

Senate Bill No. 2252

An act relating to law enforcement communications; providing for a review panel to evaluate and select a strategy to complete implementation of the statewide law enforcement radio system; providing for membership and staffing of the panel; providing for the reduction of certain funds appropriated; providing for termination of the panel; providing an appropriation; amending s. 23.1225, F.S.; describing an additional authorized joint city-county law enforcement activity by voluntary cooperation written agreement; amending ss. 810.08, 810.09, F.S.; defining the terms "person authorized" and "authorized person" for purposes of provisions prohibiting trespass; amending s. 901.15, F.S.; specifying lawful arrest without a warrant for trespass in secure areas of airports; providing for immunity from civil liability for arresting law enforcement officers under certain circumstances; amending s. 934.03, F.S.; revising limited authorization for certain personnel to intercept and record specified incoming wire communications; amending s. 934.02, F.S.; redefining the terms "wire communication," "electronic, mechanical, or other device," and "electronic communication"; amending s. 934.03, F.S.; prohibiting certain disclosure or attempted disclosure of intercepted communications; providing penalties; amending s. 934.07, F.S.; deleting prostitution as an offense for which interception of communications may be authorized; amending s. 934.09, F.S.; providing for emergency interception of certain communications; providing exemptions from requirements for specification of facilities for certain interceptions; amending s. 934.10, F.S.; providing additional defense to civil liability; amending s. 934.23, F.S.; requiring a provider of electronic or remote computer service to provide certain information when subpoenaed; revising grounds for issuance of a court order for disclosure; requiring preservation of records; providing immunity from civil liability; providing for compensation; amending s. 934.27, F.S.; providing additional grounds for immunity from civil liability; amending s. 934.31, F.S.; requiring certain technology to be used in installation of pen registers and trap and trace devices; amending s. 934.34, F.S.; revising conditions under which assistance in installing or using pen registers or trap and trace devices must be provided; providing for emergency pen register and trap and trace device installation; providing an effective date.

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

Section 1. (1) There is created the State Agency Law Enforcement Radio System Review Panel. The membership of the panel shall consist of three State Senators appointed by the President of the Senate; three State Representatives appointed by the Speaker of the House of Representatives; two members appointed by the Governor; the chairman of the Joint Task Force on State Agency Law Enforcement Communications; and the Director of the Division of Bond Finance within the State Board of Administration.

All appointments to the panel must be made by May 19, 2000, or within 30 days after the effective date of this act, whichever occurs later. Members of the panel are not entitled to compensation except for reimbursement, in accordance with section 112.061, Florida Statutes, for travel and per diem expenses associated with official activities of the panel. Such travel and per diem expenses shall be paid by the Department of Management Services.

(2) The panel shall review and evaluate a proposal presented to the panel in one or more public meetings by the Department of Management Services to complete the implementation of the statewide law enforcement radio system as authorized by section 282.1095, Florida Statutes. The presentation must be made within 30 days after the successful conclusion of negotiations between the department and the prospective vendor, with the department awarding a contract to the vendor subject to approval of a budget amendment to secure funds for the proposal. The panel shall evaluate whether the proposal provides the best long-term solution for an effective communications system statewide, protects both the investments previously made by the state in developing the system and the future investments to be made, and ensures the optimal value to the state in the future with regard to state resources and assets invested in the system. The panel shall issue a report of its findings and recommendations regarding the proposal, and shall submit the report, within 15 days after the presentation of the proposal by the department, to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the chairperson of the Senate Budget Committee and the House Fiscal Responsibility Council.

(3) After presenting the proposal to the review panel, the Department of Management Services may:

(a) Recommend to the Board of Trustees of the Internal Improvement Trust Fund that specified state lands and assets associated with the state-agency law enforcement radio system be leased, sold, or otherwise controlled by nonstate entities as part of the proposal.

