

HOUSE BILL No. 5240

October 16, 2001, Introduced by Reps. Raczkowski, Vander Veen, Voorhees, Pappageorge, Stewart and Birkholz and referred to the Committee on Criminal Justice.

A bill to authorize certain interceptions of communications and the use of interception devices for certain offenses; to provide for and regulate the application, issuance, and execution of interception orders; to prescribe the powers and duties of certain agencies, officers, and employees; to regulate the use and disclosure of communications and evidence intercepted or obtained under this act; to provide remedies and exemptions from liability; to prescribe penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Aggrieved person" means a person who was a party to an
3 intercepted wire, oral, or electronic communication or a person
4 against whom the interception was directed.

1 (b) "Aural transfer" means a transfer containing the human
2 voice at any point between the point of origin and the point of
3 reception, including those points.

4 (c) "Communication common carrier" means a person engaged as
5 a common carrier for hire in communication by wire or radio or in
6 radio transmission of energy. A person engaged in radio broad-
7 casting is not a communication common carrier while so engaged.

8 (d) "Contents" means any information concerning the sub-
9 stance, purport, or meaning of a wire, oral, or electronic
10 communication.

11 (e) "Electronic communication" means a transfer of signs,
12 signals, writing, images, sounds, data, or intelligence of any
13 nature transmitted in whole or in part by a wire, radio, electro-
14 magnetic, photoelectronic, or photooptical system. Electronic
15 communication does not include any of the following:

16 (i) A wire or oral communication.

17 (ii) A communication made through a tone-only paging
18 device.

19 (iii) A communication from an electronic or mechanical
20 device that permits the tracking of an individual's or object's
21 movement.

22 (f) "Electronic communication service" means a service that
23 provides to the service's users the ability to send or receive
24 wire or electronic communications.

25 (g) "Electronic communications system" means wire, radio,
26 electromagnetic, photooptical, or photoelectronic facilities for
27 transmitting wire or electronic communications and computer

1 facilities or related electronic equipment for the electronic
2 storage of wire or electronic communications.

3 (h) "Electronic storage" means either of the following:

4 (i) Temporary, intermediate storage of a wire or electronic
5 communication incidental to its electronic transmission.

6 (ii) Storage of a wire or electronic communication by an
7 electronic communication service for backup protection of the
8 communication.

9 (i) "Interception device" means a device or apparatus that
10 can be used to intercept a wire, oral, or electronic
11 communication. Interception device does not include any of the
12 following:

13 (i) A telephone or telegraph instrument, equipment, or
14 facility or any component of that instrument, equipment, or
15 facility that is 1 or more of the following:

16 (A) Furnished to the user by an electronic communication
17 service provider in the ordinary course of its business and being
18 used in the ordinary course of the user's business.

19 (B) Furnished by the user for connection to the facilities
20 of an electronic communication service provider and being used in
21 the ordinary course of the user's business.

22 (C) Being used by an electronic communication service pro-
23 vider in the ordinary course of its business.

24 (D) Being used by an investigative or law enforcement offi-
25 cer in the ordinary course of the officer's duties.

26 (ii) A hearing aid or similar device used to correct
27 subnormal hearing to not better than normal.

1 (j) "Intercept" or "interception" means the aural or other
2 acquisition of the contents of a wire, oral, or electronic commu-
3 nication through the use of an interception device.

4 (k) "Investigative or law enforcement officer" means an
5 officer of this state or a political subdivision who is empowered
6 by law to conduct investigations of or to make arrests for
7 offenses described in section 7 and who is certified under
8 section 10.

9 Sec. 2. As used in this act:

10 (a) "Judge of competent jurisdiction" means a court of
11 appeals judge or a circuit court judge.

12 (b) "Oral communication" means a communication uttered by a
13 person with a reasonable expectation that the communication is
14 not subject to interception. Oral communication does not include
15 an electronic communication.

16 (c) "Person" means an employee or agent of this state or a
17 political subdivision or an individual, partnership, association,
18 limited liability company, corporation, or other legal entity.

19 (d) "Political subdivision" means a county, city, township,
20 or village of this state.

21 (e) "Prosecutor" means the attorney general of this state or
22 1 assistant attorney general he or she designates or the princi-
23 pal prosecuting attorney of the county in which the facility or
24 place where the communication to be intercepted is located or 1
25 assistant prosecuting attorney of that county he or she
26 designates.

