

# SENATE BILL No. 440

July 25, 1991, Introduced by Senators N. SMITH and WELBORN  
and referred to the Committee on Family Law, Criminal  
Law, and Corrections.

A bill to authorize certain interceptions of communications and the use of interception devices for offenses involving controlled substances; to provide for and regulate the application, issuance, and execution of electronic interception warrants; 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 pursuant to this act; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal this act on a specific date.

## 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 the point of origin and the point of  
4 reception.

5 (c) "Communication common carrier" means a person engaged as  
6 a common carrier for hire in communication by wire or radio or in  
7 radio transmission of energy; but a person engaged in radio  
8 broadcasting is not, while so engaged, a communication common  
9 carrier.

10 (d) "Contents" means, when used with respect to a wire,  
11 oral, or electronic communication, any information concerning the  
12 substance, purport, or meaning of the communication.

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

18 (i) The radio portion of a cordless telephone communication  
19 that is transmitted between the cordless telephone handset and  
20 the base unit.

21 (ii) A wire or oral communication.

22 (iii) A communication made through a tone-only paging  
23 device.

24 (iv) A communication from a tracking device as defined in  
25 section 3117 of chapter 205 of title 18 of the United States  
26 Code, 18 U.S.C. 3117.

1 (f) "Electronic communication service" means a service that  
2 provides to users of the service the ability to send or receive  
3 wire or electronic communications.

4 (g) "Electronic communications system" means wire, radio,  
5 electromagnetic, photooptical, or photoelectronic facilities for  
6 the transmission of electronic communications, and computer  
7 facilities or related electronic equipment for the electronic  
8 storage of electronic communications.

9 (h) "Electronic, mechanical, or other device" means a device  
10 or apparatus that can be used to intercept a wire, oral, or elec-  
11 tronic communication, other than either of the following:

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

15 (A) Furnished to the subscriber or user by a provider of  
16 wire or electronic communication service in the ordinary course  
17 of its business and being used by the subscriber or user in the  
18 ordinary course of its business.

19 (B) Furnished by the subscriber or user for connection to  
20 the facilities of a provider of wire or electronic service and  
21 being used in the ordinary course of the business of the sub-  
22 scriber or user.

23 (C) Being used by a provider of wire or electronic communi-  
24 cation service in the ordinary course of its business.

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

1       (ii) A hearing aid or similar device that is used to correct  
2 subnormal hearing to not better than normal.

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

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

7       (ii) Storage of a wire or oral communication by an elec-  
8 tronic communication service for the purpose of backup protection  
9 of the communication.

10       (j) "Intercept" means the aural or other acquisition of the  
11 contents of a wire, oral, or electronic communication through the  
12 use of an electronic, mechanical, or other device.

13       (k) "Investigative or law enforcement officer" means an  
14 officer of this state or a political subdivision of this state  
15 who is empowered by law to conduct investigations of or to make  
16 arrests for offenses described in section 7 and who is certified  
17 pursuant to section 9.

18       (l) "Judge of competent jurisdiction" means a court of  
19 appeals judge or a judge of the circuit court.

20       (m) "Oral communication" means an oral communication uttered  
21 by a person exhibiting an expectation that the communication is  
22 not subject to interception under circumstances justifying the  
23 expectation, but does not include an electronic communication.

24       (n) "Person" means an employee or agent of this state or a  
25 political subdivision of this state or an individual, partner-  
26 ship, association, corporation, or other legal entity.

1 (o) "Political subdivision" means a county, city, township,  
2 or village.

3 (p) "Prosecutor" means the attorney general of this state or  
4 a single designated assistant attorney general; or the principal  
5 prosecuting attorney of the county in which the facility or place  
6 where the communication to be intercepted is located or a single  
7 designated assistant prosecuting attorney.

8 (q) "Readily accessible to the general public" means, with  
9 respect to a radio communication, that the communication is not  
10 any of the following:

11 (i) Scrambled or encrypted.

12 (ii) Transmitted using modulation techniques whose essential  
13 parameters have been withheld from the public with the intention  
14 of preserving the privacy of the communication.

15 (iii) Carried on a subcarrier or other signal subsidiary to  
16 a radio transmission.

17 (iv) Transmitted over a communication system provided by a  
18 communication common carrier, unless the communication is a  
19 tone-only paging system communication.

