

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" and "real-time location tracking"; authorizing
14 an investigative or law enforcement officer to apply
15 to a judge of competent jurisdiction for a warrant,
16 rather than an order, authorizing real-time location
17 tracking; requiring an application for a warrant to
18 include a statement of a reasonable period of time
19 that the mobile tracking device may be used or the
20 location data may be obtained in real time, not to
21 exceed a specified limit; authorizing a court to grant
22 extensions that do not individually exceed a specified
23 limit, for good cause; deleting a provision requiring
24 a certification to be included in the application;
25 providing that the court, if it finds probable cause

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

51 creating s. 934.44, F.S.; defining the term
52 "historical location data"; providing that a court, if
53 it finds probable cause and finds the required
54 statements in the application, must grant a warrant
55 for acquisition of historical location data;
56 specifying that a warrant may authorize acquisition of
57 historical location data; providing requirements for
58 the return of the warrant and notice to the person
59 whose data was obtained; specifying how a warrant
60 authorizing the acquisition of historical location
61 data must be returned; authorizing a court, for good
62 cause, to postpone notice; requiring that the
63 standards established by Florida courts and the United
64 States Supreme Court for the acquisition of historical
65 location data apply to such acquisition as authorized;
66 providing an effective date.

67
68 Be It Enacted by the Legislature of the State of Florida:

69
70 Section 1. Section 934.01, Florida Statutes, is amended to
71 read:

72 934.01 Legislative findings.—On the basis of its own
73 investigations and of published studies, the Legislature makes
74 the following findings:

75 (1) Wire communications are normally conducted through the

76 use of facilities which form part of an intrastate network. The
77 same facilities are used for interstate and intrastate
78 communications.

79 (2) In order to protect effectively the privacy of wire,
80 ~~and oral,~~ and electronic communications, to protect the
81 integrity of court and administrative proceedings, and to
82 prevent the obstruction of intrastate commerce, it is necessary
83 for the Legislature to define the circumstances and conditions
84 under which the interception of wire, ~~and oral,~~ and electronic
85 communications may be authorized and to prohibit any
86 unauthorized interception of such communications and the use of
87 the contents thereof in evidence in courts and administrative
88 proceedings.

89 (3) Organized criminals make extensive use of wire, ~~and~~
90 oral, and electronic communications in their criminal
91 activities. The interception of such communications to obtain
92 evidence of the commission of crimes or to prevent their
93 commission is an indispensable aid to law enforcement and the
94 administration of justice.

95 (4) To safeguard the privacy of innocent persons, the
96 interception of wire, ~~or~~ or electronic communications when
97 none of the parties to the communication has consented to the
98 interception should be allowed only when authorized by a court
99 of competent jurisdiction and should remain under the control
100 and supervision of the authorizing court. Interception of wire,

101 ~~and~~ oral, and electronic communications should further be
102 limited to certain major types of offenses and specific
103 categories of crime with assurance that the interception is
104 justified and that the information obtained thereby will not be
105 misused.

106 (5) To safeguard the privacy of innocent persons, the
107 Legislature recognizes that society is prepared to accept the
108 subjective expectation of privacy in real-time cell-site
109 location data, real-time precise global positioning system
110 location data, historical cell-site location data, and
111 historical precise global positioning system location data as
112 objectively reasonable. As such, the law enforcement collection
113 of the precise location of a person, cellular phone, or portable
114 electronic communication device without the consent of the
115 person or owner of the cellular phone or portable electronic
116 communication device should be allowed only when authorized by a
117 warrant issued by a court of competent jurisdiction and should
118 remain under the control and supervision of the authorizing
119 court. A warrant issued under this chapter and its associated
120 procedures are separate and distinct from the warrant
121 requirements in chapter 933.

122 (6) The Legislature recognizes that the use of portable
123 electronic communication devices is growing at a rapidly
124 increasing rate. These devices can store, and encourage the
125 storing of, an almost limitless amount of personal and private

126 information. Often linked to the Internet, these devices are
127 commonly used to access personal and business information and
128 databases in computers and servers that can be located anywhere
129 in the world. The user of a portable electronic communication
130 device has a reasonable and justifiable expectation of privacy
131 in the information that these devices contain.