1 (f) "Readily accessible to the general public" means the
2 communication is not any of the following:

3 (i) Scrambled or encrypted.

4 (ii) Transmitted using modulation techniques whose essential
5 parameters have been withheld from the public to preserve the
6 communication's privacy.

7 (iii) Carried on a subcarrier or other signal subsidiary to
8 a radio transmission.

9 (iv) Transmitted over a communication system provided by a
10 communication common carrier, unless the communication is a
11 tone-only paging system communication.

12 (v) Transmitted on a frequency allocated under 47
13 C.F.R. part 25, subpart D, E, or F of 47 C.F.R. part 74, or 47
14 C.F.R. former part 94 unless, in the case of a communication
15 transmitted on a frequency allocated under 47 C.F.R. part 74 that
16 is not exclusively allocated to broadcast auxiliary services, the
17 communication is a 2-way voice communication by radio.

18 (g) "User" means a person who subscribes to or uses an elec-
19 tronic communication service and is authorized to engage in that
20 use.

21 (h) "Wire communication" means an aural transfer made in
22 whole or in part through the use of facilities for transmitting
23 communications by wire, cable, or other substantially similar
24 connection between the point of origin and the point of reception
25 that are furnished or operated by a person engaged in providing
26 or operating those facilities for the transmission of
27 communications and includes the use of such a connection in a

1 switching station. Wire communication includes an electronic
2 storage of such a communication. Wire communication does not
3 include an electronic communication.

4 Sec. 3. (1) Except as otherwise provided in this act or as
5 authorized or approved under chapter 119 of title 18 of the
6 United States Code, 18 U.S.C. 2510 to 2522, a person shall not
7 intentionally do any of the following:

8 (a) Intercept, attempt to intercept, or solicit another
9 person to intercept or attempt to intercept a wire, oral, or
10 electronic communication.

11 (b) Disclose or attempt to disclose to another person the
12 contents of a wire, oral, or electronic communication knowing or
13 having reason to know that the information was obtained through
14 the interception of a wire, oral, or electronic communication in
15 violation of this act.

16 (c) Use or attempt to use the contents of a wire, oral, or
17 electronic communication knowing or having reason to know the
18 information was obtained through the interception of a wire,
19 oral, or electronic communication in violation of this act.

20 (2) Except as provided in subsection (3), a person who vio-
21 lates subsection (1) is guilty of a felony punishable by impris-
22 onment for not more than 4 years or a fine of not more than
23 \$2,000.00, or both.

24 (3) If both of the following apply, conduct prohibited by
25 subsection (1) is not punishable under subsection (2) unless it
26 is for direct or indirect commercial advantage or private
27 financial gain:

1 (a) The conduct consists of or relates to the interception
2 of a satellite transmission that is not encrypted or scrambled.

3 (b) Either of the following applies:

4 (i) The satellite transmission is transmitted to a broad-
5 casting station for retransmission to the general public.

6 (ii) The satellite transmission is transmitted as an audio
7 subcarrier intended for redistribution to facilities open to the
8 public but is not a data transmission or telephone call.

9 (4) A person who trespasses on property owned or under the
10 control of another person with the intent to intercept or facili-
11 tate intercepting a wire, oral, or electronic communication is
12 guilty of a misdemeanor punishable by imprisonment for not more
13 than 90 days or a fine of not more than \$100.00, or both.

14 (5) This act does not prohibit any of the following:

15 (a) Interception, disclosure, or use of a wire or electronic
16 communication by a switchboard operator or an officer, employee,
17 or agent of an electronic communication service provider in the
18 normal course of his or her duties or employment while engaged in
19 an activity necessarily incident to rendering service or protect-
20 ing the provider's rights or property, unless the interception
21 results from the provider's use of service observing or random
22 monitoring for purposes other than mechanical or service quality
23 control checks.

24 (b) Interception of a wire or electronic communication, or
25 an oral communication transmitted by radio, or disclosure or use
26 of the information obtained through the interception by an
27 officer, employee, or agent of the federal communications

1 commission in the normal course of his or her employment and the
2 commission's monitoring responsibilities to enforce the communi-
3 cations act of 1934, chapter 652, 48 Stat. 1064.

4 (c) A person intercepting a wire, oral, or electronic commu-
5 nication while acting under color of law if the person is a party
6 to the communication or 1 of the parties to the communication
7 gives prior consent to the interception.

