

By Senator Brandes

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1                   A bill to be entitled  
2       An act relating to searches of cellular phones and  
3       other electronic devices; amending s. 933.02, F.S.;  
4       expanding the grounds for issuance of a search warrant  
5       to include content held within a cellular phone,  
6       portable electronic communication device, or  
7       microphone-enabled household device when such content  
8       constitutes 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      terms "oral communication" and "electronic  
16      communication"; defining the terms "microphone-enabled  
17      household device" and "portable electronic  
18      communication device"; amending s. 934.03, F.S.;  
19      authorizing specified persons to provide information,  
20      facilities, or technical assistance to a person  
21      authorized by law to intercept wire, oral, or  
22      electronic communications if such person has been  
23      provided with a search warrant issued by a judge of  
24      competent jurisdiction; prohibiting specified persons  
25      from disclosing the existence of any interception of a  
26      wire, oral, or electronic communication with respect  
27      to which the person has been served with a search  
28      warrant, rather than a court order; amending s.  
29      934.06, F.S.; prohibiting the use of certain

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30 communication content obtained without a search  
31 warrant supported by probable cause in any trial,  
32 hearing, or other proceeding; providing an exception;  
33 amending s. 934.07, F.S.; authorizing a judge to issue  
34 a search warrant, rather than grant a court order, in  
35 conformity with specified provisions; authorizing the  
36 Department of Law Enforcement to request a law  
37 enforcement agency that provided certain information  
38 to join the department in seeking a new search  
39 warrant; amending s. 934.09, F.S.; requiring that each  
40 application for a search warrant, rather than an  
41 order, authorizing or approving the interception of  
42 wire, oral, or electronic communications be made in  
43 writing and state the applicant's authority; revising  
44 the required information that each application for a  
45 search warrant must include; authorizing a judge,  
46 under certain circumstances, to authorize a search  
47 warrant ex parte, rather than an ex parte order, based  
48 on the application; specifying requirements for such  
49 search warrants; authorizing an aggrieved person to  
50 move to suppress the contents of certain wire, oral,  
51 or electronic communications before, as well as  
52 during, a 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, rather than a court order, subpoena,

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

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88 acquisition of historical location data; providing  
89 that the search warrant may authorize specified  
90 location tracking; requiring the search warrant to  
91 command the investigative or law enforcement officer  
92 to complete any initiation of the location tracking or  
93 execution of the search warrant for historical  
94 location data authorized by the search warrant within  
95 a certain timeframe; providing requirements for the  
96 return of the search warrant to the judge and for  
97 service of a copy of the search warrant on the person  
98 who was tracked or whose property was tracked;  
99 providing requirements for returning and serving a  
100 search warrant authorizing the acquisition of  
101 historical location data; authorizing a court, for  
102 good cause, to postpone the notice requirement for a  
103 specified period of time; requiring that the standards  
104 established by Florida courts for the installation,  
105 use, or monitoring of mobile tracking devices and the  
106 acquisition of location data apply to the  
107 installation, use, or monitoring of any device and the  
108 acquisition of location data as authorized by certain  
109 provisions; deleting the definition of the term  
110 "tracking device"; authorizing any investigative or  
111 law enforcement officer who is specially designated by  
112 certain persons and who makes specified determinations  
113 to engage in real-time location tracking if a search  
114 warrant is obtained, as specified, after the tracking  
115 has occurred or begins to occur; specifying when real-  
116 time location tracking must terminate; reenacting s.

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117 934.22(2)(b), F.S., relating to voluntary disclosure  
118 of customer communications or records, to incorporate  
119 the amendments made to ss. 934.03 and 934.07, F.S., in  
120 references thereto; reenacting s. 934.27(1) and (4),  
121 F.S., relating to relief, damages, and defenses for  
122 certain civil actions, to incorporate the amendments  
123 made to ss. 934.09 and 934.21, F.S., in references  
124 thereto; reenacting ss. 934.23(6), 934.24(6) and (7),  
125 934.25(5), and 934.28, F.S., relating to required  
126 disclosures of customer communications or records, a  
127 subscriber or customer filing a motion for certain  
128 relief and customer notification, delayed notice, and  
129 the exclusivity of remedies and sanctions for certain  
130 violations, respectively, to incorporate the amendment  
131 made to s. 934.21, F.S., in references thereto;  
132 providing an effective date.  
133

134 Be It Enacted by the Legislature of the State of Florida:  
135

136 Section 1. Section 933.02, Florida Statutes, is amended to  
137 read:

138 933.02 Grounds for issuance of search warrant.—Upon proper  
139 affidavits being made, a search warrant may be issued under ~~the~~  
140 ~~provisions of~~ this chapter upon any of the following grounds:

141 (1) When the property shall have been stolen or embezzled  
142 in violation of law.†

143 (2) When any property shall have been used:

144 (a) As a means to commit any crime;

145 (b) In connection with gambling, gambling implements and

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146 appliances; or

147 (c) In violation of s. 847.011 or other laws in reference  
 148 to obscene prints and literature.~~†~~

149 (3) When any property, or when content held within a  
 150 cellular phone, a portable electronic communication device as  
 151 defined in s. 934.02(28), or a microphone-enabled household  
 152 device as defined in s. 934.02(27), constitutes evidence  
 153 relevant to proving that a felony has been committed.~~†~~

154 (4) When any property is being held or possessed:

155 (a) In violation of any of the laws prohibiting the  
 156 manufacture, sale, and transportation of intoxicating liquors;

157 (b) In violation of the fish and game laws;

158 (c) In violation of the laws relative to food and drug; or

159 (d) In violation of the laws relative to citrus disease  
 160 pursuant to s. 581.184.~~†~~~~or~~

161 (5) When the laws in relation to cruelty to animals, as  
 162 provided in chapter 828, have been or are violated in any  
 163 particular building or place.

164

165 This section also applies to any papers or documents used as a  
 166 means of or in aid of the commission of any offense against the  
 167 laws of the state.

168 Section 2. Section 933.04, Florida Statutes, is amended to  
 169 read:

170 933.04 Affidavits.—The right of the people to be secure in  
 171 their persons, houses, papers, and effects against unreasonable  
 172 seizures and searches and against the unreasonable interception  
 173 of private communications by any means may ~~shall~~ not be violated  
 174 and a ~~no~~ search warrant may not ~~shall~~ be issued except upon

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175 probable cause, supported by oath or affirmation particularly  
176 describing the place to be searched and the person and thing to  
177 be seized.

178 Section 3. Section 934.01, Florida Statutes, is amended to  
179 read:

180 934.01 Legislative findings.—On the basis of its own  
181 investigations and of published studies, the Legislature makes  
182 the following findings:

183 (1) Wire communications are normally conducted through the  
184 use of facilities which form part of an intrastate network. The  
185 same facilities are used for interstate and intrastate  
186 communications.

187 (2) In order to protect effectively the privacy of wire,  
188 ~~and oral,~~ and electronic communications, to protect the  
189 integrity of court and administrative proceedings, and to  
190 prevent the obstruction of intrastate commerce, it is necessary  
191 for the Legislature to define the circumstances and conditions  
192 under which the interception of wire, ~~and oral,~~ and electronic  
193 communications may be authorized and to prohibit any  
194 unauthorized interception of such communications and the use of  
195 the contents thereof in evidence in courts and administrative  
196 proceedings.

