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

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

32 (4) To safeguard the privacy of innocent persons, the  
33 interception of wire, ~~or~~ oral, or electronic communications when  
34 none of the parties to the communication has consented to the  
35 interception should be allowed only when authorized by a court  
36 of competent jurisdiction and should remain under the control  
37 and supervision of the authorizing court. Interception of wire,  
38 ~~and~~ oral, and electronic communications should further be  
39 limited to certain major types of offenses and specific  
40 categories of crime with assurance that the interception is

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41 justified and that the information obtained thereby will not be  
42 misused.

43 (5) To safeguard the privacy of innocent persons, the  
44 Legislature recognizes that society is prepared to accept the  
45 subjective expectation of privacy in real-time cell-site  
46 location data, real-time precise global positioning system  
47 location data, historical cell-site location data, and  
48 historical precise global positioning system location data as  
49 objectively reasonable. As such, the law enforcement collection  
50 of the precise location of a person, cellular phone, or portable  
51 electronic communication device without the consent of the  
52 person or owner of the cellular phone or portable electronic  
53 communication device should be allowed only when authorized by a  
54 warrant issued by a court of competent jurisdiction and should  
55 remain under the control and supervision of the authorizing  
56 court. A warrant issued under this chapter and its associated  
57 procedures are separate and distinct from the warrant  
58 requirements outlined in chapter 933.

59 (6) The Legislature recognizes that the use of portable  
60 electronic communication devices is growing at a rapidly  
61 increasing rate. These devices can store, and encourage the  
62 storing of, an almost limitless amount of personal and private  
63 information. Often linked to the Internet, these devices are  
64 commonly used to access personal and business information and  
65 databases in computers and servers that can be located anywhere

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66 in the world. The user of a portable electronic communication  
67 device has a reasonable and justifiable expectation of privacy  
68 in the information that these devices contain.

69 (7) The Legislature recognizes that the use of household  
70 electronic devices, including microphone-enabled household  
71 devices, is growing at a rapidly increasing rate. These devices  
72 often contain microphones that listen for and respond to  
73 environmental cues. These household devices are generally  
74 connected to and communicate through the Internet, resulting in  
75 the storage of and accessibility to daily household information  
76 in a device itself or in a remote computing service. Persons  
77 should not have to choose between using household technological  
78 enhancements and conveniences or preserving the right to privacy  
79 in one's home.

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

83 934.02 Definitions.—As used in this chapter:

84 (2) "Oral communication" means any oral communication  
85 uttered by a person exhibiting an expectation that such  
86 communication is not subject to interception under circumstances  
87 justifying such expectation, including the use of a microphone-  
88 enabled household device, and does not mean any public oral  
89 communication uttered at a public meeting or any electronic  
90 communication.

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

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

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

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

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

101 (28) "Portable electronic communication device" means an  
102 object capable of being easily transported or conveyed by a  
103 person which is capable of creating, receiving, accessing,  
104 processing, or storing electronic data or communications and  
105 which communicates with, by any means, another device, entity,  
106 or individual.

107 Section 3. Section 934.21, Florida Statutes, is amended to  
108 read:

109 934.21 Unlawful access to stored communications;  
110 penalties.—

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

112 (a) Intentionally accesses without authorization a  
113 facility through which an electronic communication service is  
114 provided, or

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115 (b) Intentionally exceeds an authorization to access such  
116 facility,

117  
118 and thereby obtains, alters, or prevents authorized access to a  
119 wire or electronic communication while it is in electronic  
120 storage in such system shall be punished as provided in  
121 subsection (2).

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

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

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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  
144 communications service, including through cellular phones,  
145 portable electronic communication devices, or microphone-enabled  
146 household devices, with respect to a communication of or  
147 intended for that user; ~~or~~

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

149 (d) In chapter 933; or

150 (e) For accessing information for a legitimate business  
151 purpose, other than personal information as defined in s.  
152 501.171(g).

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

155 934.42 Real-time location tracking ~~Mobile tracking device~~  
156 ~~authorization.-~~

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

158 (a) "Mobile tracking device" means an electronic or  
159 mechanical device that permits the tracking of the movement of a  
160 person or an object.

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

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

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

165 3. Acquisition of real-time precise global positioning  
166 system location data.

167 ~~(2)(1)~~ An investigative or law enforcement officer may  
168 make application to a judge of competent jurisdiction for a  
169 warrant ~~an order~~ authorizing or approving real-time location  
170 tracking ~~the installation and use of a mobile tracking device.~~

171 ~~(3)(2)~~ An application under subsection (2) ~~(1)~~ of this  
172 ~~section~~ must include:

173 (a) A statement of the identity of the applicant and the  
174 identity of the law enforcement agency conducting the  
175 investigation.