8 (d) A person intercepting a wire, oral, or electronic commu-
9 nication while not acting under color of law if the person is a
10 party to the communication or 1 of the parties to the communica-
11 tion gives prior consent to the interception, unless the communi-
12 cation is intercepted to commit a criminal or tortious act in
13 violation of the constitution or laws of the United States or
14 this state.

15 (e) Electronic surveillance as defined in section 101 of
16 title I of the foreign intelligence surveillance act of 1978,
17 Public Law 95-511, 50 U.S.C. 1801, conducted by an officer,
18 employee, or agent of the United States in the normal course of
19 his or her official duty to conduct that surveillance.

20 (f) Intercepting or accessing an electronic communication
21 made through an electronic communication system that is config-
22 ured so the electronic communication is readily accessible to the
23 general public.

24 (g) Intercepting a radio communication transmitted by any of
25 the following:

1 (i) A station if the communication is for the general
2 public's use or relates to a ship, aircraft, vehicle, or person
3 in distress.

4 (ii) A governmental, law enforcement, civil defense, private
5 land mobile, fire, or public safety communications system that is
6 readily accessible to the general public.

7 (iii) A station operating on a authorized frequency within
8 the bands allocated to amateurs, citizens band, or general mobile
9 radio services.

10 (iv) A marine or aeronautical communications system.

11 (h) Engaging in conduct that is either prohibited by
12 section 633 of part IV of title VI of the communications act of
13 1934, chapter 652, 98 Stat. 2796, 47 U.S.C. 553, or excepted from
14 the application of section 705(a) of title VII of the communica-
15 tions act of 1934, chapter 652, 48 Stat. 1103, 47 U.S.C. 605, by
16 section 705(b) of title VII of the communications act of 1934,
17 chapter 652, 48 Stat. 1103, 47 U.S.C. 605.

18 (i) Intercepting a wire or electronic communication whose
19 transmission is causing harmful interference to a lawfully oper-
20 ating station or consumer electronic equipment to the extent nec-
21 essary to identify the source of the interference.

22 (j) Interception by other users of the same frequency of a
23 radio communication made through a system that utilizes frequen-
24 cies monitored by individuals engaged in providing or using the
25 system if the communication is not scrambled or encrypted.

26 (k) Using a pen register or a trap and trace device.

1 (1) An electronic communication service provider recording
2 the fact that a wire or electronic communication was initiated or
3 completed to protect the provider, another provider furnishing
4 service in connection with the wire or electronic communication,
5 or a user from fraudulent, unlawful, or abusive use of the
6 service.

7 (6) A person may provide information, facilities, or techni-
8 cal assistance to a person authorized by law to intercept a wire,
9 oral, or electronic communication if that person was provided
10 with a court order described in section 8 directing that
11 assistance. The person assisting shall not disclose the exis-
12 tence of any interception, surveillance, or interception device
13 relating to the order described in this subsection except as oth-
14 erwise required by lawful process and then only after notifying
15 the prosecutor who obtained the order before disclosure.

16 (7) Except as otherwise provided in subsections (8) and (9),
17 a person providing an electronic communication service to the
18 public shall not intentionally disclose the contents of a commu-
19 nication while it is being transmitted on that service to a
20 person other than the addressee or intended recipient of the com-
21 munication or an agent of the addressee or intended recipient.

22 (8) Subsection (7) does not apply if the service provider or
23 the provider's agent is the addressee or intended recipient of
24 the communication.

25 (9) A service provider described in subsection (7) may dis-
26 close the contents of a communication as follows:

1 (a) If the communication was intercepted as described in
2 subsection (5).

3 (b) As authorized under this act.

4 (c) With the lawful consent of the originator, an addressee,
5 or an intended recipient of the communication.

6 (d) To a person employed or authorized, or whose facilities
7 are used, to forward the communication to its destination.

8 (e) To a law enforcement agency, if the service provider
9 obtains the contents inadvertently and believes they pertain to
10 the commission of a crime.

11 Sec. 4. (1) Except as provided in subsection (2) or (3) or
12 as authorized or approved under chapter 119 of title 18 of the
13 United States Code, 18 U.S.C. 2510 to 2522, a person shall not do
14 any of the following:

15 (a) Manufacture, assemble, possess, or sell or otherwise
16 deliver an interception device knowing or having reason to know
17 the device's design renders it primarily useful for surrepti-
18 tiously intercepting wire, oral, or electronic communications.