197 (3) Organized criminals make extensive use of wire, ~~and~~  
198 oral, and electronic communications in their criminal  
199 activities. The interception of such communications to obtain  
200 evidence of the commission of crimes or to prevent their  
201 commission is an indispensable aid to law enforcement and the  
202 administration of justice.

203 (4) To safeguard the privacy of innocent persons, the

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204 interception of wire, ~~or~~ oral, or electronic communications when  
205 none of the parties to the communication has consented to the  
206 interception should be allowed only when authorized by a court  
207 of competent jurisdiction and should remain under the control  
208 and supervision of the authorizing court. Interception of wire,  
209 ~~and~~ oral, and electronic communications should further be  
210 limited to certain major types of offenses and specific  
211 categories of crime with assurance that the interception is  
212 justified and that the information obtained thereby will not be  
213 misused.

214 (5) To safeguard the privacy of innocent persons, the  
215 Legislature recognizes the subjective expectation of privacy in  
216 real-time cell-site location data, real-time precise global  
217 positioning system location data, and historical precise global  
218 positioning system location data, which society is now prepared  
219 to accept is objectively reasonable. As such, the law  
220 enforcement collection of the precise location of a person,  
221 cellular phone, or portable electronic communication device  
222 without the consent of the person or owner of the cellular phone  
223 or portable electronic communication device should be allowed  
224 only when authorized by a search warrant issued by a court of  
225 competent jurisdiction and should remain under the control and  
226 supervision of the authorizing court.

227 (6) The Legislature recognizes that the use of portable  
228 electronic communication devices is growing at a rapidly  
229 increasing rate. These devices can store, and encourage the  
230 storing of, an almost limitless amount of personal and private  
231 information. Often linked to the Internet, these devices are  
232 commonly used to access personal and business information and



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233 databases in computers and servers that can be located anywhere  
234 in the world. The user of a portable electronic communication  
235 device has a reasonable and justifiable expectation of privacy  
236 in the information that these devices contain.

237 (7) The Legislature recognizes that the use of household  
238 electronic devices, including microphone-enabled household  
239 devices, is growing rapidly. These devices often contain  
240 microphones that listen for and respond to environmental cues.  
241 These household devices are generally connected to and  
242 communicate through the Internet, resulting in the storage of  
243 and accessibility to daily household information in the device  
244 itself or at a remote computing service. Persons should not have  
245 to choose between using household technological enhancements and  
246 conveniences or preserving the right to privacy in their own  
247 homes.

248 Section 4. Subsections (2) and (12) of section 934.02,  
249 Florida Statutes, are amended, and subsections (27) and (28) are  
250 added to that section, to read:

251 934.02 Definitions.—As used in this chapter:

252 (2) "Oral communication" means any oral communication  
253 uttered by a person exhibiting an expectation that such  
254 communication is not subject to interception under circumstances  
255 justifying such expectation, including the use of a microphone-  
256 enabled household device, and does not mean any public oral  
257 communication uttered at a public meeting or any electronic  
258 communication.

259 (12) "Electronic communication" means any transfer of  
260 signs, signals, writing, images, sounds, data, or intelligence  
261 of any nature transmitted in whole or in part by a wire, a

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262 radio, a communication tower, a satellite, or an  
263 electromagnetic, a photoelectronic, or a photooptical system  
264 which ~~that~~ affects intrastate, interstate, or foreign commerce,  
265 but does not include:

- 266 (a) Any wire or oral communication;
- 267 (b) Any communication made through a tone-only paging  
268 device; or
- 269 ~~(c) Any communication from an electronic or mechanical~~  
270 ~~device which permits the tracking of the movement of a person or~~  
271 ~~an object; or~~
- 272 ~~(d) Electronic funds transfer information stored by a~~  
273 ~~financial institution in a communications system used for the~~  
274 ~~electronic storage and transfer of funds.~~

275 (27) "Microphone-enabled household device" means a device,  
276 a sensor, or another physical object within a residence which:

- 277 (a) Is capable of connecting to the Internet, directly or  
278 indirectly, or to another connected device;
- 279 (b) Is capable of creating, receiving, accessing,  
280 processing, or storing electronic data or communications;
- 281 (c) Communicates with, by any means, another device,  
282 entity, or individual; and
- 283 (d) Contains a microphone designed to listen for and  
284 respond to environmental cues.

285 (28) "Portable electronic communication device" means an  
286 object that may be easily transported or conveyed by a person;  
287 is capable of creating, receiving, accessing, processing, or  
288 storing electronic data or communications; and communicates  
289 with, by any means, another device, entity, or individual.

290 Section 5. Subsection (2) of section 934.03, Florida

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291 Statutes, is amended to read:

292 934.03 Interception and disclosure of wire, oral, or  
293 electronic communications prohibited.-

294 (2) (a) 1. It is lawful under this section and ss. 934.04-  
295 934.09 for an operator of a switchboard, or an officer,  
296 employee, or agent of a provider of wire or electronic  
297 communication service whose facilities are used in the  
298 transmission of a wire or electronic communication, to  
299 intercept, disclose, or use that communication in the normal  
300 course of his or her employment while engaged in any activity  
301 which is a necessary incident to the rendition of his or her  
302 service or to the protection of the rights or property of the  
303 provider of that service, except that a provider of wire  
304 communication service to the public may not use ~~shall not~~  
305 ~~utilize~~ service observing or random monitoring except for  
306 mechanical or service quality control checks.

307 2. Notwithstanding any other law, a provider of wire, oral,  
308 or electronic communication service, or an officer, employee, or  
309 agent thereof, or landlord, custodian, or other person, may  
310 provide information, facilities, or technical assistance to a  
311 person authorized by law to intercept wire, oral, or electronic  
312 communications if such provider, or an officer, employee, or  
313 agent thereof, or landlord, custodian, or other person, has been  
314 provided with:

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

317 ~~b.~~ A certification in writing by a person specified in s.  
318 934.09(7) that a search ~~no~~ warrant or court order is not  
319 required by law, that all statutory requirements have been met,

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320 and that the specified assistance is required, setting forth the  
321 period of time during which the provision of the information,  
322 facilities, or technical assistance is authorized and specifying  
323 the information, facilities, or technical assistance required;  
324 or

325 b. A search warrant issued by a judge of competent  
326 jurisdiction as required by law.

327 3. A provider of wire, oral, or electronic communication  
328 service, or an officer, employee, or agent thereof, or landlord,  
329 custodian, or other person may not disclose the existence of any  
330 interception or the device used to accomplish the interception  
331 with respect to which the person has been served with a search  
332 warrant ~~furnished an order under this section and ss. 934.04-~~  
333 ~~934.09~~, except as may otherwise be required by legal process and  
334 then only after prior notice to the Governor, the Attorney  
335 General, the statewide prosecutor, or a state attorney, as may  
336 be appropriate. Any such disclosure renders such person liable  
337 for the civil damages provided under s. 934.10, and such person  
338 may be prosecuted under s. 934.43. An action may not be brought  
339 against any provider of wire, oral, or electronic communication  
340 service, or an officer, employee, or agent thereof, or landlord,  
341 custodian, or other person for providing information,  
342 facilities, or assistance in accordance with the terms of a  
343 search warrant ~~court order under this section and ss. 934.04-~~  
344 ~~934.09~~.

