

By the Committee on Criminal Justice; and Senator Brandes

591-02323-19

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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. 933.02, F.S.;
4 expanding the grounds for issuance of a search
5 warrant; providing that content held within a cellular
6 phone, microphone-enabled household device, or
7 portable electronic communication device may
8 constitute evidence relevant to proving that a felony
9 has been committed; amending s. 933.04, F.S.; adopting
10 the constitutional protection against unreasonable
11 interception of private communications by any means
12 for purposes of obtaining a search warrant; amending
13 s. 934.01, F.S.; revising and providing legislative
14 findings; amending s. 934.02, F.S.; redefining the
15 term "oral communication"; defining the terms
16 "microphone-enabled household device" and "portable
17 electronic communication device"; amending s. 934.03,
18 F.S.; authorizing specified persons to provide
19 information, facilities, or technical assistance to a
20 person authorized by law to intercept wire, oral, or
21 electronic communications if the person has been
22 provided with a search warrant; prohibiting specified
23 persons from disclosing the existence of any
24 interception of a wire, oral, or electronic
25 communication with respect to which the person has
26 been served with a search warrant; amending s. 934.06,
27 F.S.; to requiring a search warrant to obtain certain
28 communication content; amending s. 934.07, F.S.;
29 authorizing a judge to issue, instead of granting, a

591-02323-19

2019210c1

30 search warrant in conformity with specified
31 provisions; authorizing the Department of Law
32 Enforcement to request a law enforcement agency that
33 provided it with certain information to join with the
34 department in seeking a new search warrant; amending
35 s. 934.08, F.S.; authorizing certain disclosure or use
36 when an investigative or law enforcement officer
37 intercepts wire, oral, or electronic communications
38 relating to offenses other than those specified in a
39 search warrant; amending s. 934.09, F.S.; requiring
40 that each application for a search warrant, rather
41 than an order, authorizing or approving the
42 interception of wire, oral, or electronic
43 communications be made in writing and state the
44 applicant's authority; authorizing a judge to
45 authorize a search warrant ex parte, rather than an ex
46 parte order, based on the application under certain
47 circumstances; specifying requirements for search
48 warrants, rather than orders, issued under certain
49 circumstances; authorizing an aggrieved person to move
50 to suppress the contents of certain wire, oral, or
51 electronic communications before, as well as during, a
52 trial, hearing, or proceeding; providing for
53 inadmissibility of certain evidence if a certain
54 motion is granted; authorizing a judge of competent
55 jurisdiction to authorize interception within this
56 state under specified circumstances; amending s.
57 934.10, F.S.; providing that a good faith reliance on
58 a search warrant issued under certain provisions

591-02323-19

2019210c1

59 constitutes a complete defense against specified
60 actions; amending s. 934.21, F.S.; revising the
61 exceptions to conduct that constitutes unlawful access
62 to stored communications; conforming a provision to
63 changes made by the act; amending s. 934.42, F.S.;
64 defining the terms "mobile tracking device," "real-
65 time location tracking," and "historical location
66 data"; authorizing an investigative or law enforcement
67 officer to apply to a judge of competent jurisdiction
68 for a search warrant, rather than an order,
69 authorizing real-time location tracking or acquisition
70 of historical location data; requiring an application
71 for a search warrant to include a statement of a
72 reasonable period of time that the mobile tracking
73 device may be used or the location data may be
74 obtained in real time, not to exceed a specified
75 limit; authorizing a court to grant extensions that do
76 not individually exceed a specified limit, for good
77 cause; deleting a provision requiring a certification
78 to be included in the application; providing that the
79 court, if it finds probable cause and finds the
80 required statements in the application, must grant a
81 search warrant; specifying the search warrant may
82 authorize real-time location tracking or acquisition
83 of historical location data; providing the search
84 warrant may authorize the tracking as specified;
85 requiring the search warrant to command the officer to
86 complete any initiation of the location tracking
87 authorized by the search warrant within a certain

591-02323-19

2019210c1

88 timeframe; providing requirements for the return of
89 the search warrant to the judge and service of a copy
90 of the search warrant on the person who was tracked or
91 whose property was tracked; specifying how a search
92 warrant authorizing the acquisition of historical
93 location data must be returned and served; authorizing
94 a court, for good cause, to postpone the notice
95 requirement for a specified time period; requiring
96 that the standards established by Florida courts for
97 the installation, use, or monitoring of mobile
98 tracking devices and the acquisition of location data
99 apply to the installation, use, or monitoring of any
100 devices and the acquisition of location data as
101 authorized; deleting the definition of "tracking
102 device"; authorizing any investigative or law
103 enforcement officer who is specially designated by
104 certain persons and who makes specified determinations
105 to engage in real-time location tracking if a search
106 warrant is later obtained as specified; providing
107 requirements for engaging in real-time location
108 tracking; specifying when real-time location tracking
109 must terminate; reenacting s. 934.22(2)(b), F.S.,
110 relating to voluntary disclosure of customer
111 communications or records, to incorporate the
112 amendments made to ss. 934.03 and 934.07, F.S., in
113 references thereto; reenacting s. 934.27(1) and (4),
114 F.S., relating to relief, damages, and defenses for
115 certain civil actions, to incorporate the amendments
116 made to ss. 934.09 and 934.21, F.S., in references

591-02323-19

2019210c1

117 thereto; reenacting ss. 934.23(6), 934.24(6) and (7),
118 934.25(5), and 934.28, F.S., relating to required
119 disclosures of customer communications or records, a
120 subscriber or customer filing a motion for certain
121 relief and customer notification, delayed notice, and
122 the exclusivity of remedies and sanctions for certain
123 violations, respectively, to incorporate the amendment
124 made to s. 934.21, F.S., in references thereto;
125 providing an effective date.
126

127 Be It Enacted by the Legislature of the State of Florida:
128

129 Section 1. Subsection (3) of section 933.02, Florida
130 Statutes, is amended to read:

131 933.02 Grounds for issuance of search warrant.—Upon proper
132 affidavits being made, a search warrant may be issued under the
133 provisions of this chapter upon any of the following grounds:

134 (3) When any property, or when content held within a
135 cellular phone, portable electronic communication device, or
136 microphone-enabled household device as defined in s. 934.02,
137 F.S., constitutes evidence relevant to proving that a felony has
138 been committed;
139

140 This section also applies to any papers or documents used as a
141 means of or in aid of the commission of any offense against the
142 laws of the state.

143 Section 2. Section 933.04, Florida Statutes, is amended to
144 read

145 933.04 Affidavits.—The right of the people to be secure in

591-02323-19

2019210c1

146 their persons, houses, papers and effects against unreasonable
147 seizures and searches and against the unreasonable interception
148 of private communications by any means shall not be violated and
149 no search warrant shall be issued except upon probable cause,
150 supported by oath or affirmation particularly describing the
151 place to be searched and the person and thing to be seized.