19 (b) Advertise or offer to sell or otherwise deliver an
20 interception device knowing or having reason to know the device's
21 design renders it primarily useful for surreptitiously intercept-
22 ing wire, oral, or electronic communications.

23 (c) Advertise or offer to sell or otherwise deliver any
24 device by promoting the use of the device to surreptitiously
25 intercept wire, oral, or electronic communications.

26 (2) In the normal course of its business, an electronic
27 communication service provider or an officer, agent, or employee

1 of or a person under contract with that service provider may
2 manufacture, assemble, possess, or sell an interception device
3 knowing or having reason to know the device's design renders it
4 primarily useful for surreptitiously intercepting wire, oral, or
5 electronic communications.

6 (3) Under a warrant or order issued by a court of competent
7 jurisdiction or a comparable court of the United States, an offi-
8 cer, agent, or employee of the United States, this state, or a
9 political subdivision may manufacture, assemble, possess, or sell
10 an interception device knowing or having reason to know the
11 device's design renders it primarily useful for surreptitiously
12 intercepting wire, oral, or electronic communications.

13 (4) A person who violates subsection (1) is guilty of a
14 felony punishable by imprisonment for not more than 4 years or a
15 fine of not more than \$2,000.00, or both.

16 Sec. 5. If a wire, oral, or electronic communication is
17 intercepted, its contents and any evidence derived from the com-
18 munication shall not be received in evidence in a trial, hearing,
19 or other proceeding before a court, grand jury, tribunal, depart-
20 ment or regulatory agency, legislative committee, or other
21 authority of this state or a political subdivision if disclosure
22 of the communication or evidence would violate this act.

23 Sec. 6. (1) An investigative or law enforcement officer who
24 knows the contents of a wire, oral, or electronic communication
25 or evidence derived from the communication may do any of the fol-
26 lowing if he or she obtained that knowledge by a means authorized
27 under this act:

1 (a) Disclose the contents or evidence to another
2 investigative or law enforcement officer or to an officer, agent,
3 or official of a law enforcement agency of the United States gov-
4 ernment to the extent appropriate for proper performance of the
5 official duties of the person making or receiving the
6 disclosure.

7 (b) Use those contents or the evidence to the extent appro-
8 priate for proper performance of his or her official duties.

9 (2) A person who receives information concerning a wire,
10 oral, or electronic communication intercepted in accordance with
11 this act or evidence derived from the communication may disclose
12 the contents or evidence while giving testimony under oath or
13 affirmation in a proceeding held under the authority of the
14 United States, this state, or a political subdivision or in a
15 civil proceeding under section 12 if the person received the
16 information by a means authorized under this act.

17 (3) A privileged wire, oral, or electronic communication
18 intercepted in accordance with or in violation of this act does
19 not lose its privileged character by that interception and shall
20 not be disclosed.

21 (4) Except as otherwise provided in this subsection, if an
22 investigative or law enforcement officer intercepting wire, oral,
23 or electronic communications in the manner authorized by this act
24 intercepts a wire, oral, or electronic communication relating to
25 an offense other than an offense specified in the order under
26 section 8, the communication's contents and evidence derived from
27 the communication may be disclosed or used as provided in

1 subsection (1). The communication's contents and any evidence
2 derived from the communication may be used under subsection (3)
3 if authorized or approved by a judge of competent jurisdiction on
4 subsequent application after determining that the contents were
5 otherwise intercepted in accordance with this act. The subse-
6 quent application shall be made as soon as practicable after
7 intercepting the communication. This subsection does not autho-
8 rize the disclosure or use in any manner of the contents of or
9 evidence derived from a wire, oral, or electronic communication
10 relating to an offense punishable by imprisonment for 4 years or
11 less or punishable only by a fine.

12 Sec. 7. (1) A prosecutor may authorize an application to a
13 judge of competent jurisdiction for an order authorizing or
14 approving the interception of wire, oral, or electronic communi-
15 cations by the investigative or law enforcement officer responsi-
16 ble for the investigation of the offense for which the applica-
17 tion is made if the interception may provide or has provided evi-
18 dence of any of the following offenses:

19 (a) A violation of section 7401(2)(a) or (b), 7402(2)(a), or
20 7403(2)(a)(i), (ii), or (iii) of the public health code, 1978 PA
21 368, MCL 333.7401, 333.7402, and 333.7403.

