

74-249

6 May 1974

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DEPARTMENT OF STATE
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SUBJECT: SB 459 by Childers
and others relating to the
security of communications.

1. What is the problem?

Under the existing law in sections 934.03(2)(c) and (d), it is lawful to intercept a wire or oral communication when one of the parties has given their consent to the interception.

2. Is there a need for this legislation?

The existing definition of "oral communication" is identical to the federal definition in Title 18, U.S.C., §2510. Paragraphs (c) and (d) of the existing section 934.03(2), Florida Statutes, are essentially identical to paragraphs (c) and (d) of Title 18, U.W.C. §2511(2). The change authorized under section 3 of the bill would not be necessary if present law were retained.

3. Is it constitutional?

Yes.

4. What are the probable consequences of this legislation?

The bill affords greater protection to the privacy of individual communication by going beyond the federal standards by allowing interception only when authorized by the bill: i.e., by a law enforcement officer, when one party has consented and the purpose of the interception was to obtain evidence of a criminal act; or by a private individual only when all parties have given prior consent to the interception.

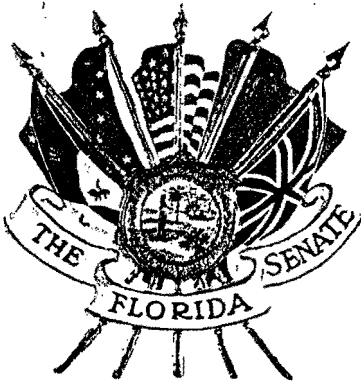
5. Is the bill correct in form and substance?'

Page 1, lines 5-6 and 25-26, "1972 Supplement" is not necessary.

6. Does it adequately and accurately express legislative intent?

Yes.

/ldr



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COMMITTEE ON CRIMINAL JUSTICE

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RICHARD M. DUNN, STAFF DIRECTOR

MEMORANDUM

TO: Members, Criminal Justice Committee
FROM: Vince Rio
RE: Senate Bill 459

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I. Summary

Section 1 clarifies that the term "oral communication" as used in the act does not include oral communications uttered in a public meeting.

Section 2 allows law enforcement officers and persons acting under direction of a law enforcement officer to intercept wire or oral communications to obtain evidence of crime when such person is a party to the communication or when a party to the communication has consented to such interception.

The section also provides that it is lawful to intercept a communication when all the parties to the communication have given prior consent to the interception, but unlawful to intercept for the purpose of committing a criminal act.

II. Existing Law

F.S. 94303(2)(c) allows a person acting under color of law

to intercept communications when one party to the communication consents to the interception.

F.S. 934.03(2)(d) allows persons not acting under color of law to intercept communications when that person or one party to the conversation has given prior consent to the interception, unless the interception is conducted for the purpose of committing a criminal act.

III. Analysis

This bill would afford greater protection to the privacy of individuals' communications by allowing interception only when:

1. One party to the communication had consented and the interception was performed by a law enforcement officer or person acting under the direction of a law enforcement officer and the purpose of the interception was to obtain evidence of a criminal act; or,

2. When all parties to the communication have given prior consent to the interception.

The act also makes it unlawful to intercept any communication for the purpose of committing any criminal act.