152 Section 3. Section 934.01, Florida Statutes, is amended to
153 read:

154 934.01 Legislative findings.—On the basis of its own
155 investigations and of published studies, the Legislature makes
156 the following findings:

157 (1) Wire communications are normally conducted through the
158 use of facilities which form part of an intrastate network. The
159 same facilities are used for interstate and intrastate
160 communications.

161 (2) In order to protect effectively the privacy of wire,
162 ~~and~~ oral, and electronic communications, to protect the
163 integrity of court and administrative proceedings, and to
164 prevent the obstruction of intrastate commerce, it is necessary
165 for the Legislature to define the circumstances and conditions
166 under which the interception of wire, ~~and~~ oral, and electronic
167 communications may be authorized and to prohibit any
168 unauthorized interception of such communications and the use of
169 the contents thereof in evidence in courts and administrative
170 proceedings.

171 (3) Organized criminals make extensive use of wire, ~~and~~
172 oral, and electronic communications in their criminal
173 activities. The interception of such communications to obtain
174 evidence of the commission of crimes or to prevent their

591-02323-19

2019210c1

175 commission is an indispensable aid to law enforcement and the
176 administration of justice.

177 (4) To safeguard the privacy of innocent persons, the
178 interception of wire, ~~or~~ oral, or electronic communications when
179 none of the parties to the communication has consented to the
180 interception should be allowed only when authorized by a court
181 of competent jurisdiction and should remain under the control
182 and supervision of the authorizing court. Interception of wire,
183 ~~and~~ oral, and electronic communications should further be
184 limited to certain major types of offenses and specific
185 categories of crime with assurance that the interception is
186 justified and that the information obtained thereby will not be
187 misused.

188 (5) To safeguard the privacy of innocent persons, the
189 Legislature recognizes that the subjective expectation of
190 privacy in real-time cell-site location data, real-time precise
191 global positioning system location data, and historical precise
192 global positioning system location data which society is now
193 prepared to accept is objectively reasonable. As such, the law
194 enforcement collection of the precise location of a person,
195 cellular phone, or portable electronic communication device
196 without the consent of the person or owner of the cellular phone
197 or portable electronic communication device should be allowed
198 only when authorized by a search warrant issued by a court of
199 competent jurisdiction and should remain under the control and
200 supervision of the authorizing court.

201 (6) The Legislature recognizes that the use of portable
202 electronic communication devices is growing at a rapidly
203 increasing rate. These devices can store, and encourage the

591-02323-19

2019210c1

204 storing of, an almost limitless amount of personal and private
205 information. Often linked to the Internet, these devices are
206 commonly used to access personal and business information and
207 databases in computers and servers that can be located anywhere
208 in the world. The user of a portable electronic communication
209 device has a reasonable and justifiable expectation of privacy
210 in the information that these devices contain.

211 (7) The Legislature recognizes that the use of household
212 electronic devices, including microphone-enabled household
213 devices, is growing at a rapidly increasing rate. These devices
214 often contain microphones that listen for and respond to
215 environmental cues. These household devices are generally
216 connected to and communicate through the Internet, resulting in
217 the storage of and accessibility to daily household information
218 in a device itself or in a remote computing service. Persons
219 should not have to choose between using household technological
220 enhancements and conveniences or preserving the right to privacy
221 in one's home.

222 Section 4. Subsection (2) of section 934.02, Florida
223 Statutes, is amended, and subsections (27) and (28) are added to
224 that section, to read:

225 934.02 Definitions.—As used in this chapter:

226 (2) "Oral communication" means any oral communication
227 uttered by a person exhibiting an expectation that such
228 communication is not subject to interception under circumstances
229 justifying such expectation, including the use of a microphone-
230 enabled household device, and does not mean any public oral
231 communication uttered at a public meeting or any electronic
232 communication.

591-02323-19

2019210c1

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

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

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

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

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

243 (28) "Portable electronic communication device" means an
244 object capable of being easily transported or conveyed by a
245 person which is capable of creating, receiving, accessing,
246 processing, or storing electronic data or communications and
247 which communicates with, by any means, another device, entity,
248 or individual.

249 Section 5. Subsection (2) of section 934.03, Florida
250 Statutes, is amended to read

251 934.03 Interception and disclosure of wire, oral, or
252 electronic communications prohibited.-

253 (2) (a) 1. It is lawful under this section and ss. 934.04-
254 934.09 for an operator of a switchboard, or an officer,
255 employee, or agent of a provider of wire or electronic
256 communication service whose facilities are used in the
257 transmission of a wire or electronic communication, to
258 intercept, disclose, or use that communication in the normal
259 course of his or her employment while engaged in any activity
260 which is a necessary incident to the rendition of his or her
261 service or to the protection of the rights or property of the

591-02323-19

2019210c1

262 provider of that service, except that a provider of wire
263 communication service to the public shall not utilize service
264 observing or random monitoring except for mechanical or service
265 quality control checks.

266 2. Notwithstanding any other law, a provider of wire, oral,
267 or electronic communication service, or an officer, employee, or
268 agent thereof, or landlord, custodian, or other person, may
269 provide information, facilities, or technical assistance to a
270 person authorized by law to intercept wire, oral, or electronic
271 communications if such provider, or an officer, employee, or
272 agent thereof, or landlord, custodian, or other person, has been
273 provided with:

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

276 ~~a.b.~~ A certification in writing by a person specified in s.
277 934.09(7) that no search warrant or court order is required by
278 law, that all statutory requirements have been met, and that the
279 specified assistance is required, setting forth the period of
280 time during which the provision of the information, facilities,
281 or technical assistance is authorized and specifying the
282 information, facilities, or technical assistance required; or

283 b. A search warrant issued by a judge of competent
284 jurisdiction as required by law.

285 3. A provider of wire, oral, or electronic communication
286 service, or an officer, employee, or agent thereof, or landlord,
287 custodian, or other person may not disclose the existence of any
288 interception or the device used to accomplish the interception
289 with respect to which the person has been served with a search
290 warrant ~~furnished an order under this section and ss. 934.04~~

591-02323-19

2019210c1

291 ~~934.09~~, except as may otherwise be required by legal process and
292 then only after prior notice to the Governor, the Attorney
293 General, the statewide prosecutor, or a state attorney, as may
294 be appropriate. Any such disclosure renders such person liable
295 for the civil damages provided under s. 934.10, and such person
296 may be prosecuted under s. 934.43. An action may not be brought
297 against any provider of wire, oral, or electronic communication
298 service, or an officer, employee, or agent thereof, or landlord,
299 custodian, or other person for providing information,
300 facilities, or assistance in accordance with the terms of a
301 search warrant ~~court order under this section and ss. 934.04-~~
302 ~~934.09.~~

303 (b) It is lawful under this section and ss. 934.04-934.09
304 for an officer, employee, or agent of the Federal Communications
305 Commission, in the normal course of his or her employment and in
306 discharge of the monitoring responsibilities exercised by the
307 commission in the enforcement of 47 U.S.C. chapter 5, to
308 intercept a wire, oral, or electronic communication transmitted
309 by radio or to disclose or use the information thereby obtained.