22 (b) A violation of section 7402(2)(e) of the public health
23 code, 1978 PA 368, MCL 333.7402, involving a controlled substance
24 analogue of a controlled substance described in section
25 7401(2)(a) or (b) of the public health code, 1978 PA 368, MCL
26 333.7401.

1 (c) A violation of section 7403(2)(b) of the public health
2 code, 1978 PA 368, MCL 333.7403, involving a controlled substance
3 analogue of a controlled substance described in section
4 7403(2)(a) of that act.

5 (d) A conspiracy to commit an offense described in subdivi-
6 sion (a), (b), or (c).

7 (e) An offense other than an offense described in subdivi-
8 sions (a) to (d) in the manner and to the extent permitted under
9 section 6(4).

10 (2) The principal prosecuting attorney for a county or his
11 or her designated prosecuting attorney shall not authorize an
12 application under subsection (1) unless the attorney general or
13 his or her designated assistant attorney general approves the
14 authorization.

15 (3) Unless the investigative or law enforcement officer
16 described in subsection (1) is employed by the department of
17 state police, the prosecutor authorizing the application shall
18 notify the director of the department of state police, or a
19 person the director designates, of the application and the infor-
20 mation described in section 8(1)(b)(ii) and (iv). If the pro-
21 posed interception will overlap, conflict with, hamper, or inter-
22 fere with another interception proposed or authorized, the direc-
23 tor or his or her designee shall advise the judge of competent
24 jurisdiction for each application and shall coordinate any subse-
25 quent interceptions.

26 Sec. 8. (1) An application for an order authorizing or
27 approving the interception of a wire, oral, or electronic

1 communication shall be in writing upon oath or affirmation to a
2 judge of competent jurisdiction and shall state the applicant's
3 authority to apply. An application shall include all of the fol-
4 lowing information:

5 (a) The identity of the investigative or law enforcement
6 officer applying and the prosecutor authorizing the application.
7 If approval by the attorney general or his or her designated
8 assistant attorney general is required under section 7(2), the
9 application shall include a statement of that approval.

10 (b) A comprehensive statement of the facts and circumstances
11 the applicant relies upon to justify his or her belief that an
12 order should be issued, including all of the following:

13 (i) Details of the particular offense that has been, is
14 being, or is about to be committed.

15 (ii) A particular description of the nature and location of
16 the facilities from which, or the place where, the communication
17 is to be intercepted.

18 (iii) A particular description of the type of communication
19 sought to be intercepted.

20 (iv) If known, the identity of any person committing or
21 about to commit the offense and whose communication is to be
22 intercepted.

23 (v) A statement of the facts indicating the specific
24 instances of conduct demonstrating probable cause to believe the
25 particular offense has been, is being, or is about to be
26 committed.

1 (c) Comprehensive statements of each of the following:

2 (i) Whether other investigative procedures have been tried
3 and have failed.

4 (ii) The time period for which the interception must be
5 maintained. If the investigation's nature is such that the
6 authorization for interception should not automatically terminate
7 when the described type of communication has been obtained, the
8 statement shall include a particular description of the facts
9 establishing probable cause to believe additional communications
10 of the same type will occur after that time.

11 (iii) The legitimate investigative objective to be achieved
12 by the interception.

13 (iv) The facts concerning all previous applications known to
14 the individuals authorizing and making the application that were
15 made for authorization to intercept or for approval of an inter-
16 ception of a wire, oral, or electronic communication involving
17 any of the same persons, facilities, or places specified in the
18 application and the action taken by the judge on each previous
19 application.

20 (d) If the application is for extension of an order, a
21 statement setting forth the results obtained from the intercep-
22 tion or a reasonable explanation of the failure to obtain any
23 results.

24 (e) Unless the applying investigative or law enforcement
25 officer is employed by the department of state police, a state-
26 ment that the director of the department of state police or an
27 individual the director designates has been notified of the

1 application and of the information described in subdivision
2 (b)(ii) and (iv).

3 (2) The judge of competent jurisdiction may require the
4 applicant to furnish additional testimony or documentary evidence
5 to support the application.