20 (v) Transmitted on a frequency allocated under 47  
21 C.F.R. part 25, subpart D, E, or F of 47 C.F.R. part 74, or 47  
22 C.F.R. part 94 unless, in the case of a communication transmitted  
23 on a frequency allocated under 47 C.F.R. part 74 that is not  
24 exclusively allocated to broadcast auxiliary services, the commu-  
25 nication is a 2-way voice communication by radio.

1 (r) "User" means a person who uses an electronic  
2 communication service and is authorized by the provider of the  
3 service to engage in that use.

4 (s) "Wire communication" means an aural transfer made in  
5 whole or in part through the use of facilities for the transmis-  
6 sion of communications by wire, cable, or other like connection  
7 between the point of origin and the point of reception, including  
8 the use of such a connection in a switching station, which facil-  
9 ities are furnished or operated by a person engaged in providing  
10 or operating such facilities for the transmission of  
11 communications. Wire communication also includes an electronic  
12 storage of such a communication, but does not include the radio  
13 portion of a cordless telephone communication that is transmitted  
14 between the cordless telephone handset and the base unit.

15 Sec. 3. (1) Except as provided in subsections (2) to (6)  
16 and sections 6, 7, and 12 or as authorized or approved under  
17 chapter 119 of part I of title 18 of the United States Code,  
18 18 U.S.C. 2510 to 2521, a person shall not commit any of the fol-  
19 lowing acts:

20 (a) Intentionally intercept, endeavor to intercept, or pro-  
21 cure another person to intercept or endeavor to intercept a wire,  
22 oral, or electronic communication.

23 (b) Intentionally use, endeavor to use, or procure another  
24 person to use or endeavor to use an electronic, mechanical, or  
25 other device to intercept an oral communication if 1 or more of  
26 the following occur:

1        (i) The device is affixed to, or otherwise transmits a  
2 signal through, a wire, cable, or other like connection used in  
3 wire communication.

4        (ii) The device transmits, or interferes with the transmis-  
5 sion of, communications by radio.

6        (c) Intentionally disclose or endeavor to disclose to  
7 another person the contents of a wire, oral, or electronic commu-  
8 nication, knowing or having reason to know that the information  
9 was obtained through the interception of a wire, oral, or elec-  
10 tronic communication in violation of this section.

11       (d) Intentionally use or endeavor to use the contents of a  
12 wire, oral, or electronic communication, knowing or having reason  
13 to know that the information was obtained through the intercep-  
14 tion of the wire, oral, or electronic communication in violation  
15 of this section.

16       (2) This act does not prohibit any of the following:

17       (a) The interception, disclosure, or use of a wire communi-  
18 cation by an operator of a switchboard, or an officer, employee,  
19 or agent of a provider of wire or electronic communication serv-  
20 ice in the normal course of his or her employment while engaged  
21 in an activity that is a necessary incident to the rendition of  
22 his or her service or to the protection of the rights or property  
23 of the service provider, unless the interception results from the  
24 use by the service provider of wire or electronic communication  
25 service of service observing or random monitoring for purposes  
26 other than mechanical or service quality control checks.

1 (b) Interception of a wire or electronic communication, or  
2 oral communication transmitted by radio, or disclosure or use of  
3 the information obtained through the interception, by an officer,  
4 employee, or agent of the federal communications commission, in  
5 the normal course of his or her employment and in discharge of  
6 the monitoring responsibilities exercised by the commission in  
7 the enforcement of the communications act of 1934, chapter 652,  
8 48 Stat. 1064.

9 (c) Interception of a wire, oral, or electronic communica-  
10 tion by a person acting under color of law, if the person is a  
11 party to the communication or 1 of the parties to the communica-  
12 tion has given prior consent to the interception.

13 (d) Interception of a wire or oral communication by a person  
14 not acting under color of law, if the person is a party to the  
15 communication or 1 of the parties to the communication has given  
16 prior consent to the interception, unless the communication is  
17 intercepted for the purpose of committing any criminal or tor-  
18 tious act in violation of the constitution or laws of the United  
19 States or of this state.

20 (e) Conducting of electronic surveillance, as defined in  
21 section 101 of title I of the foreign intelligence surveillance  
22 act of 1978, 50 U.S.C. 1801, by an officer, employee, or agent of  
23 the United States in the normal course of his or her official  
24 duty.

