

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

26 | to be included in the application; providing that the
27 | court, if it finds probable cause and finds the
28 | required statements in the application, must grant a
29 | warrant; specifying the warrant may authorize real-
30 | time location tracking or acquisition of historical
31 | location data; providing the warrant may authorize the
32 | use of the mobile tracking device as specified;
33 | requiring the warrant to command the officer to
34 | complete any installation authorized by the warrant
35 | within a certain timeframe; providing requirements for
36 | the return of the warrant to the judge and service of
37 | a copy of the warrant on the person who was tracked or
38 | whose property was tracked; specifying how a warrant
39 | authorizing the acquisition of historical location
40 | data must be returned and served; authorizing a court,
41 | for good cause, to postpone the notice requirement for
42 | a specified time period; requiring that the standards
43 | established by Florida courts for the installation,
44 | use, or monitoring of mobile tracking devices and the
45 | acquisition of location data apply to the
46 | installation, use, or monitoring of any devices and
47 | the acquisition of location data as authorized;
48 | deleting the definition of "tracking device";
49 | authorizing any investigative or law enforcement
50 | officer who is specially designated by certain persons

51 and who makes specified determinations to engage in
 52 real-time location tracking if a warrant is later
 53 obtained as specified; providing requirements for
 54 engaging in real-time location tracking; specifying
 55 when real-time location tracking must terminate;
 56 providing an effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

59
 60 Section 1. Section 934.01, Florida Statutes, is amended to
 61 read:

62 934.01 Legislative findings.—On the basis of its own
 63 investigations and of published studies, the Legislature makes
 64 the following findings:

65 (1) Wire communications are normally conducted through the
 66 use of facilities which form part of an intrastate network. The
 67 same facilities are used for interstate and intrastate
 68 communications.

69 (2) In order to protect effectively the privacy of wire,
 70 ~~and oral,~~ and electronic communications, to protect the
 71 integrity of court and administrative proceedings, and to
 72 prevent the obstruction of intrastate commerce, it is necessary
 73 for the Legislature to define the circumstances and conditions
 74 under which the interception of wire, ~~and oral,~~ and electronic
 75 communications may be authorized and to prohibit any

76 | unauthorized interception of such communications and the use of
 77 | the contents thereof in evidence in courts and administrative
 78 | proceedings.

79 | (3) Organized criminals make extensive use of wire, and
 80 | oral, and electronic communications in their criminal
 81 | activities. The interception of such communications to obtain
 82 | evidence of the commission of crimes or to prevent their
 83 | commission is an indispensable aid to law enforcement and the
 84 | administration of justice.

85 | (4) To safeguard the privacy of innocent persons, the
 86 | interception of wire, ~~or~~ oral, or electronic communications when
 87 | none of the parties to the communication has consented to the
 88 | interception should be allowed only when authorized by a court
 89 | of competent jurisdiction and should remain under the control
 90 | and supervision of the authorizing court. Interception of wire,
 91 | ~~and~~ oral, and electronic communications should further be
 92 | limited to certain major types of offenses and specific
 93 | categories of crime with assurance that the interception is
 94 | justified and that the information obtained thereby will not be
 95 | misused.

96 | (5) To safeguard the privacy of innocent persons, the
 97 | Legislature recognizes that the subjective expectation of
 98 | privacy in real-time cell-site location data, real-time precise
 99 | global positioning system location data, and historical precise
 100 | global positioning system location data which society is now

101 prepared to accept is objectively reasonable. As such, the law
102 enforcement collection of the precise location of a person,
103 cellular phone, or portable electronic communication device
104 without the consent of the person or owner of the cellular phone
105 or portable electronic communication device should be allowed
106 only when authorized by a warrant issued by a court of competent
107 jurisdiction and should remain under the control and supervision
108 of the authorizing court.

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

119 (7) The Legislature recognizes that the use of household
120 electronic devices, including microphone-enabled household
121 devices, is growing at a rapidly increasing rate. These devices
122 often contain microphones that listen for and respond to
123 environmental cues. These household devices are generally
124 connected to and communicate through the Internet, resulting in
125 the storage of and accessibility to daily household information

126 in a device itself or in a remote computing service. Persons
127 should not have to choose between using household technological
128 enhancements and conveniences or preserving the right to privacy
129 in one's home.

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

133 934.02 Definitions.—As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (a) If the offense is committed for purposes of commercial
175 advantage, malicious destruction or damage, or private

176 commercial gain, the person ~~is~~:

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

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

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

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

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

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

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

199 (d) In chapter 933; or

200 (e) For accessing for a legitimate business purpose

201 information that is not personally identifiable or that has been
 202 collected in a way that prevents identification of the user of
 203 the device.

204 Section 4. Section 934.42, Florida Statutes, is amended to
 205 read:

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

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

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

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

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

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

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

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

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

226 ~~tracking device.~~

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

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

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

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

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

247 (4)~~(3)~~ Upon application made as provided under subsection
248 (3) ~~(2)~~, the court, if it finds probable cause ~~that the~~
249 ~~certification~~ and finds that the statements required by
250 subsection (3) ~~(2)~~ have been made in the application, must grant

251 a warrant shall enter an ex parte order authorizing real-time
252 location tracking the installation and use of a mobile tracking
253 device or the acquisition of historical location data. Such
254 warrant order may authorize the use of the mobile tracking
255 device within the jurisdiction of the court and outside that
256 jurisdiction but within the State of Florida if the mobile
257 tracking device is installed within the jurisdiction of the
258 court. The warrant must command the officer to complete any
259 installation authorized by the warrant within a specified period
260 of time not to exceed 10 calendar days.

261 (5)-(4) A court may not require greater specificity or
262 additional information beyond that which is required by law and
263 this section as a requisite for issuing a warrant an order.

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

271 (7) Within 10 days after the time period specified in
272 paragraph (3)(b) has ended, the officer executing a warrant must
273 serve a copy of the warrant on the person who, or whose
274 property, was tracked. When the warrant is authorizing the
275 acquisition of historical location data, the officer executing

276 the warrant must serve a copy of the warrant on the person whose
277 data was obtained within 10 days after receipt of the records.
278 Service may be accomplished by delivering a copy to the person
279 who, or whose property, was tracked or data obtained or by
280 leaving a copy at the person's residence or usual place of abode
281 with an individual of suitable age and discretion who resides at
282 that location and by mailing a copy to the person's last known
283 address. Upon a showing of good cause to a court of competent
284 jurisdiction, the court may grant one or more postponements of
285 this notice for a period of 90 days each.

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

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

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

300 1. An emergency exists which:

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

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

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

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

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

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