6 (3) Based upon an application under subsection (1), the
7 judge of competent jurisdiction may enter an ex parte order, as
8 requested or as modified, authorizing or approving interception
9 of a wire, oral, or electronic communication if the judge deter-
10 mines all of the following on the basis of the facts submitted by
11 the applicant:

12 (a) Probable cause exists to believe an individual is com-
13 mitting, has committed, or is about to commit a particular
14 offense described in section 7.

15 (b) Probable cause exists to believe the facilities from
16 which, or the place where, the wire, oral, or electronic communi-
17 cation is to be intercepted are being used, or are about to be
18 used, in connection with the offense or are leased to, listed in
19 the name of, or commonly used by a person described in subsection
20 (1)(b)(iv).

21 (c) Probable cause exists to believe particular communica-
22 tions concerning that offense will be obtained through the
23 interception.

24 (d) Usual investigative procedures have been tried and have
25 failed.

1 (4) Each order authorizing or approving interception of a
2 wire, oral, or electronic communication shall specify all of the
3 following:

4 (a) If known, the identity of the person whose communication
5 is to be intercepted.

6 (b) The nature and location of the communication facilities
7 as to which, or the place where, authority to intercept is
8 granted.

9 (c) A particular description of the type of communication
10 sought to be intercepted and a statement of the particular
11 offense to which it relates.

12 (d) The legitimate investigative objective for which autho-
13 rization to intercept is granted.

14 (e) The agency authorized to intercept the communication and
15 the person authorizing the application.

16 (f) The time period during which interception is authorized
17 or approved, including a statement as to whether interception
18 shall automatically terminate when the described communication
19 has been obtained.

20 (5) If the application states that specific information,
21 facilities, or technical assistance is needed from a particular
22 person to accomplish the interception unobtrusively and with min-
23 imum interference with the services that person is according a
24 person whose communications are to be intercepted, the order
25 authorizing the interception shall direct the particular person
26 to immediately furnish the information, facilities, or technical
27 assistance specified in the order to the applicant. The order

1 shall specify the time period during which the person is required
2 to provide information, facilities, or technical assistance. The
3 agency conducting the interception shall compensate the person
4 furnishing facilities or technical assistance for reasonable
5 expenses incurred in providing the facilities or assistance. A
6 person is not civilly liable for providing information, facilities,
7 ties, or assistance under this subsection.

8 (6) An order entered under this section shall not authorize
9 or approve the interception of a wire, oral, or electronic communication
10 for longer than the time necessary to achieve the authorized
11 investigative objective or 30 days, whichever is earlier.
12 The period begins on the day an investigative or law enforcement
13 officer first begins to conduct an interception under the order
14 or 10 days after the order is entered, whichever is earlier. The
15 judge may grant extensions of an order only upon application for
16 an extension in accordance with subsections (1) and (3). The
17 extension period shall not be longer than the time the judge
18 determines is necessary to achieve the purposes for which the
19 order was granted or 30 days, whichever is earlier. Only 2
20 extensions of an order may be granted. After the second extension
21 of an order terminates, an investigative or law enforcement
22 officer may apply for and be granted an order authorizing the
23 interception of a wire, oral, or electronic communication based
24 on the information contained in the application for the terminated
25 order only if the new application includes new evidence, in
26 addition to that described in the previous application,
27 justifying the officer's belief that an order should be issued.

1 (7) Each order and extension shall provide that the
2 authorization to intercept be executed as soon as practicable, be
3 conducted so as to minimize the interception of communications
4 not otherwise subject to interception under this act, and termi-
5 nate when the authorized objective is obtained or, in any event,
6 after not more than 30 days.

7 (8) An order authorizing interception under this act shall
8 require reports to the judge who issued the order showing the
9 progress made toward achieving the authorized objective and any
10 need for continued interception. The reports shall be made
11 weekly or at shorter intervals as the judge requires.

12 (9) The contents of a wire, oral, or electronic communica-
13 tion intercepted as authorized by this act shall be recorded on
14 tape or by a comparable recording device. Recording under this
15 subsection shall be done in a way that protects the recording
16 from editing or other alterations. When an order or extension
17 expires, all recordings shall immediately be made available to
18 the judge issuing the order and sealed under his or her
19 directions. Custody of the recordings shall be where the judge
20 orders. The recordings shall not be destroyed except upon order
21 of the judge or his or her successor, but shall be retained for
22 at least 10 years. Duplicate recordings may be made for use or
23 disclosure of contents or evidence under section 6(1) for
24 investigations. The presence of the seal or a satisfactory
25 explanation for its absence is a prerequisite for use or disclo-
26 sure of contents or evidence under section 6(2).