310 (c) It is lawful under this section and ss. 934.04-934.09
311 for an investigative or law enforcement officer or a person
312 acting under the direction of an investigative or law
313 enforcement officer to intercept a wire, oral, or electronic
314 communication when such person is a party to the communication
315 or one of the parties to the communication has given prior
316 consent to such interception and the purpose of such
317 interception is to obtain evidence of a criminal act.

318 (d) It is lawful under this section and ss. 934.04-934.09
319 for a person to intercept a wire, oral, or electronic

591-02323-19

2019210c1

320 communication when all of the parties to the communication have
321 given prior consent to such interception.

322 (e) It is unlawful to intercept any wire, oral, or
323 electronic communication for the purpose of committing any
324 criminal act.

325 (f) It is lawful under this section and ss. 934.04-934.09
326 for an employee of a telephone company to intercept a wire
327 communication for the sole purpose of tracing the origin of such
328 communication when the interception is requested by the
329 recipient of the communication and the recipient alleges that
330 the communication is obscene, harassing, or threatening in
331 nature. The individual conducting the interception shall notify
332 local police authorities within 48 hours after the time of the
333 interception.

334 (g) It is lawful under this section and ss. 934.04-934.09
335 for an employee of:

336 1. An ambulance service licensed pursuant to s. 401.25, a
337 fire station employing firefighters as defined by s. 633.102, a
338 public utility, a law enforcement agency as defined by s.
339 934.02(10), or any other entity with published emergency
340 telephone numbers;

341 2. An agency operating an emergency telephone number "911"
342 system established pursuant to s. 365.171; or

343 3. The central abuse hotline operated pursuant to s. 39.201
344
345 to intercept and record incoming wire communications; however,
346 such employee may intercept and record incoming wire
347 communications on designated "911" telephone numbers and
348 published nonemergency telephone numbers staffed by trained

591-02323-19

2019210c1

349 dispatchers at public safety answering points only. It is also
350 lawful for such employee to intercept and record outgoing wire
351 communications to the numbers from which such incoming wire
352 communications were placed when necessary to obtain information
353 required to provide the emergency services being requested. For
354 the purpose of this paragraph, the term "public utility" has the
355 same meaning as provided in s. 366.02 and includes a person,
356 partnership, association, or corporation now or hereafter owning
357 or operating equipment or facilities in the state for conveying
358 or transmitting messages or communications by telephone or
359 telegraph to the public for compensation.

360 (h) It shall not be unlawful under this section and ss.
361 934.04-934.09 for any person:

362 1. To intercept or access an electronic communication made
363 through an electronic communication system that is configured so
364 that such electronic communication is readily accessible to the
365 general public.

366 2. To intercept any radio communication which is
367 transmitted:

368 a. By any station for the use of the general public, or
369 that relates to ships, aircraft, vehicles, or persons in
370 distress;

371 b. By any governmental, law enforcement, civil defense,
372 private land mobile, or public safety communications system,
373 including any police or fire communications system, readily
374 accessible to the general public;

375 c. By a station operating on an authorized frequency within
376 the bands allocated to the amateur, citizens band, or general
377 mobile radio services; or

591-02323-19

2019210c1

- 378 d. By any marine or aeronautical communications system.
- 379 3. To engage in any conduct which:
- 380 a. Is prohibited by s. 633 of the Communications Act of
- 381 1934; or
- 382 b. Is excepted from the application of s. 705(a) of the
- 383 Communications Act of 1934 by s. 705(b) of that act.
- 384 4. To intercept any wire or electronic communication the
- 385 transmission of which is causing harmful interference to any
- 386 lawfully operating station of consumer electronic equipment to
- 387 the extent necessary to identify the source of such
- 388 interference.
- 389 5. To intercept, if such person is another user of the same
- 390 frequency, any radio communication that is not scrambled or
- 391 encrypted made through a system that utilizes frequencies
- 392 monitored by individuals engaged in the provision or the use of
- 393 such system.
- 394 6. To intercept a satellite transmission that is not
- 395 scrambled or encrypted and that is transmitted:
- 396 a. To a broadcasting station for purposes of retransmission
- 397 to the general public; or
- 398 b. As an audio subcarrier intended for redistribution to
- 399 facilities open to the public, but not including data
- 400 transmissions or telephone calls, when such interception is not
- 401 for the purposes of direct or indirect commercial advantage or
- 402 private financial gain.
- 403 7. To intercept and privately view a private satellite
- 404 video communication that is not scrambled or encrypted or to
- 405 intercept a radio communication that is transmitted on
- 406 frequencies allocated under subpart D of part 74 of the rules of

591-02323-19

2019210c1

407 the Federal Communications Commission that is not scrambled or
408 encrypted, if such interception is not for a tortious or illegal
409 purpose or for purposes of direct or indirect commercial
410 advantage or private commercial gain.

411 (i) It shall not be unlawful under this section and ss.
412 934.04-934.09:

413 1. To use a pen register or a trap and trace device as
414 authorized under ss. 934.31-934.34 or under federal law; or

415 2. For a provider of electronic communication service to
416 record the fact that a wire or electronic communication was
417 initiated or completed in order to protect such provider,
418 another provider furnishing service toward the completion of the
419 wire or electronic communication, or a user of that service,
420 from fraudulent, unlawful, or abusive use of such service.

421 (j) It is not unlawful under this section and ss. 934.04-
422 934.09 for a person acting under color of law to intercept the
423 wire or electronic communications of a computer trespasser which
424 are transmitted to, through, or from a protected computer if:

425 1. The owner or operator of the protected computer
426 authorizes the interception of the communications of the
427 computer trespasser;

428 2. The person acting under color of law is lawfully engaged
429 in an investigation;

430 3. The person acting under color of law has reasonable
431 grounds to believe that the contents of the communications of
432 the computer trespasser will be relevant to the investigation;
433 and

434 4. The interception does not acquire communications other
435 than those transmitted to, through, or from the computer

591-02323-19

2019210c1

436 trespasser.

437 (k) It is lawful under this section and ss. 934.04-934.09
438 for a child under 18 years of age to intercept and record an
439 oral communication if the child is a party to the communication
440 and has reasonable grounds to believe that recording the
441 communication will capture a statement by another party to the
442 communication that the other party intends to commit, is
443 committing, or has committed an unlawful sexual act or an
444 unlawful act of physical force or violence against the child.

445 Section 6. Section 934.06, Florida Statutes, is amended to
446 read:

447 934.06 Prohibition of use as evidence of intercepted wire
448 or oral communications; content of cellular phone, microphone-
449 enabled household device, or portable electronic communication
450 device; exceptions.—Whenever any wire or oral communication has
451 been intercepted, or when the content of a cellular phone,
452 microphone-enabled household device, or portable electronic
453 communication device is obtained without a search warrant
454 supported by probable cause no part of the contents of such
455 communication and no evidence derived therefrom may be received
456 in evidence in any trial, hearing, or other proceeding in or
457 before any court, grand jury, department, officer, agency,
458 regulatory body, legislative committee, or other authority of
459 the state, or a political subdivision thereof, if the disclosure
460 of that information would be in violation of this chapter. The
461 prohibition of use as evidence provided in this section does not
462 apply in cases of prosecution for criminal interception in
463 violation of the provisions of this chapter, or in cases where
464 the content of a cellular phone, microphone-enabled household

591-02323-19

2019210c1

465 device, or portable electronic communication device is lawfully
466 obtained under circumstances where a search warrant is not
467 required.

