

By Senator Brandes

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1 A bill to be entitled
2 An act relating to personal privacy; providing a short
3 title; creating s. 901.40, F.S.; prohibiting use of
4 certain radar technology by law enforcement agencies
5 except for specified purposes; providing that evidence
6 unlawfully collected is not admissible in criminal,
7 civil, or administrative actions; creating s. 934.70,
8 F.S.; providing definitions; providing restrictions on
9 government searches of portable electronic devices;
10 requiring a warrant for all searches of such devices;
11 prohibiting government entities from entering into
12 nondisclosure agreements with vendors of certain
13 equipment used to monitor portable electronic devices;
14 declaring existing nondisclosure agreements void;
15 providing that such agreement is subject to public
16 records laws; providing that evidence unlawfully
17 collected is not admissible in criminal, civil, or
18 administrative actions; providing exceptions;
19 providing criminal penalties for violations;
20 authorizing a private right of action against
21 governmental entities for violations; requiring common
22 carriers, electronic communications services, courts,
23 and prosecutors to prepare certain reports to be
24 delivered to the Department of Law Enforcement;
25 providing requirements for such reports; requiring the
26 department to prepare reports to be delivered to the
27 Governor, the Legislature, and certain legislative
28 entities; providing requirements for such reports;
29 providing severability; providing an effective date.

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

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33 Section 1. This act may be cited as the "Florida Privacy
34 Protection Act."

35 Section 2. Section 901.40, Florida Statutes, is created to
36 read:

37 901.40 Prohibition against use of wall-penetrating radar
38 device.—A law enforcement officer or law enforcement agency in
39 this state may not use a wall-penetrating radar device. This
40 section does not prohibit the use of a wall-penetrating radar
41 device:

42 (1) To execute a lawful arrest warrant issued pursuant to
43 s. 901.02.

44 (2) To counter a high risk of a terrorist attack by a
45 specific individual or organization if the United States
46 Secretary of Homeland Security determines that credible
47 intelligence indicates that there is such a risk.

48 (3) If the law enforcement agency first obtains a search
49 warrant signed by a judge authorizing the use of a wall-
50 penetrating radar device.

51 (4) If the law enforcement agency has a reasonable belief
52 that, under particular circumstances, swift action is needed to
53 prevent imminent danger to life or serious damage to property;
54 to forestall the imminent escape of a suspect or the destruction
55 of evidence; or to achieve purposes, including, but not limited
56 to, facilitating the search for a missing person.

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58 Evidence obtained in violation of this section is not admissible

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59 in a criminal, civil, administrative, or other proceeding except
60 as proof of a violation of this section.

61 Section 3. Section 934.70, Florida Statutes, is created to
62 read:

63 934.70 Portable electronic device privacy.-

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

65 (a) "Department" means the Department of Law Enforcement.

66 (b) "Government entity" means a federal, state, or local
67 government agency, including, but not limited to, a law
68 enforcement agency or any other investigative entity, agency,
69 department, division, bureau, board, or commission or an
70 individual acting or purporting to act for, or on behalf of, a
71 federal, state, or local government agency. The term does not
72 include a federal agency to the extent that federal law preempts
73 this section.

74 (c) "Information" includes any information concerning the
75 substance or meaning or purported substance or meaning of a
76 communication, including, but not limited to, the name and
77 address of the sender and receiver and the time, date, location,
78 and duration of the communication.

79 (d) "Portable electronic device" means any portable device
80 that is capable of creating, receiving, accessing, or storing
81 electronic data or communications, including, but not limited
82 to, cellular telephones.

83 (2) Information contained in a portable electronic device
84 is not subject to search by a government entity, including a
85 search incident to a lawful arrest, except pursuant to a warrant
86 signed by a judge and based on probable cause or pursuant to a
87 lawful exception to the warrant requirement.

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88 (3) A government entity may not enter into a nondisclosure
89 agreement with a vendor who sells equipment to monitor
90 electronic devices. Any existing nondisclosure agreements are
91 declared void as being against the public policy of the state.
92 Records otherwise protected by such agreements are declared
93 subject to the public records laws, and an agency may not refuse
94 to disclose such agreements or related records upon request by
95 citing such an agreement.

