

# HOUSE BILL No. 5712

July 16, 2014, Introduced by Rep. McMillin and referred to the Committee on Criminal Justice.

A bill to create the surveillance device act; to create the surveillance device oversight board; to prescribe the powers and duties of the surveillance device oversight board; and to require certain reports by police agencies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "surveillance device act".

3           Sec. 2. As used in this act:

4           (a) "Board" means the surveillance device oversight board  
5 created in section 3.

6           (b) "Surveillance device" means a device intended to be used  
7 by a person other than a telephone service provider to intercept

1 any data or voice communications, including communications to or  
2 from cellular telephones.

3 Sec. 3. (1) The surveillance device oversight board is created  
4 within the department of state police.

5 (2) The board shall consist of the following members:

6 (a) The director of the department of state police or his or  
7 her designated representative from within the department of state  
8 police.

9 (b) One individual appointed by the senate majority leader who  
10 is not and has not been a police officer, who represents the  
11 interests of the public.

12 (c) One individual appointed by the speaker of the house of  
13 representatives who is not and has not been a police officer, who  
14 represents the interests of the public.

15 (d) One individual appointed by the governor who is a county  
16 prosecuting attorney.

17 (e) One individual appointed by the governor who is a criminal  
18 defense attorney.

19 (f) One individual appointed by the governor from a list of at  
20 least 5 individuals nominated by the board of directors of the  
21 Michigan chapter of the American civil liberties union.

22 (3) The members first appointed to the board shall be  
23 appointed within 90 days after the effective date of this act.

24 (4) Appointed members of the board shall serve for terms of 4  
25 years or until a successor is appointed, whichever is later, except  
26 that, of the members first appointed, 1 shall serve for 1 year, 2  
27 shall serve for 2 years, and 2 shall serve for 3 years.

1           (5) If a vacancy occurs on the board, an appointment shall be  
2 made for the unexpired term in the same manner as the original  
3 appointment.

4           (6) The governor may remove a member of the board for  
5 incompetence, dereliction of duty, malfeasance, misfeasance, or  
6 nonfeasance in office, or any other good cause. The governor may  
7 also remove a member of the board for failing to receive or  
8 maintain the proper security clearances necessary to receive  
9 information regarding surveillance devices provided by the federal  
10 government to law enforcement agencies in this state.

11           (7) The first meeting of the board shall be called by the  
12 director of the department of state police. At the first meeting,  
13 the board shall elect from among its members a chairperson and  
14 other officers as it considers necessary or appropriate. After the  
15 first meeting, the board shall meet at least quarterly, or more  
16 frequently at the call of the chairperson or if requested by a  
17 majority or more members.

18           (8) A majority of the members of the board constitute a quorum  
19 for the transaction of business at a meeting of the board. A  
20 majority of the members present and serving are required for  
21 official action of the board.

22           (9) The business that the board may perform shall be conducted  
23 at a public meeting of the board held in compliance with the open  
24 meetings act, 1976 PA 267, MCL 15.261 to 15.275. However, the board  
25 may close a meeting or any portion of a meeting to the public for  
26 purposes of obtaining or reviewing information or questioning any  
27 individual regarding matters that are subject to security

1 requirements under federal law.

2 (10) A writing prepared, owned, used, in the possession of, or  
3 retained by the board in the performance of an official function is  
4 subject to the freedom of information act, 1976 PA 442, MCL 15.231  
5 to 15.246.

6 (11) Members of the board shall serve without compensation.  
7 However, members of the board may be reimbursed for their actual  
8 and necessary expenses incurred in the performance of their  
9 official duties as members of the board.

10 (12) The board shall do all of the following:

11 (a) Review and analyze surveillance technology for purposes of  
12 regulating the distribution to, possession of, and use of that  
13 technology by police agencies and police officers in this state.

14 (b) Promulgate rules regarding the distribution to, possession  
15 of, and use of surveillance technology by police agencies and  
16 police officers in this state.

17 (13) The board may restrict or prohibit the continued use of  
18 surveillance devices by a police agency or a police officer if,  
19 after providing written notice to the police agency or police  
20 officer and providing that police agency or police officer with an  
21 opportunity to be heard, the board determines that the police  
22 agency or police officer has used a surveillance device in  
23 violation of any state or federal law or a rule promulgated by the  
24 board under this act.

25 (14) Each police agency that possesses or uses any  
26 surveillance device shall, on a monthly basis, report all of the  
27 following information to the board in the manner required by the

1 board:

2 (a) The type and number of surveillance devices possessed or  
3 used by the agency or used by a police officer employed by that  
4 agency.

5 (b) The dates of use of those devices.

6 (c) The reasons for using those devices.

7 (d) Whether the use of those devices contributed to any person  
8 being charged with or convicted of a violation of local, state, or  
9 federal law.

10 (15) The board may administer oaths, issue subpoenas, and  
11 examine the books and records of any police agency or police  
12 officer that is subject to the requirements of this act for  
13 purposes of this act. Any person who neglects or refuses to obey a  
14 subpoena issued by the board, who refuses to be sworn or to  
15 testify, or who fails upon the demand of the board to produce any  
16 paper, book, or document regarding any matter under investigation  
17 by the board is guilty of contempt and may be punished by  
18 imprisonment for not more than 93 days or a fine of not more than  
19 \$500.00, or both.

20 (16) The board shall submit annual reports of its findings  
21 under subsection (12) (a) with the senate standing committee on  
22 government operations and the house of representatives standing  
23 committee on oversight. Each report under this subsection shall be  
24 submitted not later than February 1 of the year following the year  
25 for which the report is required. Each report submitted under this  
26 subsection shall be presented in 1 or more meetings that are closed  
27 to the public. The report and all information disclosed in those

1 meetings, including any supporting documentation, is confidential,  
2 is not subject to disclosure under the freedom of information act,  
3 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to  
4 any other person except committee members. A person who discloses  
5 information to another person in violation of this subsection is  
6 guilty of a misdemeanor punishable by 1 of the following:

7 (a) Imprisonment under the jurisdiction of the department of  
8 corrections for not more than 5 years.

9 (b) Imprisonment in a county jail for not more than 1 year or  
10 a fine of not more than \$1,000.00, or both.

11 Enacting section 1. This act takes effect 90 days after the  
12 date it is enacted into law.