345 (b) It is lawful under this section and ss. 934.04-934.09  
346 for an officer, employee, or agent of the Federal Communications  
347 Commission, in the normal course of his or her employment and in  
348 discharge of the monitoring responsibilities exercised by the

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349 commission in the enforcement of 47 U.S.C. chapter 5, to  
350 intercept a wire, oral, or electronic communication transmitted  
351 by radio or to disclose or use the information thereby obtained.

352 (c) It is lawful under this section and ss. 934.04-934.09  
353 for an investigative or law enforcement officer or a person  
354 acting under the direction of an investigative or law  
355 enforcement officer to intercept a wire, oral, or electronic  
356 communication when such person is a party to the communication  
357 or one of the parties to the communication has given prior  
358 consent to such interception and the purpose of such  
359 interception is to obtain evidence of a criminal act.

360 (d) It is lawful under this section and ss. 934.04-934.09  
361 for a person to intercept a wire, oral, or electronic  
362 communication when all of the parties to the communication have  
363 given prior consent to such interception.

364 (e) It is unlawful to intercept any wire, oral, or  
365 electronic communication for the purpose of committing any  
366 criminal act.

367 (f) It is lawful under this section and ss. 934.04-934.09  
368 for an employee of a telephone company to intercept a wire  
369 communication for the sole purpose of tracing the origin of such  
370 communication when the interception is requested by the  
371 recipient of the communication and the recipient alleges that  
372 the communication is obscene, harassing, or threatening in  
373 nature. The individual conducting the interception shall notify  
374 local police authorities within 48 hours after the time of the  
375 interception.

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

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- 378 1. An ambulance service licensed pursuant to s. 401.25, a  
379 fire station employing firefighters as defined by s. 633.102, a  
380 public utility, a law enforcement agency as defined by s.  
381 934.02(10), or any other entity with published emergency  
382 telephone numbers;
- 383 2. An agency operating an emergency telephone number "911"  
384 system established pursuant to s. 365.171; or
- 385 3. The central abuse hotline operated under s. 39.101  
386
- 387 to intercept and record incoming wire communications; however,  
388 such employee may intercept and record incoming wire  
389 communications on designated "911" telephone numbers and  
390 published nonemergency telephone numbers staffed by trained  
391 dispatchers at public safety answering points only. It is also  
392 lawful for such employee to intercept and record outgoing wire  
393 communications to the numbers from which such incoming wire  
394 communications were placed when necessary to obtain information  
395 required to provide the emergency services being requested. For  
396 the purpose of this paragraph, the term "public utility" has the  
397 same meaning as provided in s. 366.02 and includes a person,  
398 partnership, association, or corporation now or hereafter owning  
399 or operating equipment or facilities in the state for conveying  
400 or transmitting messages or communications by telephone or  
401 telegraph to the public for compensation.
- 402 (h) It is lawful ~~shall not be unlawful~~ under this section  
403 and ss. 934.04-934.09 for any person:
- 404 1. To intercept or access an electronic communication made  
405 through an electronic communication system that is configured so  
406 that such electronic communication is readily accessible to the

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407 general public.

408 2. To intercept any radio communication that ~~which~~ is  
409 transmitted:

410 a. By any station for the use of the general public, or  
411 that relates to ships, aircraft, vehicles, or persons in  
412 distress;

413 b. By any governmental, law enforcement, civil defense,  
414 private land mobile, or public safety communications system,  
415 including any police or fire communications system, readily  
416 accessible to the general public;

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

420 d. By any marine or aeronautical communications system.

421 3. To engage in any conduct that ~~which~~:

422 a. Is prohibited by s. 633 of the Communications Act of  
423 1934; or

424 b. Is excepted from the application of s. 705(a) of the  
425 Communications Act of 1934 by s. 705(b) of that act.

426 4. To intercept any wire or electronic communication the  
427 transmission of which is causing harmful interference to any  
428 lawfully operating station of consumer electronic equipment to  
429 the extent necessary to identify the source of such  
430 interference.

431 5. To intercept, if such person is another user of the same  
432 frequency, any radio communication that is not scrambled or  
433 encrypted made through a system that utilizes frequencies  
434 monitored by individuals engaged in the provision or the use of  
435 such system.

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436           6. To intercept a satellite transmission that is not  
437 scrambled or encrypted and that is transmitted:

438           a. To a broadcasting station for purposes of retransmission  
439 to the general public; or

440           b. As an audio subcarrier intended for redistribution to  
441 facilities open to the public, but not including data  
442 transmissions or telephone calls, when such interception is not  
443 for the purposes of direct or indirect commercial advantage or  
444 private financial gain.

445           7. To intercept and privately view a private satellite  
446 video communication that is not scrambled or encrypted or to  
447 intercept a radio communication that is transmitted on  
448 frequencies allocated under subpart D of part 74 of the rules of  
449 the Federal Communications Commission that is not scrambled or  
450 encrypted, if such interception is not for a tortious or illegal  
451 purpose or for purposes of direct or indirect commercial  
452 advantage or private commercial gain.

453           (i) It is lawful ~~shall not be unlawful~~ under this section  
454 and ss. 934.04-934.09:

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

457           2. For a provider of electronic communication service to  
458 record the fact that a wire or electronic communication was  
459 initiated or completed in order to protect such provider,  
460 another provider furnishing service toward the completion of the  
461 wire or electronic communication, or a user of that service,  
462 from fraudulent, unlawful, or abusive use of such service.

463           (j) It is lawful ~~not unlawful~~ under this section and ss.  
464 934.04-934.09 for a person acting under color of law to



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465 intercept the wire or electronic communications of a computer  
466 trespasser which are transmitted to, through, or from a  
467 protected computer if:

468 1. The owner or operator of the protected computer  
469 authorizes the interception of the communications of the  
470 computer trespasser;

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

473 3. The person acting under color of law has reasonable  
474 grounds to believe that the contents of the communications of  
475 the computer trespasser will be relevant to the investigation;  
476 and

477 4. The interception does not acquire communications other  
478 than those transmitted to, through, or from the computer  
479 trespasser.

480 (k) It is lawful under this section and ss. 934.04-934.09  
481 for a child under 18 years of age to intercept and record an  
482 oral communication if the child is a party to the communication  
483 and has reasonable grounds to believe that recording the  
484 communication will capture a statement by another party to the  
485 communication that the other party intends to commit, is  
486 committing, or has committed an unlawful sexual act or an  
487 unlawful act of physical force or violence against the child.

488 (l) It is lawful under this section and ss. 934.04-934.09  
489 for a person who is protected under an active temporary or final  
490 injunction for repeat violence, sexual violence, or dating  
491 violence under s. 784.046; stalking under s. 784.0485; domestic  
492 violence under s. 741.30; or any other court-imposed prohibition  
493 of conduct toward the person to intercept and record a wire,

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494 oral, or electronic communication received in violation of such  
495 injunction or court order. A recording authorized under this  
496 paragraph may be provided to a law enforcement agency, an  
497 attorney, or a court for the purpose of evidencing a violation  
498 of an injunction or court order if the subject of the injunction  
499 or court order prohibiting contact has been served the  
500 injunction or is on notice that the conduct is prohibited. A  
501 recording authorized under this paragraph may not be otherwise  
502 disseminated or shared.