(b) Submit a budget amendment to redirect any funds appropriated specifically for implementation and operation of the radio system in the General Appropriations Act for fiscal year 2000-2001 and the unexpended balances of any prior year appropriations from the State Agency Law Enforcement Radio System Trust Fund as deemed necessary to carry out the proposal, notwithstanding the provisions of sections 216.241 and 216.301, Florida Statutes, and pursuant to the provisions of section 216.351, Florida Statutes. Notwithstanding the provisions of section 216.292, Florida Statutes, and pursuant to the provisions of section 216.351, Florida Statutes, such redirection may include establishing new fixed-capital-outlay appropriation categories and may also include transferring funds from fixed-capital-outlay appropriations to operational-appropriation categories.

(c) Execute contracts between private vendors and the Department of Management Services which implement the proposal. However, the contracts may not obligate the state to expenditures beyond those which can be met by the unexpended balance of funds specifically appropriated for the law enforcement radio system together with the official projected future reve-

nues of the State Agency Law Enforcement Radio System Trust Fund established by section 282.1095, Florida Statutes. The official projections shall be based on the most recently available forecasts of the Revenue Estimating Conference. Before entering into a contract with any successful bidder, the department shall assure that the contractor's systems are functionally proven, shall undertake a due-diligence review of the contractor's fitness to perform its contracted responsibilities, and shall require that the contractor have an internal system of quality assurance.

(4) If the chairpersons of the House Fiscal Responsibility Council and the Senate Budget Committee, or if the Speaker of the House of Representatives and the President of the Senate object to the budget amendment submitted by the department pursuant to subsection (3), in accordance with the provisions of section 216.177, Florida Statutes, the Department of Management Services shall continue to implement the law enforcement radio system as authorized by existing appropriations made by law.

(5) The Department of Management Services shall provide adequate staffing for the panel within appropriated staff and resources.

(6) The panel is abolished 15 days after the submission of its report, or on March 15, 2001, whichever occurs sooner.

Section 2. The sum of \$15,000 is appropriated from the General Revenue Fund to the Department of Management Services for fiscal year 1999-2000, and the sum of \$15,000 is appropriated from the General Revenue Fund to the Department of Management Services for fiscal year 2000-2001, to be used for travel and per diem expenses incurred by members of the State Law Enforcement Radio System Review Panel.

Section 3. Paragraph (a) of subsection (1) of section 23.1225, Florida Statutes, is amended to read:

23.1225 Mutual aid agreements.—

(1) The term "mutual aid agreement," as used in this part, refers to one of the following types of agreement:

(a) A voluntary cooperation written agreement between two or more law enforcement agencies, or between one or more law enforcement agencies and either a school board that employs school safety officers or a state university that employs or appoints university police officers in accordance with s. 240.268, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. Examples of law enforcement activities that may be addressed in a voluntary cooperation written agreement include, but are not limited to, establishing a joint city-county task

force on narcotics smuggling, ~~or authorizing school safety officers to enforce laws in an area within 1,000 feet of a school or school board property, or establishing a joint city-county traffic enforcement task force.~~

Section 4. Subsection (3) is added to section 810.08, Florida Statutes, to read:

810.08 Trespass in structure or conveyance.—

(3) As used in this section, the term “person authorized” means any owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in the case of a threat to public safety or welfare.

Section 5. Subsection (3) is added to section 810.09, Florida Statutes, to read:

810.09 Trespass on property other than structure or conveyance.—

(3) As used in this section, the term “authorized person” or “person authorized” means any owner, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner, or his or her agent, to communicate an order to leave the property in the case of a threat to public safety or welfare.

Section 6. Subsection (15) is added to section 901.15, Florida Statutes, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(15) There is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of the law enforcement officer’s action.

Section 7. Paragraph (g) of subsection (2) of section 934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)

(g) It is lawful under ss. 934.03-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.30, a public utility as defined by ss. 365.01 and 366.02, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number “911” system established pursuant to s. 365.171; or
3. The central abuse hotline operated pursuant to s. 39.201,

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated “911” telephone numbers and published nonemergency emergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested.