1 (10) The judge shall seal applications made and orders
2 granted under this act. Custody of the applications and orders
3 shall be where the judge directs. The applications and orders
4 shall be disclosed only upon a showing of good cause before a
5 judge of competent jurisdiction. The applications and orders
6 shall not be destroyed except on order of the judge or his or her
7 successor, but shall be retained for at least 10 years.

8 (11) Within a reasonable time, but not later than 90 days
9 after an order or extension terminates, the judge shall cause an
10 inventory to be served on the persons named in the order and on
11 other parties to intercepted communications as the judge deter-
12 mines is in the interest of justice. The inventory shall include
13 notice of all of the following:

14 (a) Entry of the order.

15 (b) The date the order was entered and the period of autho-
16 rized or approved interception.

17 (c) The fact that during the period wire, oral, or elec-
18 tronic communications were or were not intercepted.

19 (12) If a person given an inventory under subsection (11)
20 files a motion and serves a copy of the motion on the law
21 enforcement agency described in subsection (11) and other parties
22 as required by law, the judge shall make available to the person
23 or his or her attorney for inspection the portions of the inter-
24 cepted communications to which the person was a party and the
25 portions of the applications and orders pertaining to communica-
26 tions to which the person was a party.

1 (13) The contents of a wire, oral, or electronic
2 communication intercepted under this act or evidence derived from
3 the communication shall not be received in evidence or otherwise
4 disclosed in a trial, hearing, preliminary examination, or other
5 proceeding in a court unless each party has been furnished with a
6 copy of the application and order authorizing or approving the
7 interception before the preliminary examination or not less than
8 21 days before the trial, hearing, or other proceeding.

9 (14) An aggrieved person in a trial, hearing, preliminary
10 examination, or other proceeding before a court, grand jury, tri-
11 bunal, department or regulatory agency, legislative committee, or
12 other authority of this state or a political subdivision may move
13 to suppress the contents of a wire, oral, or electronic communi-
14 cation intercepted under this act or evidence derived from the
15 communication on 1 or more of the following grounds:

16 (a) The communication was unlawfully intercepted.

17 (b) The order of authorization or approval under which the
18 communication was intercepted is insufficient on its face.

19 (c) The interception was not in conformity with the order of
20 authorization or approval.

21 (15) A motion to suppress under subsection (14) shall be
22 made before the trial, hearing, preliminary examination, or other
23 proceeding unless there is no opportunity to make the motion
24 before the trial, hearing, preliminary examination, or other pro-
25 ceeding or the aggrieved person making the motion is not aware of
26 the grounds of the motion before the trial, hearing, preliminary
27 examination, or other proceeding. If the aggrieved person files

1 a motion, the judge may make available to the aggrieved person or
2 his or her attorney for inspection any portion of the intercepted
3 communication or evidence derived from the intercepted communica-
4 tion that the judge determines is in the interests of justice.
5 If the judge grants the motion to suppress under subsection (14),
6 the intercepted wire, oral, or electronic communication or evi-
7 dence derived from the communication shall be treated as having
8 been obtained in violation of this act.

9 (16) The prosecutor may appeal an order granting a motion to
10 suppress under subsection (14) or the denial of an application
11 for an order of approval if the prosecutor certifies to the judge
12 or other official granting the motion or denying the application
13 that the appeal is not taken for delay. The prosecutor shall
14 take the appeal within 30 days after the order granting the
15 motion to suppress is entered or the application is denied and
16 shall prosecute it diligently.

17 (17) A violation of subsection (9) or (10) may be punished
18 as contempt of the court that approved or denied the application
19 for interception.

20 Sec. 9. (1) Within 30 days after an order or extension
21 entered under section 8 expires or the judge denies an order
22 authorizing or approving interception of a wire, oral, or elec-
23 tronic communication, the judge shall report all of the following
24 information to the administrative office of the United States
25 courts and to the department of state police:

26 (a) The fact that an order or extension was applied for.

1 (b) The kind of order or extension applied for.

2 (c) Whether the order or extension was granted as applied
3 for, modified, or denied.

4 (d) The interception time period authorized and the number
5 and duration of any extensions of the order.