468 Section 7. Subsections (1) and (2) of section 934.07,
469 Florida Statutes, are amended to read:

470 934.07 Authorization for interception of wire, oral, or
471 electronic communications.—

472 (1) The Governor, the Attorney General, the statewide
473 prosecutor, or any state attorney may authorize an application
474 to a judge of competent jurisdiction for, and such judge may
475 issue grant in conformity with ss. 934.03-934.09 a search
476 warrant as required by law ~~an order~~ authorizing or approving the
477 interception of, wire, oral, or electronic communications by:

478 (a) The Department of Law Enforcement or any law
479 enforcement agency as defined in s. 934.02 having responsibility
480 for the investigation of the offense as to which the application
481 is made when such interception may provide or has provided
482 evidence of the commission of the offense of murder, kidnapping,
483 aircraft piracy, arson, gambling, robbery, burglary, theft,
484 dealing in stolen property, criminal usury, bribery, or
485 extortion; any felony violation of ss. 790.161-790.166,
486 inclusive; any violation of s. 787.06; any violation of chapter
487 893; any violation of the provisions of the Florida Anti-Fencing
488 Act; any violation of chapter 895; any violation of chapter 896;
489 any violation of chapter 815; any violation of chapter 847; any
490 violation of s. 827.071; any violation of s. 944.40; or any
491 conspiracy or solicitation to commit any violation of the laws
492 of this state relating to the crimes specifically enumerated in
493 this paragraph.

591-02323-19

2019210c1

494 (b) The Department of Law Enforcement, together with other
495 assisting personnel as authorized and requested by the
496 department under s. 934.09(5), for the investigation of the
497 offense as to which the application is made when such
498 interception may provide or has provided evidence of the
499 commission of any offense that may be an act of terrorism or in
500 furtherance of an act of terrorism or evidence of any conspiracy
501 or solicitation to commit any such violation.

502 (2) (a) If, during the course of an interception of
503 communications by a law enforcement agency as authorized under
504 paragraph (1) (a), the law enforcement agency finds that the
505 intercepted communications may provide or have provided evidence
506 of the commission of any offense that may be an act of terrorism
507 or in furtherance of an act of terrorism, or evidence of any
508 conspiracy or solicitation to commit any such violation, the law
509 enforcement agency shall promptly notify the Department of Law
510 Enforcement and apprise the department of the contents of the
511 intercepted communications. The agency notifying the department
512 may continue its previously authorized interception with
513 appropriate minimization, as applicable, and may otherwise
514 assist the department as provided in this section.

515 (b) Upon its receipt of information of the contents of an
516 intercepted communications from a law enforcement agency, the
517 Department of Law Enforcement shall promptly review the
518 information to determine whether the information relates to an
519 actual or anticipated act of terrorism as defined in this
520 section. If, after reviewing the contents of the intercepted
521 communications, there is probable cause that the contents of the
522 intercepted communications meet the criteria of paragraph

591-02323-19

2019210c1

523 (1) (b), the Department of Law Enforcement may make application
524 for the interception of wire, oral, or electronic communications
525 consistent with paragraph (1) (b). The department may make an
526 independent new application for interception based on the
527 contents of the intercepted communications. Alternatively, the
528 department may request the law enforcement agency that provided
529 the information to join with the department in seeking a new
530 search warrant as required by law or an amendment of the
531 original interception search warrant ~~order~~, or may seek
532 additional authority to continue intercepting communications
533 under the direction of the department. In carrying out its
534 duties under this section, the department may use the provisions
535 for an emergency interception provided in s. 934.09(7) if
536 applicable under statutory criteria.

537 Section 8. Section 934.09, Florida Statutes, is amended to
538 read:

539 934.09 Procedure for interception of wire, oral, or
540 electronic communications.—

541 (1) Each application for a search warrant ~~an order~~
542 authorizing or approving the interception of a wire, oral, or
543 electronic communication under ss. 934.03-934.09 shall be made
544 in writing upon oath or affirmation to a judge of competent
545 jurisdiction and shall state the applicant's authority to make
546 such application. Each application shall include the following
547 information:

548 (a) The identity of the investigative or law enforcement
549 officer making the application and the officer authorizing the
550 application.

551 (b) A full and complete statement of the facts and

591-02323-19

2019210c1

552 circumstances relied upon by the applicant to justify his or her
553 belief that a search warrant ~~an order~~ should be issued,
554 including:

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

557 2. Except as provided in subsection (11), a particular
558 description of the nature and location of the facilities from
559 which, or the place where, the communications are to be
560 intercepted.

561 3. A particular description of the type of communications
562 sought to be intercepted.

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

565 (c) A full and complete statement as to whether or not
566 other investigative procedures have been tried and failed or why
567 they reasonably appear to be unlikely to succeed if tried or to
568 be too dangerous.

569 (d) A statement of the period of time for which the
570 interception is required to be maintained and, if the nature of
571 the investigation is such that the authorization for
572 interception should not automatically terminate when the
573 described type of communication has been first obtained, a
574 particular description of facts establishing probable cause to
575 believe that additional communications of the same type will
576 occur thereafter.

577 (e) A full and complete statement of the facts concerning
578 all previous applications known to the individual authorizing
579 and making the application, made to any judge for authorization
580 to intercept, or for approval of interceptions of, wire, oral,

591-02323-19

2019210c1

581 or electronic communications involving any of the same persons,
582 facilities, or places specified in the application, and the
583 action taken by the judge on each such application.

584 (f) When the application is for the extension of a search
585 warrant ~~an order~~, a statement setting forth the results thus far
586 obtained from the interception or a reasonable explanation of
587 the failure to obtain such results.

588 (2) The judge may require the applicant to furnish
589 additional testimony or documentary evidence in support of the
590 application.

591 (3) Upon such application, the judge may authorize a search
592 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
593 authorizing or approving interception of wire, oral, or
594 electronic communications within the territorial jurisdiction of
595 the court in which the judge is sitting, and outside such
596 jurisdiction but within the State of Florida in the case of a
597 mobile interception device authorized by the judge within such
598 jurisdiction, if the judge determines on the basis of the facts
599 submitted by the applicant that:

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

603 (b) There is probable cause for belief that particular
604 communications concerning that offense will be obtained through
605 such interception.

606 (c) Normal investigative procedures have been tried and
607 have failed or reasonably appear to be unlikely to succeed if
608 tried or to be too dangerous.