503 Section 6. Section 934.06, Florida Statutes, is amended to  
504 read:

505 934.06 Prohibition of use as evidence of intercepted wire  
506 or oral communications; content of cellular phone, microphone-  
507 enabled household device, or portable electronic communication  
508 device; exceptions ~~exception~~.—Whenever any wire or oral  
509 communication has been intercepted, or when the content of a  
510 cellular phone, microphone-enabled household device, or portable  
511 electronic communication device is obtained without a search  
512 warrant supported by probable cause, no part of the contents of  
513 such communication or content and no evidence derived therefrom  
514 may be received in evidence in any trial, hearing, or other  
515 proceeding in or before any court, grand jury, department,  
516 officer, agency, regulatory body, legislative committee, or  
517 other authority of the state, or a political subdivision  
518 thereof, if the disclosure of that information would be in  
519 violation of this chapter. The prohibition of use as evidence  
520 provided in this section does not apply in cases of prosecution  
521 for criminal interception in violation of ~~the provisions of this~~  
522 chapter, or in cases in which the content of a cellular phone,

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523 microphone-enabled household device, or portable electronic  
524 communication device is lawfully obtained under circumstances in  
525 which a search warrant is not required.

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

528 934.07 Authorization for interception of wire, oral, or  
529 electronic communications.—

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

536 (a) The Department of Law Enforcement or any law  
537 enforcement agency as defined in s. 934.02 having responsibility  
538 for the investigation of the offense as to which the application  
539 is made when such interception may provide or has provided  
540 evidence of the commission of the offense of murder, kidnapping,  
541 aircraft piracy, arson, gambling, robbery, burglary, theft,  
542 dealing in stolen property, criminal usury, bribery, or  
543 extortion; any felony violation of ss. 790.161-790.166,  
544 inclusive; any violation of s. 787.06; any violation of chapter  
545 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing  
546 Act; any violation of chapter 895; any violation of chapter 896;  
547 any violation of chapter 815; any violation of chapter 847; any  
548 violation of s. 827.071; any violation of s. 944.40; or any  
549 conspiracy or solicitation to commit any violation of the laws  
550 of this state relating to the crimes specifically enumerated in  
551 this paragraph.

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552 (b) The Department of Law Enforcement, together with other  
553 assisting personnel as authorized and requested by the  
554 department under s. 934.09(5), for the investigation of the  
555 offense as to which the application is made when such  
556 interception may provide or has provided evidence of the  
557 commission of any offense that may be an act of terrorism or in  
558 furtherance of an act of terrorism or evidence of any conspiracy  
559 or solicitation to commit any such violation.

560 (2) (a) If, during the course of an interception of  
561 communications by a law enforcement agency as authorized under  
562 paragraph (1) (a), the law enforcement agency finds that the  
563 intercepted communications may provide or have provided evidence  
564 of the commission of any offense that may be an act of terrorism  
565 or in furtherance of an act of terrorism, or evidence of any  
566 conspiracy or solicitation to commit any such violation, the law  
567 enforcement agency shall promptly notify the Department of Law  
568 Enforcement and apprise the department of the contents of the  
569 intercepted communications. The agency notifying the department  
570 may continue its previously authorized interception with  
571 appropriate minimization, as applicable, and may otherwise  
572 assist the department as provided in this section.

573 (b) Upon its receipt of information of the contents of an  
574 intercepted communications from a law enforcement agency, the  
575 Department of Law Enforcement shall promptly review the  
576 information to determine whether the information relates to an  
577 actual or anticipated act of terrorism as defined in this  
578 section. If, after reviewing the contents of the intercepted  
579 communications, there is probable cause that the contents of the  
580 intercepted communications meet the criteria of paragraph

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581 (1) (b), the Department of Law Enforcement may make application  
582 for the interception of wire, oral, or electronic communications  
583 consistent with paragraph (1) (b). The department may make an  
584 independent new application for interception based on the  
585 contents of the intercepted communications. Alternatively, the  
586 department may request the law enforcement agency that provided  
587 the information to join with the department in seeking a new  
588 search warrant as required by law or an amendment of the  
589 original interception search warrant ~~order~~, or may seek  
590 additional authority to continue intercepting communications  
591 under the direction of the department. In carrying out its  
592 duties under this section, the department may use the provisions  
593 for an emergency interception provided in s. 934.09(7) if  
594 applicable under statutory criteria.

595 Section 8. Section 934.09, Florida Statutes, is amended to  
596 read:

597 934.09 Procedure for interception of wire, oral, or  
598 electronic communications.—

599 (1) Each application for a search warrant ~~an order~~  
600 authorizing or approving the interception of a wire, oral, or  
601 electronic communication under ss. 934.03-934.09 shall be made  
602 in writing upon oath or affirmation to a judge of competent  
603 jurisdiction and shall state the applicant's authority to make  
604 such application. Each application shall include the following  
605 information:

606 (a) The identity of the investigative or law enforcement  
607 officer making the application and the officer authorizing the  
608 application.

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

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

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

615 2. Except as provided in subsection (11), a particular  
616 description of the nature and location of the facilities from  
617 which, or the place where, the communications are to be  
618 intercepted.

619 3. A particular description of the type of communications  
620 sought to be intercepted.

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

623 (c) A full and complete statement as to whether or not  
624 other investigative procedures have been tried and failed or why  
625 they reasonably appear to be unlikely to succeed if tried or to  
626 be too dangerous.

627 (d) A statement of the period of time for which the  
628 interception is required to be maintained and, if the nature of  
629 the investigation is such that the authorization for  
630 interception should not automatically terminate when the  
631 described type of communication has been first obtained, a  
632 particular description of facts establishing probable cause to  
633 believe that additional communications of the same type will  
634 occur thereafter.

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

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

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

646 (2) The judge may require the applicant to furnish  
647 additional testimony or documentary evidence in support of the  
648 application.

649 (3) Upon such application, the judge may authorize a search  
650 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,  
651 authorizing or approving interception of wire, oral, or  
652 electronic communications within the territorial jurisdiction of  
653 the court in which the judge is sitting, and outside such  
654 jurisdiction but within the State of Florida in the case of a  
655 mobile interception device authorized by the judge within such  
656 jurisdiction, if the judge determines on the basis of the facts  
657 submitted by the applicant that:

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

661 (b) There is probable cause for belief that particular  
662 communications concerning that offense will be obtained through  
663 such interception.

664 (c) Normal investigative procedures have been tried and  
665 have failed or reasonably appear to be unlikely to succeed if  
666 tried or to be too dangerous.

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

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668 probable cause for belief that the facilities from which, or the  
669 place where, the wire, oral, or electronic communications are to  
670 be intercepted are being used, or are about to be used, in  
671 connection with the commission of such offense, or are leased  
672 to, listed in the name of, or commonly used by such person.

673 (4) Each search warrant ~~order~~ authorizing or approving the  
674 interception of any wire, oral, or electronic communication  
675 shall specify:

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

678 (b) The nature and location of the communications  
679 facilities as to which, or the place where, authority to  
680 intercept is granted.