132 (7) The Legislature recognizes that the use of household
133 electronic devices, including microphone-enabled household
134 devices, is growing at a rapidly increasing rate. These devices
135 often contain microphones that listen for and respond to
136 environmental cues. These household devices are generally
137 connected to and communicate through the Internet, resulting in
138 the storage of and accessibility to daily household information
139 in a device itself or in a remote computing service. Persons
140 should not have to choose between using household technological
141 enhancements and conveniences or preserving the right to privacy
142 in one's home.

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

146 934.02 Definitions.—As used in this chapter:

147 (2) "Oral communication" means any oral communication
148 uttered by a person exhibiting an expectation that such
149 communication is not subject to interception under circumstances
150 justifying such expectation, including the use of a microphone-

151 enabled household device, and does not mean any public oral
 152 communication uttered at a public meeting or any electronic
 153 communication.

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

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

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

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

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

164 (28) "Portable electronic communication device" means an
 165 object capable of being easily transported or conveyed by a
 166 person which is capable of creating, receiving, accessing,
 167 processing, or storing electronic data or communications and
 168 which communicates with, by any means, another device, entity,
 169 or individual.

170 Section 3. Section 934.21, Florida Statutes, is amended to
 171 read:

172 934.21 Unlawful access to stored communications;
 173 penalties.—

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

175 (a) Intentionally accesses without authorization a

176 facility through which an electronic communication service is
 177 provided, or

178 (b) Intentionally exceeds an authorization to access such
 179 facility,

180

181 and thereby obtains, alters, or prevents authorized access to a
 182 wire or electronic communication while it is in electronic
 183 storage in such system shall be punished as provided in
 184 subsection (2).

185 (2) The punishment for an offense under subsection (1) is
 186 as follows:

187 (a) If the offense is committed for purposes of commercial
 188 advantage, malicious destruction or damage, or private
 189 commercial gain, the person ~~is~~:

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

193 2. In the case of any subsequent offense under this
 194 subsection, commits ~~guilty of~~ a felony of the third degree,
 195 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 196 s. 934.41.

197 (b) In any other case, the person commits ~~is guilty of~~ a
 198 misdemeanor of the second degree, punishable as provided in s.
 199 775.082 or s. 775.083.

200 (3) Subsection (1) does not apply with respect to conduct

201 authorized:

202 (a) By the person or entity providing a wire, oral, or
 203 electronic communications service, including through cellular
 204 phones, portable electronic communication devices, or
 205 microphone-enabled household devices;

206 (b) By a user of a wire, oral, or electronic
 207 communications service, including through cellular phones,
 208 portable electronic communication devices, or microphone-enabled
 209 household devices, with respect to a communication of or
 210 intended for that user; ~~or~~

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

212 (d) In chapter 933; or

213 (e) For accessing information for a legitimate business
 214 purpose, other than personal information as defined in s.
 215 501.171(g).

216 Section 4. Section 934.42, Florida Statutes, is amended to
 217 read:

218 934.42 Real-time location tracking ~~Mobile tracking device~~
 219 ~~authorization.~~-

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

221 (a) "Mobile tracking device" means an electronic or
 222 mechanical device that permits the tracking of the movement of a
 223 person or an object.

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

225 1. Installation and use of a mobile tracking device on the

226 | object to be tracked;

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

228 | 3. Acquisition of real-time precise global positioning
229 | system location data.

230 | ~~(2)(1)~~ An investigative or law enforcement officer may
231 | make application to a judge of competent jurisdiction for a
232 | warrant ~~an order~~ authorizing or approving real-time location
233 | tracking ~~the installation and use of a mobile tracking device.~~

234 | ~~(3)(2)~~ An application under subsection (2) ~~(1)~~ of this
235 | ~~section~~ must include:

236 | (a) A statement of the identity of the applicant and the
237 | identity of the law enforcement agency conducting the
238 | investigation.