25 (f) Interception or accessing of an electronic communication  
26 made through an electronic communication system that is



1 configured so that the electronic communication is readily  
2 accessible to the general public.

3 (g) Interception of a radio communication to which any of  
4 the following apply:

5 (i) The communication is transmitted by any station and is  
6 transmitted for the use of the general public or relates to a  
7 ship, aircraft, vehicle, or person in distress.

8 (ii) The communication is transmitted by a governmental, law  
9 enforcement, civil defense, private land mobile, or public safety  
10 communications system, including police and fire, that is readily  
11 accessible to the general public.

12 (iii) The communication is transmitted by a station operat-  
13 ing on an authorized frequency within the bands allocated to the  
14 amateur, citizens band, or general mobile radio services.

15 (iv) The communication is transmitted by a marine or aero-  
16 nautical communications system.

17 (h) Engaging in conduct that is either prohibited by  
18 section 633 of part IV of title VI of the communications act of  
19 1934, 47 U.S.C. 553, or excepted from the application of  
20 section 705(a) of title VII of the communications act of 1934 by  
21 section 705(b) of title VII of that act, 47 U.S.C. 605.

22 (i) Interception of a wire or electronic communication the  
23 transmission of which is causing harmful interference to a law-  
24 fully operating station or consumer electronic equipment, to the  
25 extent necessary to identify the source of the interference.

26 (j) Interception by other users of the same frequency of a  
27 radio communication made through a system that utilizes

1 frequencies monitored by individuals engaged in the provision or  
2 the use of the system, if the communication is not scrambled or  
3 encrypted.

4 (k) The use of a pen register or a trap and trace device.

5 (l) Recording by a provider of electronic communication  
6 service of the fact that a wire or electronic communication was  
7 initiated or completed to protect the provider, another provider  
8 furnishing service toward the completion of the wire or elec-  
9 tronic communication, or a user of that service from fraudulent,  
10 unlawful, or abusive use of the service.

11 (3) A provider of electronic communication service, an offi-  
12 cer, employee, or agent of a provider of electronic communication  
13 service, a landlord, a custodian, or another person, may provide  
14 information, facilities, or technical assistance to a person  
15 authorized by law to intercept a wire, oral, or electronic commu-  
16 nication or to conduct electronic surveillance, as defined in  
17 section 101 of title I of the foreign intelligence surveillance  
18 act of 1978, 50 U.S.C. 1801, if the service provider, officer,  
19 employee, agent, landlord, custodian, or other person has been  
20 provided with a court order signed by the authorizing judge  
21 directing that assistance, and the court order sets forth the  
22 period of time during which the provision of the information,  
23 facilities, or technical assistance is authorized and specifies  
24 the information, facilities, or technical assistance required. A  
25 provider of electronic communication service, an officer, employ-  
26 ee, or agent of a provider of electronic communication service, a  
27 landlord, a custodian, or another person shall not disclose the

1 existence of any interception or surveillance or the device used  
2 to accomplish the interception or surveillance with respect to  
3 which the person has been furnished an order under this subsec-  
4 tion, except as may otherwise be required by legal process and  
5 then only after prior notification to the attorney general of  
6 this state or the principal prosecuting attorney of a county, as  
7 appropriate. A provider of electronic communication service, an  
8 officer, employee, or agent of the provider of electronic commu-  
9 nication service, a landlord, custodian, or other person is not  
10 civilly liable for providing information, facilities, or assist-  
11 ance in accordance with the terms of a court order under this  
12 act.

13 (4) Except as otherwise provided in subsections (5) and (6),  
14 a person providing an electronic communication service to the  
15 public shall not intentionally divulge the contents of a communi-  
16 cation while in transmission on that service to a person or  
17 entity other than the addressee or intended recipient of the com-  
18 munication or an agent of the addressee or intended recipient.

19 (5) Subsection (4) does not apply if the person, or an agent  
20 of the person, providing the electronic communication service on  
21 which the communication is transmitted is the addressee or  
22 intended recipient of the communication.

23 (6) A person providing electronic communication service to  
24 the public may divulge the contents of a communication as  
25 follows:

26 (a) If the communication was intercepted as described in  
27 subsection (2).

1 (b) As authorized under section 6.

2 (c) With the lawful consent of the originator or an  
3 addressee or intended recipient of the communication.