96 (4) Evidence obtained in violation of this section is not
97 admissible in a criminal, civil, administrative, or other
98 proceeding except as proof of a violation of this section.

99 (5) A government entity that purposely violates this
100 section commits a misdemeanor of the first degree, punishable as
101 provided in s. 775.082 or s. 775.083. A person injured by a
102 government entity as a result of a violation of this section may
103 file civil suit against the government entity.

104 (6) (a) By January 15 of each year, a communication common
105 carrier or electronic communications service doing business in
106 this state shall report to the department the following
107 information for the preceding calendar year, disaggregated by
108 each law enforcement agency in this state making the applicable
109 requests:

110 1. The number of requests made for pen register or trap and
111 trace information.

112 2. The number of requests made for electronic serial number
113 reader information.

114 3. The number of requests made for location information.

115 4. The number of individuals whose location information was
116 disclosed.

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117 5. The amount that each law enforcement agency was billed
118 by the communication common carrier or electronic communications
119 service for each request made under subsections (1)-(3).

120 (b) By the 30th day after expiration of a warrant or order
121 issued under subsection (2) or an order extending the period of
122 a warrant or order issued under subsection (2), or by the 30th
123 day after the court denies an application for a warrant or order
124 under subsection (2), the court shall submit to the department
125 the following information, as applicable:

126 1. The receipt of an application for a warrant or order
127 under this section.

128 2. The type of warrant or order for which the application
129 was made.

130 3. Whether any application for an order of extension was
131 granted, granted as modified by the court, or denied.

132 4. The period of monitoring authorized by the warrant or
133 order and the number and duration of any extensions of the
134 warrant.

135 5. The offense under investigation, as specified in the
136 application for the warrant or order or an extension of the
137 warrant or order.

138 6. The name of the law enforcement agency or prosecutor
139 that submitted an application for the warrant or order or an
140 extension of the warrant or order.

141 (c) By January 15 of each year, each prosecutor that
142 submits an application for a warrant or order or an extension of
143 a warrant or order under this section shall submit to the
144 department the following information for the preceding calendar
145 year:

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146 1. The information required to be submitted by a court
147 under paragraph (b) with respect to each application submitted
148 by the prosecutor for the warrant or order or an extension of
149 the warrant or order.

150 2. A general description of information collected under
151 each warrant or order that was issued by the court, including
152 the approximate number of individuals for whom location
153 information was intercepted and the approximate duration of the
154 monitoring of the location information of those individuals.

155 3. The number of arrests made as a result of information
156 obtained under a warrant or order issued pursuant to subsection
157 (2).

158 4. The number of criminal trials commenced as a result of
159 information obtained under a warrant or order issued pursuant to
160 subsection (2).

161 5. The number of convictions obtained as a result of
162 information obtained under a warrant or order issued pursuant to
163 subsection (2).

164 (d) Reports submitted to the department under this section
165 are expressly declared subject to disclosure under the public
166 records laws and are not confidential or exempt.

167 (e) By March 1 of each year, the department shall submit a
168 report to the Governor, the President of the Senate, the Speaker
169 of the House of Representatives, and the chairs of the standing
170 committees of the Senate and the House of Representatives with
171 primary jurisdiction over criminal justice. The report shall
172 contain the following information for the preceding calendar
173 year:

174 1. An assessment of the extent of tracking or monitoring by

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175 law enforcement agencies of pen registers, trap and trace
176 devices, electronic serial number readers, and location
177 information.

178 2. A comparison of the ratio of the number of applications
179 for warrants or orders made pursuant to subsection (2) to the
180 number of arrests and convictions resulting from information
181 obtained under a warrant or order issued pursuant to subsection
182 (2).

183 3. Identification of the types of offenses investigated
184 under a warrant or order issued pursuant to subsection (2).

185 4. With respect to both state and local jurisdictions, an
186 estimate of the total cost of conducting investigations under a
187 warrant or order issued pursuant to subsection (2).

188 Section 4. If any provision of this act or its application
189 to any person or circumstance is held invalid, the invalidity
190 does not affect other provisions or applications of this act
191 which can be given effect without the invalid provision or
192 application, and to this end the provisions of this act are
193 severable.

194 Section 5. This act shall take effect July 1, 2015.