Section 8. Subsections (1), (4), and (12) of section 934.02, Florida Statutes, are amended to read:

934.02 Definitions.—As used in this chapter:

(1) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce. Such term includes any electronic storage of such communication ~~but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~

(4) “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a provider of wire or electronic communications service ~~communications common carrier~~ in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(12) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in

whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include:

~~(a) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;~~

~~(a)(b)~~ Any wire or oral communication;

~~(b)(c)~~ Any communication made through a tone-only paging device; ~~or~~

~~(c)(d)~~ Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; ~~or~~.

(d) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

Section 9. Subsection (1), paragraphs (a) and (e) of subsection (2), and subsection (4) of section 934.03, Florida Statutes, are amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(1) Except as otherwise specifically provided in this chapter, any person who:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; ~~or~~

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by

means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. 934.07, or s. 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;

shall be punished as provided in subsection (4).

(2)(a)1. It is lawful under ss. 934.03-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

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

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

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

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under ss. 934.03-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10 and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under ss. 934.03-934.09.

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

(4)(a) Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) If the offense is a first offense under paragraph (a) and is not for any tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) was committed is a radio communication that is not scrambled, encrypted ~~or~~, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then:

1. If the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in subparagraph (2)(h)7., the person committing the offense is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. If the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 10. Section 934.07, Florida Statutes, is amended to read:

934.07 Authorization for interception of wire, oral, or electronic communications.—The Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03-934.09, an order authorizing or approving the interception of wire, oral, or electronic communications by the Department of Law Enforcement or any law enforcement agency as defined in s. 934.02 having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, arson, gambling, robbery, burglary, theft, dealing in stolen property, ~~prostitution~~, criminal usury, bribery, or extortion; any violation of chapter 893; any violation of the provisions of the Florida Anti-Fencing Act; any violation of chapter 895; any violation of chapter 896; any violation of chapter 815; any violation of chapter 847; any violation of s. 827.071; any violation of s. 944.40; or any conspiracy to commit any violation of the laws of this state relating to the crimes specifically enumerated above.

Section 11. Paragraph (b) of subsection (1) and paragraph (d) of subsection (3) of section 934.09, Florida Statutes, are amended, present subsec-

tions (7) through (11) of that section are renumbered subsections (8) through (12), respectively, and amended, and a new subsection (7) is added to that section, to read:

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

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

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including:

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

2. Except as provided in subsection (11) ~~(10)~~, a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted.

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

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

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

(d) Except as provided in subsection (11) ~~(10)~~, there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

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

(a) An emergency exists that:

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

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

(b) There are grounds upon which an order could be entered under this chapter to authorize such interception

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

(8)(a)(7)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of s. 934.08(1) and (2) for investigations.

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

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

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

(e) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the order or the

application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the entry of the order or the application.
2. The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application.
3. The fact that during the period wire, oral, or electronic communications were or were not intercepted.

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

~~(9)~~(8) As required by federal law, the contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

~~(10)(a)~~(9)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;
2. The order of authorization or approval under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

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

(c) The remedies and sanctions described in ss. 934.03-934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

~~(11)(10)~~ The requirements of subparagraph (1)(b)2. and paragraph (3)(d) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

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

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

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

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

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

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

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility of a purpose, on the part of that person, to thwart interception by changing facilities.

3. The judge finds that such showing purpose has been adequately made shown.

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

~~(12)(11)~~ If an interception of a communication is to be carried out pursuant to subsection ~~(11)~~ (10), such interception may not begin until the facili-

ties from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided under paragraph ~~(11)(b)~~ ~~(10)(b)~~ may petition the court to modify or quash the order on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

Section 12. Subsection (2) of section 934.10, Florida Statutes, is amended to read:

934.10 Civil remedies.—

(2) A good faith reliance on:

(a) A court order, subpoena, or legislative authorization as provided in ss. 934.03-934.09, ~~or~~

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

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

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

Section 13. Subsections (4) and (5) of section 934.23, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

934.23 Requirements for governmental access.—

(4)(a) Except as provided in paragraph (b), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of such service, not including the contents of communication covered by subsection (1) or subsection (2), to any person other than an investigative or law enforcement officer.