609 (d) Except as provided in subsection (11), there is

591-02323-19

2019210c1

610 probable cause for belief that the facilities from which, or the
611 place where, the wire, oral, or electronic communications are to
612 be intercepted are being used, or are about to be used, in
613 connection with the commission of such offense, or are leased
614 to, listed in the name of, or commonly used by such person.

615 (4) Each search warrant ~~order~~ authorizing or approving the
616 interception of any wire, oral, or electronic communication
617 shall specify:

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

620 (b) The nature and location of the communications
621 facilities as to which, or the place where, authority to
622 intercept is granted.

623 (c) A particular description of the type of communication
624 sought to be intercepted and a statement of the particular
625 offense to which it relates.

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

628 (e) The period of time during which such interception is
629 authorized, including a statement as to whether or not the
630 interception shall automatically terminate when the described
631 communication has been first obtained.

632
633 A search warrant ~~An order~~ authorizing the interception of a
634 wire, oral, or electronic communication shall, upon the request
635 of the applicant, direct that a provider of wire or electronic
636 communication service, landlord, custodian, or other person
637 shall furnish the applicant forthwith all information,
638 facilities, and technical assistance necessary to accomplish the

591-02323-19

2019210c1

639 interception unobtrusively and with a minimum of interference
640 with the services that such service provider, landlord,
641 custodian, or person is according the person whose
642 communications are to be intercepted. The obligation of a
643 provider of wire, oral, or electronic communication service
644 under such a search warrant ~~an order~~ may include, but is not
645 limited to, conducting an in-progress trace during an
646 interception, or providing other assistance to support the
647 investigation as may be specified in the search warrant ~~order~~.
648 Any provider of wire or electronic communication service,
649 landlord, custodian, or other person furnishing such facilities
650 or technical assistance shall be compensated therefor by the
651 applicant for reasonable expenses incurred in providing such
652 facilities or assistance.

653 (5) No search warrant ~~order~~ entered under this section may
654 authorize or approve the interception of any wire, oral, or
655 electronic communication for any period longer than is necessary
656 to achieve the objective of the authorization or in any event
657 longer than 30 days. Such 30-day period begins on the day on
658 which the agent or officer of the law enforcement agency first
659 begins to conduct an interception under the search warrant ~~order~~
660 or 10 days after the search warrant is approved ~~order is~~
661 ~~entered~~, whichever occurs earlier. Extensions of a search
662 warrant ~~an order~~ may be granted but only upon application for an
663 extension made in accordance with subsection (1) and upon the
664 court making the findings required by subsection (3). The period
665 of extension shall be no longer than the authorizing judge deems
666 necessary to achieve the purposes for which it was granted and
667 in no event for longer than 30 days. Every search warrant ~~order~~

591-02323-19

2019210c1

668 and extension thereof shall contain a provision that the
669 authorization to intercept shall be executed as soon as
670 practicable, shall be conducted in such a way as to minimize the
671 interception of communications not otherwise subject to
672 interception under ss. 934.03-934.09, and must terminate upon
673 attainment of the authorized objective or in any event in 30
674 days. If the intercepted communication is in code or foreign
675 language and an expert in that foreign language or code is not
676 reasonably available during the interception period,
677 minimization may be accomplished as soon as practicable after
678 such interception. An interception under ss. 934.03-934.09 may
679 be conducted in whole or in part by government personnel or by
680 an individual operating under a contract with the government,
681 acting under the supervision of an agent or officer of the law
682 enforcement agency authorized to conduct the interception.

683 (6) Whenever a search warrant ~~an order~~ authorizing
684 interception is granted ~~entered~~ pursuant to ss. 934.03-934.09,
685 the search warrant ~~order~~ may require reports to be made to the
686 judge who issued the search warrant ~~order~~ showing what progress
687 has been made toward achievement of the authorized objective and
688 the need for continued interception. Such reports shall be made
689 at such intervals as the judge may require.

690 (7) Notwithstanding any other provision of this chapter,
691 any investigative or law enforcement officer specially
692 designated by the Governor, the Attorney General, the statewide
693 prosecutor, or a state attorney acting under this chapter, who
694 reasonably determines that:

695 (a) An emergency exists that:

696 1. Involves immediate danger of death or serious physical

591-02323-19

2019210c1

697 injury to any person, the danger of escape of a prisoner, or
698 conspiratorial activities threatening the security interest of
699 the nation or state; and

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

703 (b) There are grounds upon which a search warrant ~~an order~~
704 could be entered under this chapter to authorize such
705 interception

706

707 may intercept such wire, oral, or electronic communication if an
708 application for a search warrant ~~an order~~ approving the
709 interception is made in accordance with this section within 48
710 hours after the interception has occurred or begins to occur. In
711 the absence of a search warrant ~~an order~~, such interception
712 shall immediately terminate when the communication sought is
713 obtained or when the application for the search warrant ~~order~~ is
714 denied, whichever is earlier. If such application for approval
715 is denied, or in any other case in which the interception is
716 terminated without a search warrant ~~an order~~ having been issued,
717 the contents of any wire, oral, or electronic communication
718 intercepted shall be treated as having been obtained in
719 violation of s. 934.03(4), and an inventory shall be served as
720 provided for in paragraph (8)(e) on the person named in the
721 application.

722 (8)(a) The contents of any wire, oral, or electronic
723 communication intercepted by any means authorized by ss. 934.03-
724 934.09 shall, if possible, be recorded on tape or wire or other
725 comparable device. The recording of the contents of any wire,

591-02323-19

2019210c1

726 oral, or electronic communication under this subsection shall be
727 kept in such a way as will protect the recording from editing or
728 other alterations. Immediately upon the expiration of the period
729 of the search warrant order, or extensions thereof, such
730 recordings shall be made available to the judge approving the
731 search warrant ~~issuing such order~~ and sealed under his or her
732 directions. Custody of the recordings shall be wherever the
733 judge orders. They shall not be destroyed except upon an order
734 of the issuing or denying judge, or that judge's successor in
735 office, and in any event shall be kept for 10 years. Duplicate
736 recordings may be made for use or disclosure pursuant to the
737 provisions of s. 934.08(1) and (2) for investigations, or for
738 purposes of discovery as required by law.

739 (b) The presence of the seal provided for by this
740 subsection, or a satisfactory explanation for the absence
741 thereof, shall be a prerequisite for the use or disclosure of
742 the contents of any wire, oral, or electronic communication or
743 evidence derived therefrom under s. 934.08(3), as required by
744 federal law.

745 (c) Applications made and search warrants ~~orders~~ granted
746 under ss. 934.03-934.09 shall be sealed by the judge. Custody of
747 the applications and search warrants ~~orders~~ shall be wherever
748 the judge directs. As required by ~~federal~~ law, such applications
749 and search warrants ~~orders~~ shall be disclosed only for purposes
750 of discovery or upon a showing of good cause before a judge of
751 competent jurisdiction and shall not be destroyed except on
752 order of the issuing or denying judge, or that judge's successor
753 in office, and in any event shall be kept for 10 years.

754 (d) Any violation of the provisions of this subsection may

591-02323-19

2019210c1

755 be punished as contempt of the issuing or denying judge.

