

By Senator Brandes

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

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

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

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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 interception of wire, or oral, or electronic communications when none of the parties to the communication has consented to the

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88 interception should be allowed only when authorized by a court
89 of competent jurisdiction and should remain under the control
90 and supervision of the authorizing court. Interception of wire,
91 ~~and oral,~~ and electronic communications should further be
92 limited to certain major types of offenses and specific
93 categories of crime with assurance that the interception is
94 justified and that the information obtained thereby will not be
95 misused.

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

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

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117 device has a reasonable and justifiable expectation of privacy
118 in the information that these devices contain.

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

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

133 934.02 Definitions.—As used in this chapter:

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

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

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

145 (b) Capable of creating, receiving, accessing, processing,

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146 or storing electronic data or communications;

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

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

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

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

159 934.21 Unlawful access to stored communications;
160 penalties.—

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

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

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

167
168 and thereby obtains, alters, or prevents authorized access to a
169 wire or electronic communication while it is in electronic
170 storage in such system shall be punished as provided in
171 subsection (2).

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

174 (a) If the offense is committed for purposes of commercial

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175 advantage, malicious destruction or damage, or private
176 commercial gain, the person ~~is~~:

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

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

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

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

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

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

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

198 (d) In chapter 933; or

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

203 Section 4. Section 934.42, Florida Statutes, is amended to

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204 read:

205 934.42 Mobile tracking device and location tracking
206 authorization.—

207 (1) As used in this section, the term:

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

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

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

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

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

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

220 (2)~~(1)~~ An investigative or law enforcement officer may make
221 application to a judge of competent jurisdiction for a warrant
222 ~~an order~~ authorizing or approving real-time location tracking or
223 the acquisition of historical location data in the possession of
224 the provider ~~the installation and use of a mobile tracking~~
225 ~~device.~~

226 (3)~~(2)~~ An application under subsection (2) ~~(1)~~ ~~of this~~
227 ~~section~~ must include:

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

231 (b) A statement setting forth a reasonable period of time
232 that the mobile tracking device may be used or the location data

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

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

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

246 ~~(4)-(3)~~ Upon application made as provided under subsection
247 ~~(3) -(2)~~, the court, if it finds probable cause ~~that the~~
248 ~~certification~~ and finds that the statements required by
249 subsection ~~(3) -(2)~~ have been made in the application, must grant
250 a warrant shall enter an ex parte ~~order~~ authorizing real-time
251 location tracking the installation and use of a mobile tracking
252 device or the acquisition of historical location data. Such
253 warrant order may authorize the use of the mobile tracking
254 device within the jurisdiction of the court and outside that
255 jurisdiction but within the State of Florida if the mobile
256 tracking device is installed within the jurisdiction of the
257 court. The warrant must command the officer to complete any
258 installation authorized by the warrant within a specified period
259 of time not to exceed 10 calendar days.

260 ~~(5)-(4)~~ A court may not require greater specificity or
261 additional information beyond that which is required by law and

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262 this section as a requisite for issuing a warrant ~~an order~~.

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

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

285 (8) ~~(5)~~ The standards established by Florida courts and the
286 United States Supreme Court for the installation, use, or ~~and~~
287 monitoring of mobile tracking devices and the acquisition of
288 location data shall apply to the installation, use, or
289 monitoring ~~and use~~ of any device and the acquisition of location
290 data as authorized by this section.

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

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

299 1. An emergency exists which:

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

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

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

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

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

317 Section 5. This act shall take effect July 1, 2019.