(b) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service, not including the contents of communications covered by subsection (1) or subsection (2), to an investigative or law enforcement officer only when the investigative or law enforcement officer:

~~1. Uses a subpoena;~~

~~1.2.~~ Obtains a warrant issued by the judge of a court of competent jurisdiction;

~~2.3.~~ Obtains a court order for such disclosure under subsection (5); or

~~3.4.~~ Has the consent of the subscriber or customer to such disclosure.

(c) A provider of electronic communication service or remote computing service shall disclose to an investigative or law enforcement officer the name, address, telephone toll billing records, telephone number or other subscriber number or identity, and length of service as a subscriber or customer of such service and the types of services the subscriber or customer used when the governmental entity uses a subpoena.

~~(d)(e)~~ An investigative or law enforcement officer who receives records or information under this subsection is not required to provide notice to a subscriber or customer.

(5) A court order for disclosure under subsection (2), subsection (3), or subsection (4) shall issue only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds ~~shows that there is reason~~ to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation to a legitimate law enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order ~~on motion made promptly by the service provider~~ if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(7)(a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(8) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from any claim and civil liability resulting from the disclosure of information pursuant to this section and shall be reasonably compensated for reasonable expenses incurred in providing such assistance.

Section 14. Subsection (4) of section 934.27, Florida Statutes, is amended to read:

934.27 Civil action: relief; damages; defenses.—

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

(a) A court warrant or order, a subpoena, or a statutory authorization.

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

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

Section 15. Present subsection (3) of section 934.31, Florida Statutes, is renumbered as subsection (5), and new subsections (3) and (4) are added to that section, to read:

934.31 General prohibition on pen register and trap and trace device use; exception.—

(3) An investigative or law enforcement officer authorized to install and use a pen register under ss. 934.31-934.34 shall use technology reasonably available to him or her which restricts the recording or decoding of electronic or other impulses to the dialing and signaling information used in call processing.

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

1. An emergency exists which:

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

b. Requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained; and

2. There are grounds upon which an order could be entered under this chapter to authorize such installation and use.

may have installed and use a pen register or trap and trace device if, within 48 hours after the installation has occurred or begins to occur, an order approving the installation or use is issued in accordance with s. 934.33.

(b) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied, or when 48 hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

(c) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to paragraph (a) without application for the authorizing order within 48 hours after the installation constitutes a violation of s. 934.31.

(d) A provider of wire or electronic service, landlord, custodian, or other person who has furnished facilities or technical assistance pursuant to this subsection shall be held harmless from any claims and civil liability resulting from the disclosure of information pursuant to this subsection and shall be reasonably compensated for reasonable expenses incurred in providing such facilities and assistance.

Section 16. Subsection (2) of section 934.34, Florida Statutes, is amended to read:

934.34 Assistance in installation and use of a pen register or a trap and trace device.—

(2) Upon the request of the applicant specified in s. 934.32(1), a provider of a wire or electronic communication service, landlord, custodian, or other person shall install a trap and trace device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer or other applicant all additional information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such installation and assistance is directed by a court order as provided in s. 934.33(2)(b). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished, pursuant to s. 934.33(2)(b) or s. 934.31(4), to an officer of the law enforcement agency designated in the court order at reasonable intervals during regular business hours for the duration of the order. The obligation of a provider of electronic communication service under such an order or under such emergency pen register or trap and trace device installation may include, but is not limited to, conducting an in-progress trace, or providing other assistance to support the investigation as may be specified in the order.

Section 17. This act shall take effect upon becoming a law.

Approved by the Governor June 26, 2000.

Filed in Office Secretary of State June 26, 2000.