756 (e) Within a reasonable time but not later than 90 days
757 after the termination of the period of a search warrant ~~an order~~
758 or extensions thereof, the issuing or denying judge shall cause
759 to be served on the persons named in the search warrant ~~order~~ or
760 the application, and such other parties to intercepted
761 communications as the judge may determine in his or her
762 discretion to be in the interest of justice, an inventory which
763 shall include notice of:

764 1. The fact of the approval of the search warrant ~~entry of~~
765 ~~the order~~ or the application.

766 2. The date of the approval of the search warrant ~~entry~~ and
767 the period of authorized, approved, or disapproved interception,
768 or the denial of the application.

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

771
772 The judge, upon the filing of a motion, may make available to
773 such person or the person's counsel for inspection such portions
774 of the intercepted communications, applications, and search
775 warrants ~~orders~~ as the judge determines to be in the interest of
776 justice. On an ex parte showing of good cause to a judge of
777 competent jurisdiction, the serving of the inventory required by
778 this paragraph may be postponed.

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

591-02323-19

2019210c1

784 proceeding, has been furnished with a copy of the search warrant
785 ~~court order~~ and accompanying application under which the
786 interception was authorized or approved. This 10-day period may
787 be waived by the judge if he or she finds that it was not
788 possible to furnish the party with the above information 10 days
789 before the trial, hearing, or proceeding and that the party will
790 not be prejudiced by the delay in receiving such information.

791 (10) (a) An ~~Any~~ aggrieved person before or in any trial,
792 hearing, or proceeding in or before any court, department,
793 officer, agency, regulatory body, or other authority may move to
794 suppress the contents of any intercepted wire, oral, or
795 electronic communication, or evidence derived therefrom, on the
796 grounds that:

- 797 1. The communication was unlawfully intercepted;
- 798 2. The search warrant ~~order of authorization or approval~~
799 under which it was intercepted is insufficient on its face; or
- 800 3. The interception was not made in conformity with the
801 search warrant ~~order of authorization or approval~~.

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

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

807 2. If the motion is granted, the contents of the
808 intercepted wire or oral communication, or evidence derived
809 therefrom, shall be treated as having been obtained in violation
810 of ss. 934.03-934.09 and are not admissible as evidence.

811 3. The judge, upon the filing of such motion by the
812 aggrieved person, may make available to the aggrieved person or

591-02323-19

2019210c1

813 his or her counsel for inspection such portions of the
814 intercepted communication or evidence derived therefrom as the
815 judge determines to be in the interest of justice.

816 (c)~~(b)~~ In addition to any other right to appeal, the state
817 shall have the right to appeal from an order granting a motion
818 to suppress made under paragraph (a) or the denial of an
819 application for a search warrant ~~an order of approval~~ if the
820 attorney shall certify to the judge or other official granting
821 such motion or denying such application that the appeal is not
822 taken for purposes of delay. Such appeal shall be taken within
823 30 days after the date the order was entered and shall be
824 diligently prosecuted.

825 (d)~~(e)~~ The remedies and sanctions described in ss. 934.03-
826 934.10 with respect to the interception of electronic
827 communications are the only judicial remedies and sanctions for
828 violations of those sections involving such communications.

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

833 (a) In the case of an application with respect to the
834 interception of an oral communication:

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

838 2. The application contains a full and complete statement
839 as to why such specification is not practical and identifies the
840 person committing the offense and whose communications are to be
841 intercepted.

591-02323-19

2019210c1

842 3. The judge finds that such specification is not
843 practical.

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

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

849 2. The application identifies the person believed to be
850 committing the offense and whose communications are to be
851 intercepted and the applicant makes a showing that there is
852 probable cause to believe that the person's actions could have
853 the effect of thwarting interception from a specified facility
854 or that the person whose communications are to be intercepted
855 has removed, or is likely to remove, himself or herself to
856 another judicial circuit within the state.

857 3. The judge finds that such showing has been adequately
858 made.

859 4. The search warrant ~~order~~ authorizing or approving the
860 interception is limited to interception only for such time as it
861 is reasonable to presume that the person identified in the
862 application is or was reasonably proximate to the instrument
863 through which such communication will be or was transmitted.

864
865 ~~Consistent with this paragraph, a judge of competent~~
866 ~~jurisdiction may authorize interception within this state,~~
867 ~~whether the interception is within or outside the court's~~
868 ~~jurisdiction, if the application for the interception makes a~~
869 ~~showing that some activity or conspiracy believed to be related~~
870 ~~to, or in furtherance of, the criminal predicate for the~~

591-02323-19

2019210c1

871 ~~requested interception has occurred or will likely occur, or the~~
872 ~~communication to be intercepted or expected to be intercepted is~~
873 ~~occurring or will likely occur, in whole or in part, within the~~
874 ~~jurisdiction of the court where the order is being sought.~~

875 (12) If an interception of a communication is to be carried
876 out pursuant to subsection (11), such interception may not begin
877 until the facilities from which, or the place where, the
878 communication is to be intercepted is ascertained by the person
879 implementing the interception search warrant ~~order~~. A provider
880 of wire or electronic communications service that has received a
881 ~~an~~ search warrant ~~order~~ as provided under paragraph (11)(b) may
882 petition the court to modify or quash the search warrant ~~order~~
883 on the ground that the interception cannot be performed in a
884 timely or reasonable fashion. The court, upon notice to the
885 state, shall decide such a petition expeditiously.

886 (13) Consistent with this section, a judge of competent
887 jurisdiction may authorize interception within this state,
888 whether the interception is within or outside the court's
889 jurisdiction, if the application for the interception makes a
890 showing that some activity or conspiracy believed to be related
891 to, or in furtherance of, the criminal predicate for the
892 requested interception has occurred or will likely occur, or the
893 communication to be intercepted or expected to be intercepted is
894 occurring or will likely occur, in whole or in part, within the
895 jurisdiction of the court where the search warrant is being
896 sought.

897 Section 9. Subsection (2) of section 934.10, Florida
898 Statutes, is amended, and subsection (1) of that section is
899 republished, to read:

591-02323-19

2019210c1

900 934.10 Civil remedies.—

901 (1) Any person whose wire, oral, or electronic
 902 communication is intercepted, disclosed, or used in violation of
 903 ss. 934.03-934.09 shall have a civil cause of action against any
 904 person or entity who intercepts, discloses, or uses, or procures
 905 any other person or entity to intercept, disclose, or use, such
 906 communications and shall be entitled to recover from any such
 907 person or entity which engaged in that violation such relief as
 908 may be appropriate, including:

909 (a) Preliminary or equitable or declaratory relief as may
 910 be appropriate;

911 (b) Actual damages, but not less than liquidated damages
 912 computed at the rate of \$100 a day for each day of violation or
 913 \$1,000, whichever is higher;

914 (c) Punitive damages; and

915 (d) A reasonable attorney's fee and other litigation costs
 916 reasonably incurred.