681 (c) A particular description of the type of communication  
682 sought to be intercepted and a statement of the particular  
683 offense to which it relates.

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

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

690  
691 A search warrant ~~An order~~ authorizing the interception of a  
692 wire, oral, or electronic communication shall, upon the request  
693 of the applicant, direct that a provider of wire or electronic  
694 communication service, landlord, custodian, or other person  
695 shall furnish the applicant forthwith all information,  
696 facilities, and technical assistance necessary to accomplish the



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697 interception unobtrusively and with a minimum of interference  
698 with the services that such service provider, landlord,  
699 custodian, or person is according the person whose  
700 communications are to be intercepted. The obligation of a  
701 provider of wire, oral, or electronic communication service  
702 under such a search warrant ~~an order~~ may include, but is not  
703 limited to, conducting an in-progress trace during an  
704 interception, or providing other assistance to support the  
705 investigation as may be specified in the search warrant ~~order~~.  
706 Any provider of wire or electronic communication service,  
707 landlord, custodian, or other person furnishing such facilities  
708 or technical assistance shall be compensated therefor by the  
709 applicant for reasonable expenses incurred in providing such  
710 facilities or assistance.

711 (5) A search warrant ~~No order~~ entered under this section  
712 may not authorize or approve the interception of any wire, oral,  
713 or electronic communication for any period longer than is  
714 necessary to achieve the objective of the authorization or in  
715 any event longer than 30 days. Such 30-day period begins on the  
716 day on which the agent or officer of the law enforcement agency  
717 first begins to conduct an interception under the search warrant  
718 ~~order~~ or 10 days after the search warrant is approved ~~order is~~  
719 ~~entered~~, whichever occurs earlier. Extensions of a search  
720 warrant ~~an order~~ may be granted but only upon application for an  
721 extension made in accordance with subsection (1) and upon the  
722 court making the findings required by subsection (3). The period  
723 of extension shall be no longer than the authorizing judge deems  
724 necessary to achieve the purposes for which it was granted and  
725 in no event for longer than 30 days. Every search warrant ~~order~~

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726 and extension thereof shall contain a provision that the  
727 authorization to intercept shall be executed as soon as  
728 practicable, shall be conducted in such a way as to minimize the  
729 interception of communications not otherwise subject to  
730 interception under ss. 934.03-934.09, and must terminate upon  
731 attainment of the authorized objective or in any event in 30  
732 days. If the intercepted communication is in code or foreign  
733 language and an expert in that foreign language or code is not  
734 reasonably available during the interception period,  
735 minimization may be accomplished as soon as practicable after  
736 such interception. An interception under ss. 934.03-934.09 may  
737 be conducted in whole or in part by government personnel or by  
738 an individual operating under a contract with the government,  
739 acting under the supervision of an agent or officer of the law  
740 enforcement agency authorized to conduct the interception.

741 (6) Whenever a search warrant ~~an order~~ authorizing  
742 interception is granted ~~entered~~ pursuant to ss. 934.03-934.09,  
743 the search warrant ~~order~~ may require reports to be made to the  
744 judge who issued the search warrant ~~order~~ showing what progress  
745 has been made toward achievement of the authorized objective and  
746 the need for continued interception. Such reports shall be made  
747 at such intervals as the judge may require.

748 (7) Notwithstanding any other provision of this chapter,  
749 any investigative or law enforcement officer specially  
750 designated by the Governor, the Attorney General, the statewide  
751 prosecutor, or a state attorney acting under this chapter, who  
752 reasonably determines that:

753 (a) An emergency exists that:

754 1. Involves immediate danger of death or serious physical

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755 injury to any person, the danger of escape of a prisoner, or  
756 conspiratorial activities threatening the security interest of  
757 the nation or state; and

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

761 (b) There are grounds upon which a search warrant ~~an order~~  
762 could be entered under this chapter to authorize such  
763 interception,

764

765 may intercept such wire, oral, or electronic communication if an  
766 application for a search warrant ~~an order~~ approving the  
767 interception is made in accordance with this section within 48  
768 hours after the interception has occurred or begins to occur. In  
769 the absence of a search warrant ~~an order~~, such interception  
770 shall immediately terminate when the communication sought is  
771 obtained or when the application for the search warrant ~~order~~ is  
772 denied, whichever is earlier. If such application for approval  
773 is denied, or in any other case in which the interception is  
774 terminated without a search warrant ~~an order~~ having been issued,  
775 the contents of any wire, oral, or electronic communication  
776 intercepted shall be treated as having been obtained in  
777 violation of s. 934.03(4), and an inventory shall be served as  
778 provided for in paragraph (8)(e) on the person named in the  
779 application.

780 (8)(a) The contents of any wire, oral, or electronic  
781 communication intercepted by any means authorized by ss. 934.03-  
782 934.09 shall, if possible, be recorded on tape or wire or other  
783 comparable device. The recording of the contents of any wire,

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784 oral, or electronic communication under this subsection shall be  
785 kept in such a way as will protect the recording from editing or  
786 other alterations. Immediately upon the expiration of the period  
787 of the search warrant ~~order~~, or extensions thereof, such  
788 recordings shall be made available to the judge approving the  
789 search warrant ~~issuing such order~~ and sealed under his or her  
790 directions. Custody of the recordings shall be wherever the  
791 judge orders. They may ~~shall~~ not be destroyed except upon an  
792 order of the issuing or denying judge, or that judge's successor  
793 in office, and in any event shall be kept for 10 years.  
794 Duplicate recordings may be made for use or disclosure pursuant  
795 to ~~the provisions of~~ s. 934.08(1) and (2) for investigations, or  
796 for purposes of discovery as required by law.

797 (b) The presence of the seal provided for by this  
798 subsection, or a satisfactory explanation for the absence  
799 thereof, shall be a prerequisite for the use or disclosure of  
800 the contents of any wire, oral, or electronic communication or  
801 evidence derived therefrom under s. 934.08(3), as required by  
802 federal law.

803 (c) Applications made and search warrants ~~orders~~ granted  
804 under ss. 934.03-934.09 shall be sealed by the judge. Custody of  
805 the applications and search warrants ~~orders~~ shall be wherever  
806 the judge directs. As required by ~~federal~~ law, such applications  
807 and search warrants must ~~orders shall~~ be disclosed only for  
808 purposes of discovery or upon a showing of good cause before a  
809 judge of competent jurisdiction and may ~~shall~~ not be destroyed  
810 except on order of the issuing or denying judge, or that judge's  
811 successor in office, and in any event shall be kept for 10  
812 years.

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

815 (e) Within a reasonable time but not later than 90 days  
816 after the termination of the period of a search warrant, ~~an~~  
817 ~~order~~ or extensions thereof, the issuing or denying judge shall  
818 cause to be served on the persons named in the search warrant  
819 ~~order~~ or the application, and such other parties to intercepted  
820 communications as the judge may determine in his or her  
821 discretion to be in the interest of justice, an inventory which  
822 shall include notice of:

823 1. The fact of the approval of the search warrant ~~entry of~~  
824 ~~the order~~ or the application.

825 2. The date of the approval of the search warrant ~~entry~~ and  
826 the period of authorized, approved, or disapproved interception,  
827 or the denial of the application.

