

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 7001

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Criminal Justice Subcommittee;
Trujillo; Moskowitz

116 Y's 0 N's

COMPANION CS/SB 542
BILLS:

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 7001 passed the House on March 18, 2015. The bill was amended by the Senate on April 22, 2015, and subsequently passed the House on April 24, 2015.

Section 934.03, F.S., makes it a third degree felony for a person to intentionally intercept an oral communication. The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception; and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

The bill creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. This may have a negative prison bed impact. The bill may also result in additional criminal prosecutions, because it allows additional evidence to be used in court proceedings.

Subject to the Governor's veto powers, the bill is effective July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Section 934.03, F.S., makes it a third degree felony¹ for a person to intentionally intercept² an oral communication.³ The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception;⁴ and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.⁵

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.⁶

In *McDade v. State*,⁷ a 16-year old girl secretly recorded conversations with her step-father that confirmed that he had sexually abused her. The trial court admitted these recordings into evidence, and the defendant was convicted. On appeal, the 2nd District Court of Appeal affirmed the trial court's decision to admit the recordings into evidence reasoning that the defendant did not have an expectation of privacy in the communication that "society [was] prepared to accept as reasonable."⁸ After examining the plain language of the prohibitions in s. 934.03, F.S., the Florida Supreme Court disagreed and held that because the recordings impermissibly intercepted oral communications, they were inadmissible as evidence.⁹ However, the court stated the following:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity – or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature.¹⁰

Effect of the Bill

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a child under 18 years of age to intercept and record an oral communication if the child:

- Is a party to the communication; and

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² Section 934.02, F.S., defines "intercept" as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

³ Section 934.02, F.S., defines "oral communication" as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

⁴ Section 934.03(2)(d), F.S. As of August 2012, Florida was one of 12 states that required the consent of all parties (rather than one party) to a communication to consent in order for interception to be lawful. Reporters Committee for Freedom of the Press, *Reporter's Recording Guide - A State-by-State Guide to Taping Phone Calls and In-Person Conversations*, August 1, 2012, <http://www.rcfp.org/rcfp/orders/docs/RECORDING.pdf> (last accessed on April 27, 2015).

⁵ s. 934.03(2)(c), F.S.

⁶ s. 934.06, F.S.

⁷ 154 So. 3d 292 (Fla. 2014)

⁸ *McDade v. State*, 154 So. 3d 292, 296 (Fla. 2014)(citing *McDade v. State*, 114 So. 3d 465 at 470 (Fla. 2d DCA 2013)).

⁹ *McDade v. State*, 154 So. 3d 292 (Fla. 2014).

¹⁰ *Id.* at 299

- Has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. To the extent this results in fewer people being arrested for violating s. 934.03, F.S., the bill may have a negative prison bed impact (i.e., a decrease in prison beds). The bill also allows additional evidence relating to a crime of violence to be used in court proceedings. This may result in additional criminal prosecutions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.