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

6 (e) If the contents of the communication were inadvertently  
7 obtained by the service provider and appear to pertain to the  
8 commission of a crime, if the divulgence is made to a law  
9 enforcement agency.

10 (7) A person who violates subsection (1) is guilty of a  
11 felony.

12 (8) Conduct prohibited by subsection (1) is not punishable  
13 under subsection (7) unless the conduct is for the purpose of  
14 direct or indirect commercial advantage or private financial  
15 gain, if both of the following apply:

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

18 (b) Either of the following applies:

19 (i) The satellite transmission is transmitted to a broad-  
20 casting station for the purpose of retransmission to the general  
21 public.

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

25 Sec. 4. (1) Except as provided in subsection (2) or (3) or  
26 as authorized or approved under chapter 119 of part I of title 18

1 of the United States Code, 18 U.S.C. 2510 to 2521, a person shall  
2 not commit any of the following acts:

3 (a) Manufacture, assemble, possess, or sell an electronic,  
4 mechanical, or other device, knowing or having reason to know  
5 that the design of the device renders it primarily useful for the  
6 surreptitious interception of wire, oral, or electronic  
7 communications.

8 (b) Place in a newspaper, magazine, handbill, or other pub-  
9 lication an advertisement of an electronic, mechanical, or other  
10 device knowing or having reason to know that the design of the  
11 device renders it primarily useful for the surreptitious inter-  
12 ception of wire, oral, or electronic communications.

13 (c) Place in a newspaper, magazine, handbill, or other pub-  
14 lication an advertisement that promotes the use of an electronic,  
15 mechanical, or other device for the surreptitious interception of  
16 wire or oral communications.

17 (2) A provider of electronic communication service or an  
18 officer, agent, or employee of, or a person under contract with,  
19 a provider of electronic communication service, in the normal  
20 course of the business of providing that electronic communication  
21 service, may manufacture, assemble, possess, or sell an electron-  
22 ic, mechanical, or other device, knowing or having reason to know  
23 that the design of the device renders it primarily useful for the  
24 surreptitious interception of wire or oral communications.

25 (3) An officer, agent, or employee of the United States,  
26 this state, or a political subdivision of this state, pursuant to  
27 a validly authorized warrant issued by a court of competent

1 jurisdiction of the United States, this state, or a political  
2 subdivision of this state, may manufacture, assemble, possess, or  
3 sell an electronic, mechanical, or other device, knowing or  
4 having reason to know that the design of the device renders it  
5 primarily useful for the surreptitious interception of wire,  
6 oral, or electronic communications.

7 (4) A person who violates subsection (1) is guilty of a  
8 felony.

9 Sec. 5. If a wire or oral communication has been intercept-  
10 ed, the contents of the communication and any evidence derived  
11 from the communication shall not be received in evidence in a  
12 trial, hearing, or other proceeding in or before a court, grand  
13 jury, department, officer, agency, regulatory body, legislative  
14 committee, or other authority of this state or a political subdi-  
15 vision of this state, if the disclosure of the communication or  
16 evidence would violate this act.

17 Sec. 6. (1) An investigative or law enforcement officer  
18 who, by any means authorized by this act, has obtained knowledge  
19 of the contents of a wire, oral, or electronic communication or  
20 evidence derived from a wire, oral, or electronic communication  
21 may disclose the contents of the communication or the evidence to  
22 another investigative or law enforcement officer, or to an offi-  
23 cer, agent, or official of a law enforcement agency of the United  
24 States government, to the extent that the disclosure is appropri-  
25 ate to the proper performance of the official duties of the  
26 person making or receiving the disclosure.

1       (2) An investigative or law enforcement officer who, by any  
2 means authorized by this act, has obtained knowledge of the  
3 contents of a wire, oral, or electronic communication or evidence  
4 derived from a wire, oral, or electronic communication may use  
5 the contents of the communication or the evidence to the extent  
6 the use is appropriate to the proper performance of his or her  
7 official duties.

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

16       (4) A privileged wire, oral, or electronic communication  
17 intercepted in accordance with or in violation of this act does  
18 not lose its privileged character and shall not be disclosed.