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

830  
831 The judge, upon the filing of a motion, may make available to  
832 such person or the person's counsel for inspection such portions  
833 of the intercepted communications, applications, and search  
834 warrants ~~orders~~ as the judge determines to be in the interest of  
835 justice. On an ex parte showing of good cause to a judge of  
836 competent jurisdiction, the serving of the inventory required by  
837 this paragraph may be postponed.

838 (9) ~~As required by federal law,~~ The contents of any  
839 intercepted wire, oral, or electronic communication or evidence  
840 derived therefrom may ~~shall~~ not be received in evidence or  
841 otherwise disclosed in any trial, hearing, or other proceeding

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842 unless each party, not less than 10 days before the trial,  
843 hearing, or proceeding, has been furnished with a copy of the  
844 search warrant ~~court order~~ and accompanying application under  
845 which the interception was authorized or approved. This 10-day  
846 period may be waived by the judge if he or she finds that it was  
847 not possible to furnish the party with the above information 10  
848 days before the trial, hearing, or proceeding and that the party  
849 will not be prejudiced by the delay in receiving such  
850 information.

851 (10) (a) An ~~Any~~ aggrieved person before or during ~~in~~ any  
852 trial, hearing, or proceeding in or before any court,  
853 department, officer, agency, regulatory body, or other authority  
854 may move to suppress the contents of any intercepted wire, oral,  
855 or electronic communication, or evidence derived therefrom, on  
856 the grounds that:

- 857 1. The communication was unlawfully intercepted;  
858 2. The search warrant ~~order of authorization or approval~~  
859 under which it was intercepted is insufficient on its face; or  
860 3. The interception was not made in conformity with the  
861 search warrant ~~order of authorization or approval~~.

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

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

867 2. If the motion is granted, the contents of the  
868 intercepted wire or oral communication, or evidence derived  
869 therefrom, must ~~shall~~ be treated as having been obtained in  
870 violation of ss. 934.03-934.09 and are not admissible as

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871 evidence.

872 3. The judge, upon the filing of such motion by the  
873 aggrieved person, may make available to the aggrieved person or  
874 his or her counsel for inspection such portions of the  
875 intercepted communication or evidence derived therefrom as the  
876 judge determines to be in the interest of justice.

877 (c) ~~(b)~~ In addition to any other right to appeal, the state  
878 shall have the right to appeal from an order granting a motion  
879 to suppress made under paragraph (a) or the denial of an  
880 application for a search warrant ~~an order of approval~~ if the  
881 attorney certifies ~~shall certify~~ to the judge or other official  
882 granting such motion or denying such application that the appeal  
883 is not taken for purposes of delay. Such appeal shall be taken  
884 within 30 days after the date the order was entered and shall be  
885 diligently prosecuted.

886 (d) ~~(e)~~ The remedies and sanctions described in ss. 934.03-  
887 934.10 with respect to the interception of electronic  
888 communications are the only judicial remedies and sanctions for  
889 violations of those sections involving such communications.

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

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

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

899 2. The application contains a full and complete statement

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900 as to why such specification is not practical and identifies the  
901 person committing the offense and whose communications are to be  
902 intercepted.

903 3. The judge finds that such specification is not  
904 practical.

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

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

910 2. The application identifies the person believed to be  
911 committing the offense and whose communications are to be  
912 intercepted and the applicant makes a showing that there is  
913 probable cause to believe that the person's actions could have  
914 the effect of thwarting interception from a specified facility  
915 or that the person whose communications are to be intercepted  
916 has removed, or is likely to remove, himself or herself to  
917 another judicial circuit within the state.

918 3. The judge finds that such showing has been adequately  
919 made.

920 4. The search warrant ~~order~~ authorizing or approving the  
921 interception is limited to interception only for such time as it  
922 is reasonable to presume that the person identified in the  
923 application is or was reasonably proximate to the instrument  
924 through which such communication will be or was transmitted.

925  
926 ~~Consistent with this paragraph, a judge of competent~~  
927 ~~jurisdiction may authorize interception within this state,~~  
928 ~~whether the interception is within or outside the court's~~



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929 ~~jurisdiction, if the application for the interception makes a~~  
930 ~~showing that some activity or conspiracy believed to be related~~  
931 ~~to, or in furtherance of, the criminal predicate for the~~  
932 ~~requested interception has occurred or will likely occur, or the~~  
933 ~~communication to be intercepted or expected to be intercepted is~~  
934 ~~occurring or will likely occur, in whole or in part, within the~~  
935 ~~jurisdiction of the court where the order is being sought.~~

936 (12) If an interception of a communication is to be carried  
937 out pursuant to subsection (11), such interception may not begin  
938 until the facilities from which, or the place where, the  
939 communication is to be intercepted is ascertained by the person  
940 implementing the interception search warrant ~~order~~. A provider  
941 of wire or electronic communications service that has received a  
942 search warrant ~~an order~~ as provided under paragraph (11)(b) may  
943 petition the court to modify or quash the search warrant ~~order~~  
944 on the ground that the interception cannot be performed in a  
945 timely or reasonable fashion. The court, upon notice to the  
946 state, shall decide such a petition expeditiously.

947 (13) Consistent with this section, a judge of competent  
948 jurisdiction may authorize interception within this state,  
949 regardless of whether the interception is within or outside the  
950 court's jurisdiction, if the application for the interception  
951 makes a showing that some activity or conspiracy believed to be  
952 related to, or in furtherance of, the criminal predicate for the  
953 requested interception has occurred or will likely occur, or the  
954 communication to be intercepted or expected to be intercepted is  
955 occurring or will likely occur, in whole or in part, within the  
956 jurisdiction of the court where the search warrant is being  
957 sought.

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958 Section 9. Subsections (1) and (2) of section 934.10,  
959 Florida Statutes, are amended to read:

960 934.10 Civil remedies.—

961 (1) Any person whose wire, oral, or electronic  
962 communication is intercepted, disclosed, or used in violation of  
963 ss. 934.03-934.09 shall have a civil cause of action against any  
964 person or entity who intercepts, discloses, or uses, or procures  
965 any other person or entity to intercept, disclose, or use, such  
966 communications and is ~~shall be~~ entitled to recover from any such  
967 person or entity that ~~which~~ engaged in that violation any such  
968 ~~relief as may be~~ appropriate relief, including all of the  
969 following:

970 (a) Preliminary or equitable or declaratory relief as may  
971 be appropriate. ~~†~~

972 (b) Actual damages, but not less than liquidated damages  
973 computed at the rate of \$100 a day for each day of violation or  
974 \$1,000, whichever is higher. ~~†~~

975 (c) Punitive damages. ~~† and~~

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

978 (2) A good faith reliance on any of the following  
979 constitutes a complete defense to any civil, criminal, or  
980 administrative action arising out of such conduct under the laws  
981 of this state:

982 (a) A search warrant ~~court order, subpoena, or legislative~~  
983 ~~authorization~~ as provided for in ss. 934.03-934.09. ~~†~~

984 (b) A request of an investigative or law enforcement  
985 officer under s. 934.09(7). ~~† or~~

986 (c) A good faith determination that Florida or federal law,

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987 other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the  
988 conduct complained of

989  
990 ~~shall constitute a complete defense to any civil or criminal, or~~  
991 ~~administrative action arising out of such conduct under the laws~~  
992 ~~of this state.~~

993 Section 10. Section 934.21, Florida Statutes, is amended to  
994 read:

995 934.21 Unlawful access to stored communications;  
996 penalties.—

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

998 (a) Intentionally accesses without authorization a facility  
999 through which an electronic communication service is provided,  
1000 or

1001 (b) Intentionally exceeds an authorization to access such  
1002 facility,

1003  
1004 and thereby obtains, alters, or prevents authorized access to a  
1005 wire or electronic communication while it is in electronic  
1006 storage in such system shall be punished as provided in  
1007 subsection (2).