917 (2) A good faith reliance on:

918 (a) A search warrant ~~court order, subpoena, or legislative~~
 919 ~~authorization~~ as provided in ss. 934.03-934.09;IT

920 (b) A request of an investigative or law enforcement
 921 officer under s. 934.09(7);IT or

922 (c) A good faith determination that Florida or federal law,
 923 other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the
 924 conduct complained of,

925

926 ~~shall constitutes~~ constitute a complete defense to any civil or
 927 criminal, or administrative action arising out of such conduct
 928 under the laws of this state.

591-02323-19

2019210c1

929 Section 10. Section 934.21, Florida Statutes, is amended to
930 read:

931 934.21 Unlawful access to stored communications;
932 penalties.—

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

934 (a) Intentionally accesses without authorization a facility
935 through which an electronic communication service is provided,
936 or

937 (b) Intentionally exceeds an authorization to access such
938 facility,

939

940 and thereby obtains, alters, or prevents authorized access to a
941 wire or electronic communication while it is in electronic
942 storage in such system shall be punished as provided in
943 subsection (2).

944 (2) The punishment for an offense under subsection (1) is
945 as follows:

946 (a) If the offense is committed for purposes of commercial
947 advantage, malicious destruction or damage, or private
948 commercial gain, the person ~~is~~:

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

952 2. In the case of any subsequent offense under this
953 subsection, commits ~~guilty of~~ a felony of the third degree,
954 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
955 s. 934.41.

956 (b) In any other case, the person commits ~~is guilty of~~ a
957 misdemeanor of the second degree, punishable as provided in s.

591-02323-19

2019210c1

958 775.082 or s. 775.083.

959 (3) Subsection (1) does not apply with respect to conduct
960 authorized:

961 (a) By the person or entity providing a wire, oral, or
962 electronic communications service, including through cellular
963 phones, microphone-enabled household devices, or portable
964 electronic communication devices;

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

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

970 (d) In chapter 933; or

971 (e) For accessing for a legitimate business purpose
972 information that is not personally identifiable or that has been
973 collected in a way that prevents identification of the user of
974 the device.

975 Section 11. Section 934.42, Florida Statutes, is amended to
976 read:

977 934.42 Mobile tracking device and location tracking
978 authorization.—

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

980 (a) "Mobile tracking device" means an electronic or
981 mechanical device that permits the tracking of the movement of a
982 person or an object.

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

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

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

591-02323-19

2019210c1

987 3. Acquisition of real-time precise global positioning
988 system location data.

989 (c) "Historical location data" means historical precise
990 global positioning system location data in the possession of a
991 provider.

992 (2)~~(1)~~ An investigative or law enforcement officer may make
993 application to a judge of competent jurisdiction for a search
994 warrant ~~an order~~ authorizing or approving real-time location
995 tracking or the acquisition of historical location data in the
996 possession of the provider ~~the installation and use of a mobile~~
997 ~~tracking device.~~

998 (3)~~(2)~~ An application under subsection (2) ~~(1)~~ ~~of this~~
999 ~~section~~ must include:

1000 (a) A statement of the identity of the applicant and the
1001 identity of the law enforcement agency conducting the
1002 investigation.

1003 (b) A statement setting forth a reasonable period of time
1004 that the mobile tracking device may be used or the location data
1005 may be obtained in real time, not to exceed 45 days from the
1006 date the search warrant is issued. The court may, for good
1007 cause, grant one or more extensions for a reasonable period of
1008 time, not to exceed 45 days each. When seeking historical
1009 location data, the applicant must specify a date range for the
1010 data sought ~~certification by the applicant that the information~~
1011 ~~likely to be obtained is relevant to an ongoing criminal~~
1012 ~~investigation being conducted by the investigating agency.~~

1013 (c) A statement of the offense to which the information
1014 likely to be obtained relates.

1015 (d) A statement as to whether it may be necessary to use

591-02323-19

2019210c1

1016 and monitor the mobile tracking device outside the jurisdiction
1017 of the court from which authorization is being sought.

1018 ~~(4)(3)~~ Upon application made as provided under subsection
1019 (3) (2), the court, if it finds probable cause ~~that the~~
1020 ~~certification~~ and finds that the statements required by
1021 subsection (3) (2) have been made in the application, must grant
1022 a search warrant ~~shall enter an ex parte order~~ authorizing real-
1023 time location tracking ~~the installation and use of a mobile~~
1024 ~~tracking device~~ or the acquisition of historical location data.
1025 Such search warrant ~~order~~ may authorize the location tracking
1026 ~~use of the device~~ within the jurisdiction of the court and
1027 outside that jurisdiction but within the State of Florida if the
1028 location tracking device is initiated ~~installed~~ within the
1029 jurisdiction of the court. The search warrant must command the
1030 investigative or law enforcement officer to complete any
1031 initiation of the location tracking or execution of the search
1032 warrant for historical location data authorized by the search
1033 warrant within a specified period of time not to exceed 10
1034 calendar days.

1035 ~~(5)(4)~~ A court may not require greater specificity or
1036 additional information beyond that which is required by law and
1037 this section as a requisite for issuing a search warrant ~~an~~
1038 ~~order~~.

1039 (6) Within 10 days after the time period specified in
1040 paragraph (3)(b) has ended, the investigative or law enforcement
1041 officer executing a search warrant must return the search
1042 warrant to the issuing judge. When the search warrant is
1043 authorizing the acquisition of historical location data, the
1044 investigative or law enforcement officer executing the search

591-02323-19

2019210c1

1045 warrant must return the search warrant to the issuing judge
1046 within 10 days after receipt of the records. The investigative
1047 or law enforcement officer may do so by reliable electronic
1048 means.

1049 (7) Within 10 days after the time period specified in
1050 paragraph (3)(b) has ended, the investigative or law enforcement
1051 officer executing a search warrant must serve a copy of the
1052 search warrant on the person who, or whose property, was
1053 tracked. When the search warrant is authorizing the acquisition
1054 of historical location data, the investigative or law
1055 enforcement officer executing the search warrant must serve a
1056 copy of the search warrant on the person whose data was obtained
1057 within 10 days after receipt of the records. Service may be
1058 accomplished by delivering a copy to the person who, or whose
1059 property, was tracked or data obtained or by leaving a copy at
1060 the person's residence or usual place of abode with an
1061 individual of suitable age and discretion who resides at that
1062 location and by mailing a copy to the person's last known
1063 address. Upon a showing of good cause to a court of competent
1064 jurisdiction, the court may grant one or more postponements of
1065 this notice for a period of 90 days each.

1066 (8)~~(5)~~ The standards established by Florida courts and the
1067 United States Supreme Court for the installation, use, or ~~and~~
1068 monitoring of mobile tracking devices and the acquisition of
1069 location data shall apply to the installation, use, or
1070 monitoring ~~and use~~ of any device and the acquisition of location
1071 data as authorized by this section.