176 (b) A statement setting forth a reasonable period of time  
177 that the mobile tracking device may be used or the location data  
178 may be obtained in real time, not to exceed 45 days from the  
179 date the warrant is issued. The court may, for good cause, grant  
180 one or more extensions for a reasonable period of time, not to  
181 exceed 45 days each ~~certification by the applicant that the~~  
182 ~~information likely to be obtained is relevant to an ongoing~~  
183 ~~criminal investigation being conducted by the investigating~~  
184 ~~agency.~~

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



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

190 ~~(4)(3)~~ Upon application made as provided under subsection  
191 (3) (2), the court, if it finds probable cause ~~that the~~  
192 ~~certification~~ and finds that the statements required by  
193 subsection (3) (2) have been made in the application, must grant  
194 a warrant shall enter an ex parte order authorizing real-time  
195 location tracking the installation and use of a mobile tracking  
196 device. Such warrant order may authorize the use of the mobile  
197 tracking device within the jurisdiction of the court and outside  
198 that jurisdiction but within the State of Florida if the mobile  
199 tracking device is installed within the jurisdiction of the  
200 court. The warrant must command the officer, or any person named  
201 in the warrant, to complete any installation authorized by the  
202 warrant within a specified period of time not to exceed 10  
203 calendar days.

204 ~~(5)(4)~~ A court may not require greater specificity or  
205 additional information beyond that which is required by law and  
206 this section as a requisite for issuing a warrant ~~an order~~.

207 (6) The officer executing the warrant for real-time  
208 location tracking must:

209 (a) Return the warrant to the issuing judge within 10 days  
210 after the time period specified in paragraph (3) (b) has ended.  
211 The officer may do so by reliable electronic means. Upon request

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212 and a showing of good cause, the court may seal any court  
213 filings associated with the warrant.

214 (b) Serve notice on the person who, or whose property, was  
215 tracked within a reasonable time but not later than 90 days  
216 after the time period specified in paragraph (3)(b) has ended.  
217 Such notice must include the fact and date of the warrant's  
218 issuance and the period of tracking. Service may be accomplished  
219 by delivering such notice to the person who, or whose property,  
220 was tracked or by leaving a copy at the person's residence or  
221 usual place of abode with an individual of suitable age and  
222 discretion who resides at that location or by mailing a copy to  
223 the person's last known address. Upon an ex parte showing of  
224 good cause to a court of competent jurisdiction, the court may  
225 postpone notice.

226 (7)(5) The standards established by Florida courts and the  
227 United States Supreme Court for the installation, use, or ~~and~~  
228 monitoring of mobile tracking devices and the acquisition of  
229 location data shall apply to the installation, use, or  
230 monitoring ~~and use~~ of any device and the acquisition of location  
231 data as authorized by this section.

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

235 (8) (a) Notwithstanding any other provision of this  
236 chapter, any investigative or law enforcement officer specially

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237 designated by the Governor, the Attorney General, the statewide  
238 prosecutor, or a state attorney acting pursuant to this chapter  
239 may engage in real-time location tracking if he or she  
240 reasonably determines that:

241 1. An emergency exists which requires real-time location  
242 tracking before a warrant authorizing such tracking can, with  
243 due diligence, be obtained, and which involves:

244 a. Immediate danger of death or serious physical injury to  
245 any person;

246 b. The danger of prisoner escape;

247 c. A missing person at risk of death or serious physical  
248 harm; or

249 d. A call for emergency services from a cellular  
250 telephone; and

251 2. There are grounds upon which a warrant could be issued  
252 under this chapter to authorize such tracking, which for  
253 purposes of this subsection may include probable cause of an  
254 emergency described in subparagraph 1.

255 (b) A provider shall provide, without delay, real-time  
256 cell-site location data or real-time precise global positioning  
257 system location data to a person acting in his or her official  
258 capacity under this subsection.

259 (c) A warrant authorizing tracking under this subsection  
260 must be issued within 48 hours of the tracking occurring or  
261 beginning to occur and follow all other procedures outlined in

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262 this chapter. In the absence of an authorizing warrant, such  
263 tracking must immediately terminate when the information sought  
264 is obtained, when the application for the warrant is denied, or  
265 when 48 hours have lapsed since the tracking began, whichever is  
266 earlier.

267 Section 5. Section 934.44, Florida Statutes, is created to  
268 read:

269 934.44 Historical location data acquisition.—

270 (1) As used in this section, the term "historical location  
271 data" means:

272 (a) Historical cell-site location data in the possession  
273 of a provider.

274 (b) Historical precise global positioning system location  
275 data in the possession of a provider.

276 (2) An investigative or law enforcement officer may make  
277 application to a judge of competent jurisdiction for a warrant  
278 authorizing or approving the acquisition of historical location  
279 data. Such application must include:

280 (a) A statement of the identity of the applicant and the  
281 identity of the law enforcement agency conducting the  
282 investigation.