1008 (2) The punishment for an offense under subsection (1) is  
1009 as follows:

1010 (a) If the offense is committed for purposes of commercial  
1011 advantage, malicious destruction or damage, or private  
1012 commercial gain, the person ~~is~~:

1013 1. In the case of a first offense under this subsection,  
1014 commits ~~guilty of~~ a misdemeanor of the first degree, punishable  
1015 as provided in s. 775.082, s. 775.083, or s. 934.41.

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1016 2. In the case of any subsequent offense under this  
1017 subsection, commits ~~guilty~~ of a felony of the third degree,  
1018 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or  
1019 s. 934.41.

1020 (b) In any other case, the person commits ~~is guilty~~ of a  
1021 misdemeanor of the second degree, punishable as provided in s.  
1022 775.082 or s. 775.083.

1023 (3) Subsection (1) does not apply with respect to conduct  
1024 authorized:

1025 (a) By the person or entity providing a wire, an oral, or  
1026 an electronic communications service, including through cellular  
1027 phones, microphone-enabled household devices, or portable  
1028 electronic communication devices;

1029 (b) By a user of a wire, an oral, or an electronic  
1030 communications service, including through cellular phones,  
1031 microphone-enabled household devices, or portable electronic  
1032 communication devices, with respect to a communication of or  
1033 intended for that user; ~~or~~

1034 (c) In s. 934.09, s. 934.23, or s. 934.24;

1035 (d) In chapter 933; or

1036 (e) For accessing for a legitimate business purpose  
1037 information that is not personally identifiable or that has been  
1038 collected in a way that prevents identification of the user of  
1039 the device.

1040 Section 11. Section 934.42, Florida Statutes, is amended to  
1041 read:

1042 934.42 Mobile tracking device and location tracking  
1043 authorization.—

1044 (1) As used in this section, the term:

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1045 (a) "Historical location data" means historical precise  
1046 global positioning system location data in the possession of a  
1047 provider.

1048 (b) "Mobile tracking device" means an electronic or a  
1049 mechanical device that tracks the movement of a person or an  
1050 object.

1051 (c) "Real-time location tracking" means:

1052 1. The installation and use of a mobile tracking device on  
1053 the object to be tracked;

1054 2. The acquisition of real-time cell-site location data; or

1055 3. The acquisition of real-time precise global positioning  
1056 system location data.

1057 (2) ~~(1)~~ An investigative or law enforcement officer may make  
1058 application to a judge of competent jurisdiction for a search  
1059 warrant ~~an order~~ authorizing or approving real-time location  
1060 tracking or the acquisition of historical location data in the  
1061 possession of the provider ~~the installation and use of a mobile~~  
1062 tracking device.

1063 (3) ~~(2)~~ An application made under subsection (2) ~~(1)~~ of this  
1064 section must include:

1065 (a) A statement of the identity of the applicant and the  
1066 identity of the law enforcement agency conducting the  
1067 investigation.

1068 (b) A statement setting forth a reasonable period of time  
1069 during which the mobile tracking device may be used or the  
1070 location data may be obtained in real time, not to exceed 45  
1071 days from the date on which the search warrant is issued. The  
1072 court may, for good cause, grant one or more extensions for a  
1073 reasonable period of time, not to exceed 45 days each. When

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1074 seeking historical location data, the applicant must specify a  
1075 date range for the data sought ~~certification by the applicant~~  
1076 ~~that the information likely to be obtained is relevant to an~~  
1077 ~~ongoing criminal investigation being conducted by the~~  
1078 ~~investigating agency.~~

1079 (c) A statement of the offense to which the information  
1080 likely to be obtained relates.

1081 (d) A statement as to whether it may be necessary to use  
1082 and monitor the mobile tracking device outside the jurisdiction  
1083 of the court from which authorization is being sought.

1084 (4) ~~(3)~~ Upon application made as provided under subsection  
1085 (3), and (2), the court, if the court ~~it~~ finds both probable  
1086 cause that the certification and that the statements required by  
1087 subsection (3) ~~(2)~~ have been made in the application, it must  
1088 grant a search warrant ~~shall enter an ex parte order~~ authorizing  
1089 real-time location tracking or the acquisition of historical  
1090 location data the installation and use of a mobile tracking  
1091 device. Such search warrant ~~order~~ may authorize the location  
1092 tracking use of the device within the jurisdiction of the court  
1093 and outside that jurisdiction but within the State of Florida if  
1094 the location tracking device is initiated ~~installed~~ within the  
1095 jurisdiction of the court. The search warrant must command the  
1096 investigative or law enforcement officer to complete any  
1097 initiation of the location tracking or execution of the search  
1098 warrant for historical location data authorized by the search  
1099 warrant within a specified period of time not to exceed 10  
1100 calendar days.

1101 (5) ~~(4)~~ A court may not require greater specificity or  
1102 additional information beyond that which is required by law and

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1103 this section as a requisite for issuing a search warrant ~~an~~  
1104 ~~order~~.

1105 (6) Within 10 days after the timeframe specified in  
1106 paragraph (3)(b) has ended, the investigative or law enforcement  
1107 officer executing a search warrant must return the search  
1108 warrant to the issuing judge. When the search warrant authorizes  
1109 the acquisition of historical location data, the investigative  
1110 or law enforcement officer executing the search warrant must  
1111 return the search warrant to the issuing judge within 10 days  
1112 after receipt of the records. The investigative or law  
1113 enforcement officer may do so by reliable electronic means.

1114 (7) Within 10 days after the timeframe specified in  
1115 paragraph (3)(b) has ended, the investigative or law enforcement  
1116 officer executing a search warrant shall serve a copy of the  
1117 search warrant on the person who, or whose property, was  
1118 tracked. When the search warrant authorizes the acquisition of  
1119 historical location data, the investigative or law enforcement  
1120 officer executing the search warrant must serve a copy of the  
1121 search warrant on the person whose data was obtained within 10  
1122 days after receipt of the records. Service may be accomplished  
1123 by delivering a copy to the person who, or whose property, was  
1124 tracked or whose data was obtained or by leaving a copy at the  
1125 person's residence or usual place of abode with an individual of  
1126 suitable age and discretion who resides at that location and by  
1127 mailing a copy to the person's last known address. Upon a  
1128 showing of good cause to a court of competent jurisdiction, the  
1129 court may grant one or more postponements of this notice for a  
1130 period of 90 days each.

1131 (8) ~~(5)~~ The standards established by Florida courts and the

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1132 United States Supreme Court for the installation, use, or ~~and~~  
1133 monitoring of mobile tracking devices and the acquisition of  
1134 location data shall apply to the installation, use, or  
1135 monitoring ~~and use~~ of any device and the acquisition of location  
1136 data as authorized by this section.