1072 ~~(6) As used in this section, a "tracking device" means an~~
1073 ~~electronic or mechanical device which permits the tracking of~~

591-02323-19

2019210c1

1074 ~~the movement of a person or object.~~

1075 (9) (a) Notwithstanding any other provision of this chapter,
1076 any investigative or law enforcement officer specially
1077 designated by the Governor, the Attorney General, the statewide
1078 prosecutor, or a state attorney acting pursuant to this chapter
1079 who reasonably determines that:

1080 1. An emergency exists which:

1081 a. Involves immediate danger of death or serious physical
1082 injury to any person or the danger of escape of a prisoner; and

1083 b. Requires real-time location tracking before a search
1084 warrant authorizing such tracking can, with due diligence, be
1085 obtained; and

1086 2. There are grounds upon which a search warrant could be
1087 issued under this chapter to authorize such tracking,

1088
1089 may engage in real-time location tracking if, within 48 hours
1090 after the tracking has occurred or begins to occur, a search
1091 warrant approving the tracking is issued in accordance with this
1092 section.

1093 (b) In the absence of an authorizing search warrant, such
1094 tracking must immediately terminate when the information sought
1095 is obtained, when the application for the search warrant is
1096 denied, or when 48 hours have lapsed since the tracking began,
1097 whichever is earlier.

1098 Section 12. For the purpose of incorporating the amendments
1099 made by this act to sections 934.03 and 934.07, Florida

1100 Statutes, in a reference thereto, paragraph (b) of subsection
1101 (2) of section 934.22, Florida Statutes, is reenacted to read:

1102 934.22 Voluntary disclosure of customer communications or

591-02323-19

2019210c1

1103 records.—

1104 (2) A provider described in subsection (1) may divulge the
1105 contents of a communication:

1106 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,
1107 or s. 934.23.

1108 Section 13. For the purpose of incorporating the amendments
1109 made by this act to sections 934.09 and 934.21, Florida
1110 Statutes, in references thereto, subsections (1) and (4) of
1111 section 934.27, Florida Statutes, are reenacted to read:

1112 934.27 Civil action: relief; damages; defenses.—

1113 (1) Except as provided in s. 934.23(5), any provider of
1114 electronic communication service, or subscriber or customer
1115 thereof, aggrieved by any violation of ss. 934.21-934.28 in
1116 which the conduct constituting the violation is engaged in with
1117 a knowing or intentional state of mind may, in a civil action,
1118 recover from the person or entity which engaged in that
1119 violation such relief as is appropriate.

1120 (4) A good faith reliance on any of the following is a
1121 complete defense to any civil or criminal action brought under
1122 ss. 934.21-934.28:

1123 (a) A court warrant or order, a subpoena, or a statutory
1124 authorization, including, but not limited to, a request of an
1125 investigative or law enforcement officer to preserve records or
1126 other evidence, as provided in s. 934.23(7).

1127 (b) A request of an investigative or law enforcement
1128 officer under s. 934.09(7).

1129 (c) A good faith determination that s. 934.03(3) permitted
1130 the conduct complained of.

1131 Section 14. For the purpose of incorporating the amendment

591-02323-19

2019210c1

1132 made by this act to section 934.21, Florida Statutes, in a
1133 reference thereto, subsection (6) of section 934.23, Florida
1134 Statutes, is reenacted to read:

1135 934.23 Required disclosure of customer communications or
1136 records.—

1137 (6) No cause of action shall lie in any court against any
1138 provider of wire or electronic communication service, its
1139 officers, employees, agents, or other specified persons for
1140 providing information, facilities, or assistance in accordance
1141 with the terms of a court order, warrant, subpoena, or
1142 certification under ss. 934.21-934.28.

1143 Section 15. For the purpose of incorporating the amendment
1144 made by this act to section 934.21, Florida Statutes, in
1145 references thereto, subsections (6) and (7) of section 934.24,
1146 Florida Statutes, are reenacted to read:

1147 934.24 Backup preservation; customer notification;
1148 challenges by customer.—

1149 (6) Within 14 days after notice by the investigative or law
1150 enforcement officer to the subscriber or customer under
1151 subsection (2), the subscriber or customer may file a motion to
1152 quash the subpoena or vacate the court order seeking contents of
1153 electronic communications, with copies served upon the
1154 investigative or law enforcement officer and with written notice
1155 of such challenge to the service provider. A motion to vacate a
1156 court order must be filed in the court which issued the order. A
1157 motion to quash a subpoena must be filed in the circuit court in
1158 the circuit from which the subpoena issued. Such motion or
1159 application must contain an affidavit or sworn statement:

1160 (a) Stating that the applicant is a subscriber or customer

591-02323-19

2019210c1

1161 of the service from which the contents of electronic
1162 communications maintained for her or him have been sought, and

1163 (b) Stating the applicant's reasons for believing that the
1164 records sought are not relevant to a legitimate law enforcement
1165 inquiry or that there has not been substantial compliance with
1166 the provisions of ss. 934.21-934.28 in some other respect.

1167 (7) Except as otherwise obtained under paragraph (3) (a),
1168 service must be made under this section upon an investigative or
1169 law enforcement officer by delivering or mailing by registered
1170 or certified mail a copy of the papers to the person, office, or
1171 department specified in the notice which the subscriber or
1172 customer has received pursuant to ss. 934.21-934.28. For the
1173 purposes of this subsection, the term "delivering" shall be
1174 construed in accordance with the definition of "delivery" as
1175 provided in Rule 1.080, Florida Rules of Civil Procedure.

1176 Section 16. For the purpose of incorporating the amendment
1177 made by this act to section 934.21, Florida Statutes, in a
1178 reference thereto, subsection (5) of section 934.25, Florida
1179 Statutes, is reenacted to read:

1180 934.25 Delayed notice.—

1181 (5) Upon the expiration of the period of delay of
1182 notification under subsection (1) or subsection (4), the
1183 investigative or law enforcement officer must serve upon or
1184 deliver by registered or first-class mail to the subscriber or
1185 customer a copy of the process or request together with notice
1186 which:

1187 (a) States with reasonable specificity the nature of the
1188 law enforcement inquiry, and

1189 (b) Informs the subscriber or customer:

591-02323-19

2019210c1

1190 1. That information maintained for such subscriber or
1191 customer by the service provider named in the process or request
1192 was supplied to or requested by the investigative or law
1193 enforcement officer and the date on which such information was
1194 so supplied or requested.

1195 2. That notification of such subscriber or customer was
1196 delayed.

1197 3. What investigative or law enforcement officer or what
1198 court made the certification or determination pursuant to which
1199 that delay was made.

1200 4. Which provision of ss. 934.21-934.28 allowed such delay.

1201 Section 17. For the purpose of incorporating the amendment
1202 made by this act to section 934.21, Florida Statutes, in a
1203 reference thereto, section 934.28, Florida Statutes, is
1204 reenacted to read:

1205 934.28 Exclusivity of remedies and sanctions.—The remedies
1206 and sanctions described in ss. 934.21-934.27 are the only
1207 judicial remedies and sanctions for violation of those sections.

1208 Section 18. This act shall take effect July 1, 2019.