283 (b) A specific date range for the data sought.

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

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286 (3) Upon application made under subsection (2), the court,  
287 if it finds probable cause and finds that the statements  
288 required by subsection (2) have been made in the application,  
289 must grant a warrant authorizing the acquisition of historical  
290 location data.

291 (4) A court may not require greater specificity or  
292 additional information beyond that which is required by law and  
293 this section as a requisite for issuing a warrant.

294 (5) The officer executing the warrant for acquisition of  
295 historical location data must:

296 (a) Return the warrant to the issuing judge within 10 days  
297 after receipt of the records. The officer may do so by reliable  
298 electronic means. Upon request and a showing of good cause, the  
299 court may seal any court filings associated with the warrant.

300 (b) Serve notice on the person whose data was obtained  
301 within a reasonable time but not later than 90 days after  
302 receipt of the records. Such notice must include the fact and  
303 date of the warrant's issuance and the timeframe for which  
304 historical location data was obtained. Service may be  
305 accomplished by delivering the notice to the person whose data  
306 was obtained or by leaving a copy at the person's residence or  
307 usual place of abode with an individual of suitable age and  
308 discretion who resides at that location or by mailing a copy to  
309 the person's last known address. Upon an ex parte showing of

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310 good cause to a court of competent jurisdiction, the court may  
311 postpone notice.

312 (6) The standards established by the courts of this state  
313 and the United States Supreme Court for the acquisition of  
314 historical location data shall apply to such acquisition as  
315 authorized by this section.

316 Section 6. This act shall take effect July 1, 2020.

317

318

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**T I T L E A M E N D M E N T**

319 Remove everything before the enacting clause and insert:  
320 An act relating to searches of cellular phones and other  
321 electronic devices; amending s. 934.01, F.S.; revising and  
322 providing legislative findings; amending s. 934.02, F.S.;  
323 redefining the term "oral communication"; defining the terms  
324 "microphone-enabled household device" and "portable electronic  
325 communication device"; amending s. 934.21, F.S.; revising the  
326 exceptions to conduct that constitutes unlawful access to stored  
327 communications; conforming a provision to changes made by the  
328 act; amending s. 934.42, F.S.; defining the terms "mobile  
329 tracking device" and "real-time location tracking"; authorizing  
330 an investigative or law enforcement officer to apply to a judge  
331 of competent jurisdiction for a warrant, rather than an order,  
332 authorizing real-time location tracking; requiring an  
333 application for a warrant to include a statement of a reasonable  
334

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335 | period of time that the mobile tracking device may be used or  
336 | the location data may be obtained in real time, not to exceed a  
337 | specified limit; authorizing a court to grant extensions that do  
338 | not individually exceed a specified limit, for good cause;  
339 | deleting a provision requiring a certification to be included in  
340 | the application; providing that the court, if it finds probable  
341 | cause and finds the required statements in the application, must  
342 | grant a warrant; specifying the warrant may authorize real-time  
343 | location tracking; providing the warrant may authorize the use  
344 | of the mobile tracking device as specified; requiring the  
345 | warrant to command the officer or any person named in the  
346 | warrant to complete any installation authorized by the warrant  
347 | within a certain timeframe; providing requirements for the  
348 | return of the warrant to the judge and notice to the person who  
349 | was tracked or whose property was tracked; authorizing a court,  
350 | for good cause, to postpone notice; requiring that the standards  
351 | established by Florida courts for the installation, use, or  
352 | monitoring of mobile tracking devices and the acquisition of  
353 | location data apply to the installation, use, or monitoring of  
354 | any devices and the acquisition of location data as authorized;  
355 | deleting the definition of "tracking device"; authorizing any  
356 | investigative or law enforcement officer who is specially  
357 | designated by certain persons and who makes specified  
358 | determinations to engage in real-time location tracking if a  
359 | warrant is later obtained as specified; providing requirements

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360 for engaging in real-time location tracking; specifying when  
361 real-time location tracking must terminate; creating s. 934.44,  
362 F.S.; defining the term "historical location data"; providing  
363 that a court, if it finds probable cause and finds the required  
364 statements in the application, must grant a warrant for  
365 acquisition of historical location data; specifying that a  
366 warrant may authorize acquisition of historical location data;  
367 providing requirements for the return of the warrant and notice  
368 to the person whose data was obtained; specifying how a warrant  
369 authorizing the acquisition of historical location data must be  
370 returned; authorizing a court, for good cause, to postpone  
371 notice; requiring that the standards established by Florida  
372 courts and the United States Supreme Court for the acquisition  
373 of historical location data apply to such acquisition as  
374 authorized; providing an effective date.