1137 ~~(6) As used in this section, a "tracking device" means an~~  
1138 ~~electronic or mechanical device which permits the tracking of~~  
1139 ~~the movement of a person or object.~~

1140 (9) (a) Notwithstanding any other provision of this chapter,  
1141 any investigative or law enforcement officer specially  
1142 designated by the Governor, the Attorney General, the statewide  
1143 prosecutor, or a state attorney acting pursuant to this chapter  
1144 who reasonably determines that:

1145 1. An emergency exists which:

1146 a. Involves immediate danger of death or serious physical  
1147 injury to any person or the danger of escape of a prisoner; and

1148 b. Requires real-time location tracking before a search  
1149 warrant authorizing such tracking can, with due diligence, be  
1150 obtained; and

1151 2. There are grounds upon which a search warrant could be  
1152 issued under this chapter to authorize such tracking,

1153  
1154 may engage in real-time location tracking if, within 48 hours  
1155 after the tracking has occurred or begins to occur, a search  
1156 warrant approving the tracking is issued in accordance with this  
1157 section.

1158 (b) In the absence of an authorizing search warrant, such  
1159 tracking must immediately terminate when the information sought  
1160 is obtained, when the application for the search warrant is



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1161 denied, or when 48 hours have lapsed since the tracking began,  
1162 whichever is earlier.

1163 Section 12. For the purpose of incorporating the amendments  
1164 made by this act to sections 934.03 and 934.07, Florida  
1165 Statutes, in references thereto, paragraph (b) of subsection (2)  
1166 of section 934.22, Florida Statutes, is reenacted to read:

1167 934.22 Voluntary disclosure of customer communications or  
1168 records.—

1169 (2) A provider described in subsection (1) may divulge the  
1170 contents of a communication:

1171 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,  
1172 or s. 934.23.

1173 Section 13. For the purpose of incorporating the amendments  
1174 made by this act to sections 934.09 and 934.21, Florida  
1175 Statutes, in references thereto, subsections (1) and (4) of  
1176 section 934.27, Florida Statutes, are reenacted to read:

1177 934.27 Civil action: relief; damages; defenses.—

1178 (1) Except as provided in s. 934.23(5), any provider of  
1179 electronic communication service, or subscriber or customer  
1180 thereof, aggrieved by any violation of ss. 934.21-934.28 in  
1181 which the conduct constituting the violation is engaged in with  
1182 a knowing or intentional state of mind may, in a civil action,  
1183 recover from the person or entity which engaged in that  
1184 violation such relief as is appropriate.

1185 (4) A good faith reliance on any of the following is a  
1186 complete defense to any civil or criminal action brought under  
1187 ss. 934.21-934.28:

1188 (a) A court warrant or order, a subpoena, or a statutory  
1189 authorization, including, but not limited to, a request of an

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1190 investigative or law enforcement officer to preserve records or  
1191 other evidence, as provided in s. 934.23(7).

1192 (b) A request of an investigative or law enforcement  
1193 officer under s. 934.09(7).

1194 (c) A good faith determination that s. 934.03(3) permitted  
1195 the conduct complained of.

1196 Section 14. For the purpose of incorporating the amendment  
1197 made by this act to section 934.21, Florida Statutes, in a  
1198 reference thereto, subsection (6) of section 934.23, Florida  
1199 Statutes, is reenacted to read:

1200 934.23 Required disclosure of customer communications or  
1201 records.—

1202 (6) No cause of action shall lie in any court against any  
1203 provider of wire or electronic communication service, its  
1204 officers, employees, agents, or other specified persons for  
1205 providing information, facilities, or assistance in accordance  
1206 with the terms of a court order, warrant, subpoena, or  
1207 certification under ss. 934.21-934.28.

1208 Section 15. For the purpose of incorporating the amendment  
1209 made by this act to section 934.21, Florida Statutes, in  
1210 references thereto, subsections (6) and (7) of section 934.24,  
1211 Florida Statutes, are reenacted to read:

1212 934.24 Backup preservation; customer notification;  
1213 challenges by customer.—

1214 (6) Within 14 days after notice by the investigative or law  
1215 enforcement officer to the subscriber or customer under  
1216 subsection (2), the subscriber or customer may file a motion to  
1217 quash the subpoena or vacate the court order seeking contents of  
1218 electronic communications, with copies served upon the

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1219 investigative or law enforcement officer and with written notice  
1220 of such challenge to the service provider. A motion to vacate a  
1221 court order must be filed in the court which issued the order. A  
1222 motion to quash a subpoena must be filed in the circuit court in  
1223 the circuit from which the subpoena issued. Such motion or  
1224 application must contain an affidavit or sworn statement:

1225 (a) Stating that the applicant is a subscriber or customer  
1226 of the service from which the contents of electronic  
1227 communications maintained for her or him have been sought, and

1228 (b) Stating the applicant's reasons for believing that the  
1229 records sought are not relevant to a legitimate law enforcement  
1230 inquiry or that there has not been substantial compliance with  
1231 the provisions of ss. 934.21-934.28 in some other respect.

1232 (7) Except as otherwise obtained under paragraph (3) (a),  
1233 service must be made under this section upon an investigative or  
1234 law enforcement officer by delivering or mailing by registered  
1235 or certified mail a copy of the papers to the person, office, or  
1236 department specified in the notice which the subscriber or  
1237 customer has received pursuant to ss. 934.21-934.28. For the  
1238 purposes of this subsection, the term "delivering" shall be  
1239 construed in accordance with the definition of "delivery" as  
1240 provided in Rule 1.080, Florida Rules of Civil Procedure.

1241 Section 16. For the purpose of incorporating the amendment  
1242 made by this act to section 934.21, Florida Statutes, in a  
1243 reference thereto, subsection (5) of section 934.25, Florida  
1244 Statutes, is reenacted to read:

1245 934.25 Delayed notice.—

1246 (5) Upon the expiration of the period of delay of  
1247 notification under subsection (1) or subsection (4), the

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1248 investigative or law enforcement officer must serve upon or  
1249 deliver by registered or first-class mail to the subscriber or  
1250 customer a copy of the process or request together with notice  
1251 which:

1252 (a) States with reasonable specificity the nature of the  
1253 law enforcement inquiry, and

1254 (b) Informs the subscriber or customer:

1255 1. That information maintained for such subscriber or  
1256 customer by the service provider named in the process or request  
1257 was supplied to or requested by the investigative or law  
1258 enforcement officer and the date on which such information was  
1259 so supplied or requested.

1260 2. That notification of such subscriber or customer was  
1261 delayed.

1262 3. What investigative or law enforcement officer or what  
1263 court made the certification or determination pursuant to which  
1264 that delay was made.

1265 4. Which provision of ss. 934.21-934.28 allowed such delay.

1266 Section 17. For the purpose of incorporating the amendment  
1267 made by this act to section 934.21, Florida Statutes, in a  
1268 reference thereto, section 934.28, Florida Statutes, is  
1269 reenacted to read:

1270 934.28 Exclusivity of remedies and sanctions.—The remedies  
1271 and sanctions described in ss. 934.21-934.27 are the only  
1272 judicial remedies and sanctions for violation of those sections.

1273 Section 18. This act shall take effect July 1, 2022.