239 | (b) A statement setting forth a reasonable period of time
240 | that the mobile tracking device may be used or the location data
241 | may be obtained in real time, not to exceed 45 days from the
242 | date the warrant is issued. The court may, for good cause, grant
243 | one or more extensions for a reasonable period of time, not to
244 | exceed 45 days each ~~certification by the applicant that the~~
245 | ~~information likely to be obtained is relevant to an ongoing~~
246 | ~~criminal investigation being conducted by the investigating~~
247 | ~~agency.~~

248 | (c) A statement of the offense to which the information
249 | likely to be obtained relates.

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

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

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

267 ~~(5)-(4)~~ A court may not require greater specificity or
268 additional information beyond that which is required by law and
269 this section as a requisite for issuing a warrant ~~an order~~.

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

272 (a) Return the warrant to the issuing judge within 10 days
273 after the time period specified in paragraph (3) (b) has ended.
274 The officer may do so by reliable electronic means. Upon request
275 and a showing of good cause, the court may seal any court

276 filings associated with the warrant.

277 (b) Serve notice on the person who, or whose property, was
278 tracked within a reasonable time but not later than 90 days
279 after the time period specified in paragraph (3) (b) has ended.
280 The notice must include the fact and date of the warrant's
281 issuance and the period of tracking. Service may be accomplished
282 by delivering such notice to the person who, or whose property,
283 was tracked or by leaving a copy at the person's residence or
284 usual place of abode with an individual of suitable age and
285 discretion who resides at that location or by mailing a copy to
286 the person's last known address. Upon an ex parte showing of
287 good cause to a court of competent jurisdiction, the court may
288 postpone notice.

289 (7)-(5) The standards established by Florida courts and the
290 United States Supreme Court for the installation, use, or and
291 monitoring of mobile tracking devices and the acquisition of
292 location data shall apply to the installation, use, or
293 monitoring and use of any device and the acquisition of location
294 data as authorized by this section.

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

298 (8) (a) Notwithstanding any other provision of this
299 chapter, any investigative or law enforcement officer specially
300 designated by the Governor, the Attorney General, the statewide

301 prosecutor, or a state attorney acting pursuant to this chapter
302 may engage in real-time location tracking if he or she
303 reasonably determines that:

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

307 a. Immediate danger of death or serious physical injury to
308 any person;

309 b. The danger of prisoner escape;

310 c. A missing person at risk of death or serious physical
311 harm; or

312 d. A call for emergency services from a cellular
313 telephone; and

314 2. There are grounds upon which a warrant could be issued
315 under this chapter to authorize such tracking, which for
316 purposes of this subsection may include probable cause of an
317 emergency as described in subparagraph 1.

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

322 (c) A warrant authorizing tracking under this subsection
323 must be issued within 48 hours of the tracking occurring or
324 beginning to occur and follow all other procedures in this
325 chapter. In the absence of an authorizing warrant, such tracking

326 must immediately terminate when the information sought is
327 obtained, when the application for the warrant is denied, or
328 when 48 hours have lapsed since the tracking began, whichever is
329 earlier.

330 Section 5. Section 934.44, Florida Statutes, is created to
331 read:

332 934.44 Historical location data acquisition.—

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

335 (a) Historical cell-site location data in the possession
336 of a provider.

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

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

343 (a) A statement of the identity of the applicant and the
344 identity of the law enforcement agency conducting the
345 investigation.

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

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

349 (3) Upon application made under subsection (2), the court,
350 if it finds probable cause and finds that the statements

351 required by subsection (2) have been made in the application,
352 must grant a warrant authorizing the acquisition of historical
353 location data.

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

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

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

363 (b) Serve notice on the person whose data was obtained
364 within a reasonable time but not later than 90 days after
365 receipt of the records. The notice must include the fact and
366 date of the warrant's issuance and the timeframe for which
367 historical location data was obtained. Service may be
368 accomplished by delivering the notice to the person whose data
369 was obtained or by leaving a copy at the person's residence or
370 usual place of abode with an individual of suitable age and
371 discretion who resides at that location or by mailing a copy to
372 the person's last known address. Upon an ex parte showing of
373 good cause to a court of competent jurisdiction, the court may
374 postpone notice.

375 (6) The standards established by the courts of this state

CS/HB 1457

2020

376 | and the United States Supreme Court for the acquisition of
377 | historical location data shall apply to such acquisition as
378 | authorized by this section.

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