. Persons
70 should not have to choose between using household technological
71 enhancements and conveniences or preserving the right to privacy
72 in one's home.

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

76 934.02 Definitions.—As used in this chapter:

77 (2) "Oral communication" means any oral communication
78 uttered by a person exhibiting an expectation that such
79 communication is not subject to interception under circumstances
80 justifying such expectation, including the use of a microphone-
81 enabled household device, and does not mean any public oral
82 communication uttered at a public meeting or any electronic
83 communication.

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

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

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

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

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

94 (28) "Portable electronic communication device" means an
95 object capable of being easily transported or conveyed by a
96 person which is capable of creating, receiving, accessing, or
97 storing electronic data or communications and that communicates



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98 with, by any means, another device, entity, or individual.

99 Section 3. Section 934.21, Florida Statutes, is amended to
100 read:

101 934.21 Unlawful access to stored communications;
102 penalties.—

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

104 (a) Intentionally accesses without authorization a facility
105 through which an electronic communication service is provided,
106 or

107 (b) Intentionally exceeds an authorization to access such
108 facility,

109
110 and thereby obtains, alters, or prevents authorized access to a
111 wire or electronic communication while it is in electronic
112 storage in such system shall be punished as provided in
113 subsection (3) ~~(2)~~.

114 (2) Except as provided in subsection (4), whoever
115 intentionally and unlawfully accesses without authorization a
116 cellular phone, portable electronic communication device, or
117 microphone-enabled household device and thereby obtains wire,
118 oral, or electronic communications stored within the cellular
119 phone, portable electronic communication device, or microphone-
120 enabled household device shall be punished as provided in
121 subsection (3).

122 (3) ~~(2)~~ The punishment for an offense under subsection (1)
123 or subsection (2) is as follows:

124 (a) If the offense is committed for purposes of commercial
125 advantage, malicious destruction or damage, or private
126 commercial gain, the person ~~is~~:



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127 1. In the case of a first offense under this subsection,
128 commits guilty of a misdemeanor of the first degree, punishable
129 as provided in s. 775.082, s. 775.083, or s. 934.41.

130 2. In the case of any subsequent offense under this
131 subsection, commits guilty of a felony of the third degree,
132 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
133 s. 934.41.

134 (b) In any other case, the person commits ~~is guilty of~~ a
135 misdemeanor of the second degree, punishable as provided in s.
136 775.082 or s. 775.083.

137 (4)(3) Subsections subsection (1) and (2) do ~~does~~ not apply
138 with respect to conduct authorized:

139 (a) By the person or entity providing a wire, oral, or
140 electronic communications service, including through cellular
141 phones, portable electronic communication devices, or
142 microphone-enabled household devices;

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

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

148 (d) For accessing for a legitimate business purpose
149 information that is not personally identifiable or that has been
150 collected in a way that prevents identification of the user of
151 the device.

152 Section 4. Section 934.42, Florida Statutes, is amended to
153 read:

154 934.42 Mobile tracking device and location tracking
155 authorization.-



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156 (1) An investigative or law enforcement officer may make
157 application to a judge of competent jurisdiction for a warrant
158 ~~an order~~ authorizing or approving the installation and use of a
159 mobile tracking device or the acquisition of cellular-site
160 location data, precise global positioning satellite location
161 data, or historical global positioning satellite location data.

162 (2) An application under subsection (1) ~~of this section~~
163 must include:

164 (a) A statement of the identity of the applicant and the
165 identity of the law enforcement agency conducting the
166 investigation.

167 (b) A statement setting forth a reasonable period of time
168 that the device may be used or the location data may be
169 obtained. The time must not exceed 45 days from the date the
170 warrant was issued. The court may, for good cause, grant one or
171 more extensions for a reasonable period of time not to exceed 45
172 days each certification by the applicant that the information
173 ~~likely to be obtained is relevant to an ongoing criminal~~
174 ~~investigation being conducted by the investigating agency.~~

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

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

180 (3) Upon application made as provided under subsection (2),
181 the court, if it finds probable cause, ~~that the certification~~
182 and the statements required by subsection (2) have been made in
183 the application, shall grant a warrant ~~enter an ex parte order~~
184 authorizing the installation and use of a mobile tracking



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185 device. Such warrant order may authorize the use of the device
186 within the jurisdiction of the court and outside that
187 jurisdiction but within the State of Florida if the device is
188 installed within the jurisdiction of the court. The warrant must
189 command the officer to complete any installation authorized by
190 the warrant within a specified period of time not to exceed 10
191 calendar days.

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

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

199 (6) Within 10 days after the time period specified in
200 paragraph (2) (b) has ended, the officer executing a warrant must
201 serve a copy of the warrant on the person who, or whose
202 property, was tracked. Service may be accomplished by delivering
203 a copy to the person who, or whose property, was tracked or by
204 leaving a copy at the person's residence or usual place of abode
205 with an individual of suitable age and discretion who resides at
206 that location and by mailing a copy to the person's last known
207 address. Upon request of the law enforcement agency, the court
208 may delay notice for a period of 90 days as provided in s.
209 934.25.

210 (7) ~~(5)~~ The standards established by Florida courts and the
211 United States Supreme Court for the installation, use, or and
212 monitoring of mobile tracking devices shall apply to the
213 installation, use, or monitoring and use of any device as



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214 authorized by this section.

215 (8)~~(6)~~ As used in this section, the term "mobile tracking
216 device" or a "tracking device" means an electronic or mechanical
217 device, including a cellular phone or a portable electronic
218 communication device, which permits the tracking of the movement
219 of a person or object and may be used to access cellular-site
220 location data, precise global positioning satellite location
221 data, or historical global positioning satellite location data.

222 (9) (a) Notwithstanding any other provision of this chapter,
223 any investigative or law enforcement officer specially
224 designated by the Governor, the Attorney General, the statewide
225 prosecutor, or a state attorney acting pursuant to this chapter
226 who reasonably determines that:

227 1. An emergency exists which:

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

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

233 2. There are grounds upon which a warrant could be issued
234 under this chapter to authorize such installation or use,

235
236 may install or use a mobile tracking device if, within 48 hours
237 after the installation or use has occurred or begins to occur, a
238 warrant approving the installation or use is issued in
239 accordance with this section.

240 (b) In the absence of an authorizing warrant, such
241 installation or use shall immediately terminate when the
242 information sought is obtained, when the application for the



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243 warrant is denied, or when 48 hours have lapsed since the
244 installation or use of the mobile tracking device began,
245 whichever is earlier.

246 (c) The knowing installation or use by any investigative or
247 law enforcement officer of a mobile tracking device pursuant to
248 paragraph (a) without application for the authorizing warrant
249 within 48 hours after the installation or use begins constitutes
250 a violation of this section.

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

252
253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255 Delete everything before the enacting clause
256 and insert:

257 A bill to be entitled
258 An act relating to the search of the content,
259 information, and communications of cellular phones,
260 portable electronic communication devices, and
261 microphone-enabled household devices; amending s.
262 934.01, F.S.; providing legislative findings; amending
263 s. 934.02, F.S.; providing definitions; amending s.
264 934.21, F.S.; conforming provisions to changes made by
265 the act; prohibiting unlawful access to communications
266 stored in specified devices; providing penalties;
267 amending s. 934.42, F.S.; requiring that law
268 enforcement obtain a warrant to acquire certain
269 location information; providing procedures for such
270 warrants; providing limited exceptions in certain
271 circumstances; providing an effective date.