



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

Sub. H.B. 535

129th General Assembly
(As Passed by the House)

Reps. Hill, Sears, J. Adams, Grossman, Maag, McClain, Roegner, Ruhl, Thompson, Phillips, Reece, Stinziano, Bupp, Letson, Amstutz, Baker, Barnes, Beck, Blair, Boose, Boyce, Carney, Derickson, DeVitis, Dovilla, Duffey, Hackett, C. Hagan, Hall, Hayes, Johnson, Kozlowski, Lynch, Mallory, Martin, McGregor, Milkovich, Murray, Newbold, O'Brien, Patmon, Pillich, Scherer, Schuring, Smith, Stebelton, Uecker, Wachtmann, Winburn, Young, Batchelder

BILL SUMMARY

- Exempts a parent or person acting in loco parentis of a minor child from the prohibition against the "interception of a wire, oral, or electronic communication" with respect to any such communication in which the child participates or of which the child is a recipient or intended recipient if the interception is made in good faith for the child's protection.

CONTENT AND OPERATION

Interception of wire, oral, or electronic communication

The bill specifies that the prohibition under existing law against the "interception of a wire, oral, or electronic communication" as described below does not apply to a parent of a minor child or a person acting in loco parentis of a minor child, including but not limited to a guardian, custodian, grandparent acting under a power of attorney created under R.C. 3109.52 (creation by a child's parent, guardian, or custodian of a power of attorney granting to the child's grandparent with whom the child resides any of the parent's, guardian's, or custodian's rights and responsibilities regarding the child's care, physical custody, and control), with respect to any wire, oral, or electronic communication in which the minor child participates or of which the minor child is a

recipient or intended recipient if the interception is made in good faith for the child's protection.¹

Existing law prohibits any person from purposely doing any of the following (see "**Definitions**" below, for definitions of terms in quotation marks):²

(1) "Intercepting," attempting to intercept, or procuring another person to intercept or attempt to intercept a "wire, oral, or electronic communication;"

(2) Using, attempting to use, or procuring another person to use or attempt to use an "interception device" to intercept a wire, oral, or electronic communication, if either of the following applies: (a) the interception device is affixed to, or otherwise transmits a signal through, a wire, cable, satellite, microwave, or other similar method of connection used in wire communications, or (b) the interception device transmits communications by radio, or interferes with the transmission of communications by radio;

(3) Using, or attempting to use, the "contents" of a wire, oral, or electronic communication, knowing or having reason to know that the contents were obtained through the interception of a wire, oral, or electronic communication in violation of R.C. 2933.51 to 2933.66 (interception warrants, oral order for interception without warrant, evidence from intercepted wire, oral, or electronic communication, wiretapping and electronic surveillance, and related matters).

A violation of the above prohibition is "interception of wire, oral, or electronic communication," a felony of the fourth degree.³

Existing law also lists various circumstances in which the prohibition does not apply.⁴

Definitions

Existing law defines the following terms as used in the above prohibition:⁵

¹ R.C. 2933.52(B)(14).

² R.C. 2933.52(A).

³ R.C. 2933.52(C).

⁴ R.C. 2933.52(B)(1) to (13).

⁵ R.C. 2933.51(A) to (D), (G), and (N), not in the bill.

"Wire communication" means an aural transfer that is made in whole or in part through the use of facilities for the transmission of communications by the aid of wires or similar methods of connecting the point of origin of the communication and the point of reception of the communication, including the use of a method of connecting the point of origin and the point of reception of the communication in a switching station, if the facilities are furnished or operated by a person engaged in providing or operating the facilities for the transmission of communications. "Wire communication" includes an electronic storage of a wire communication.

"Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation. "Oral communication" does not include an electronic communication.

"Electronic communication" means a transfer of a sign, signal, writing, image, sound, datum, or intelligence of any nature that is transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. "Electronic communication" does not mean: (1) a wire or oral communication, (2) a communication made through a tone-only paging device, or (3) a communication from an electronic or mechanical tracking device that permits the tracking of the movement of a person or object.

"Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of an interception device.

"Interception device" means an electronic, mechanical, or other device or apparatus that can be used to intercept a wire, oral, or electronic communication. "Interception device" does not mean any of the following:

(1) A telephone or telegraph instrument, equipment, or facility, or any of its components, if the instrument, equipment, facility, or component is: (a) 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, (b) furnished by a subscriber or user for connection to the facilities of a provider of wire or electronic communication service and used in the ordinary course of that subscriber's or user's business, or (c) being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties that do not involve the interception of wire, oral, or electronic communications;

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

"Contents," when used with respect to a wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of the communication.

HISTORY

ACTION	DATE
Introduced	05-03-12
Reported, H. Judiciary and Ethics	05-23-12
Passed House (87-0)	06-13-12

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