6 (e) Any offense specified in the application, order or
7 extension.

8 (f) The identity of the investigative or law enforcement
9 officer and agency applying and the prosecutor authorizing the
10 application.

11 (g) The nature of the facilities from which, or the place
12 where, communications were to be intercepted.

13 (2) In January of each year, the attorney general shall
14 report to the administrative office of the United States courts
15 all of the following:

16 (a) The information required by subsection (1) with respect
17 to each application for an order or extension authorizing or
18 approving an interception of a wire, oral, or electronic communi-
19 cation made during the preceding calendar year.

20 (b) A general description of the interceptions made under
21 each order or extension described in subdivision (a), including
22 all of the following:

23 (i) The approximate nature and frequency of incriminating
24 communications intercepted.

25 (ii) The approximate nature and frequency of other communi-
26 cations intercepted.

1 (iii) The approximate number of persons whose communications
2 were intercepted.

3 (iv) The approximate nature, amount, and cost of the man-
4 power and other resources used in the interceptions.

5 (c) The number of arrests resulting from the interceptions
6 described in subdivision (b) and the offenses for which arrests
7 were made.

8 (d) The number of trials resulting from the interceptions
9 described in subdivision (b).

10 (e) The number of motions to suppress made with respect to
11 the interceptions described in subdivision (b) and the number
12 granted or denied.

13 (f) The number of convictions resulting from the intercep-
14 tions described in subdivision (b), the offenses for which the
15 convictions were obtained, and a general assessment of the impor-
16 tance of the interceptions.

17 (g) The information required by subdivisions (b) to (f) with
18 respect to orders or extensions for interception of wire, oral,
19 or electronic communications obtained in a preceding calendar
20 year.

21 (3) On or before January 10 of each year, the department of
22 state police shall report to the attorney general, senate, house
23 of representatives, and governor all of the information regarding
24 applications, orders, and interceptions of wire, oral, or elec-
25 tronic communications required under subsection (2).

26 Sec. 10. The director of the department of state police
27 shall establish a course of training in the legal and technical

1 aspects of intercepting wire, oral, or electronic communications,
2 regulations he or she finds necessary or appropriate for the
3 training program, and minimum standards for the certification and
4 periodic recertification of investigative or law enforcement
5 officers eligible to intercept wire, oral, or electronic communi-
6 cations under this act. The director of the department of state
7 police shall charge each officer who enrolls in this training
8 program a reasonable enrollment fee to offset the costs of
9 training.

10 Sec. 11. An officer, employee, or agent of an electronic
11 communication service provider who learns of the existence of an
12 interception device in the course of his or her employment or
13 otherwise shall report the device's existence to the prosecuting
14 attorney of the county in which the device is located. The pros-
15 ecuting attorney shall determine whether placement of the device
16 is authorized by court order. If placement of the device is not
17 authorized by court order, the prosecuting attorney shall immedi-
18 ately inform the person whose wire, oral, or electronic communi-
19 cation was intercepted or intended to be intercepted of the
20 device's existence. This section does not diminish or excuse any
21 obligation of the prosecuting attorney, the officer, employee, or
22 agent of the electronic communication service provider, or any
23 other person to remove the device or to take any other actions
24 required by law, regulation, or policy.

25 Sec. 12. (1) Except as provided in section 8(5), a person
26 whose wire, oral, or electronic communication is intercepted,
27 disclosed, or used in violation of this act has a civil cause of

1 action against any person who intercepts, discloses, uses, or
2 procures another person to intercept, disclose, or use the commu-
3 nication or its contents. In the civil cause of action, the
4 person is entitled to recover all of the following:

5 (a) Actual damages, but not less than \$1,000.00 a day for
6 each day of a violation.

7 (b) Exemplary damages.

8 (c) Reasonable attorney fees and other litigation costs rea-
9 sonably incurred.

10 (2) A good faith reliance on a court order or a legislative
11 authorization is a defense to a civil or criminal action brought
12 under this act or any other law.

13 Sec. 13. Purchases of an interception device shall be
14 recorded as a separate line item on any state or local appropria-
15 tion bill.

16 Enacting section 1. Sections 539a to 539i of the Michigan
17 penal code, 1931 PA 328, MCL 750.539a to 750.539i, are repealed.

18 Enacting section 2. This act takes effect January 1, 2001.

19 Enacting section 3. This act is repealed January 1, 2004.