19       (5) Except as otherwise provided in this subsection, if an  
20 investigative or law enforcement officer, while engaged in inter-  
21 cepting a wire, oral, or electronic communication in the manner  
22 authorized by this act, intercepts a wire, oral, or electronic  
23 communication relating to an offense other than those specified  
24 in the order of authorization or approval, the contents of the  
25 communication and evidence derived from the communication may be  
26 disclosed or used as provided in subsections (1) and (2). The  
27 contents of the communication and any evidence derived from the

1 communication may be used under subsection (3) if authorized or  
2 approved by a judge of competent jurisdiction, if the judge finds  
3 on subsequent application that the contents were otherwise inter-  
4 cepted in accordance with this act. The subsequent application  
5 shall be made as soon as practicable after the interception of  
6 the communication. This subsection does not authorize the dis-  
7 closure or use in any manner of the contents of, or evidence  
8 derived from, a wire or oral communication relating to an offense  
9 that is punishable by imprisonment for not more than 4 years or  
10 punishable only by fine.

11       Sec. 7. A prosecutor may authorize an application to a  
12 judge of competent jurisdiction for, and the judge may grant in  
13 conformity with this act, an order authorizing or approving the  
14 interception of a wire, oral, or electronic communication by the  
15 investigative or law enforcement officer having responsibility  
16 for the investigation of the offense as to which the application  
17 is made, if the interception may provide or has provided evidence  
18 of any of the following offenses:

19       (a) A violation of section 7401(2)(a), 7401(2)(b),  
20 7402(2)(a), 7403(2)(a)(i), 7403(2)(a)(ii), or 7403(2)(a)(iii) of  
21 the public health code, Act No. 368 of the Public Acts of 1978,  
22 being sections 333.7401, 333.7402, and 333.7403 of the Michigan  
23 Compiled Laws.

24       (b) A conspiracy to commit an offense described in subdivi-  
25 sion (a).



1 (c) An offense other than an offense described in  
2 subdivision (a) or (b), in the manner and to the extent permitted  
3 under section 6(5).

4 Sec. 8. (1) Each application for an order authorizing or  
5 approving the interception of a wire, oral, or electronic commu-  
6 nication shall be made in writing upon oath or affirmation to a  
7 judge of competent jurisdiction and shall state the applicant's  
8 authority to make the application. Each application shall  
9 include the following information:

10 (a) The identity of the investigative or law enforcement  
11 officer making the application, and the prosecutor authorizing  
12 the application.

13 (b) A full and complete statement of the facts and circum-  
14 stances relied upon by the applicant to justify his or her belief  
15 that an order should be issued, including all of the following:

16 (i) Details as to the particular offense that has been, is  
17 being, or is about to be committed.

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

21 (iii) A particular description of the type of communication  
22 sought to be intercepted.

23 (iv) The identity, if known, of the person committing the  
24 offense and whose communication is to be intercepted.

25 (v) A statement of the facts indicating the specific  
26 instances of conduct that demonstrate probable cause to believe

1 that the particular offense has been, is being, or is about to be  
2 committed.

3 (c) A full and complete statement as to whether other inves-  
4 tigative procedures have been tried and have failed.

5 (d) A statement of the period of time for which the inter-  
6 ception is required to be maintained. If the nature of the  
7 investigation is such that the authorization for interception  
8 should not automatically terminate when the described type of  
9 communication has been first obtained, a particular description  
10 of facts establishing probable cause to believe that additional  
11 communications of the same type will occur after that time.

12 (e) A statement of the legitimate investigative objective  
13 sought to be achieved by the interception.

14 (f) A full and complete statement of the facts concerning  
15 all previous applications, known to the individuals authorizing  
16 and making the application, made to any judge of competent juris-  
17 diction or federal judge for authorization to intercept or for  
18 approval of an interception of a wire, oral, or electronic commu-  
19 nication involving any of the same persons, facilities, or places  
20 specified in the application, and the action taken by the judge  
21 on each application.

22 (g) If the application is for the extension of an order, a  
23 statement setting forth the results thus far obtained from the  
24 interception or a reasonable explanation of the failure to obtain  
25 such results.

26 (h) Unless the investigative or law enforcement officer  
27 making the application is employed by the department of state

1 police, a statement that the department of state police has been  
2 notified of the application and of the information described in  
3 subdivision (b)(ii) and (iv).

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

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

13 (a) There is probable cause to believe that an individual is  
14 committing, has committed, or is about to commit a particular  
15 offense described in section 7.

16 (b) There is probable cause to believe that particular com-  
17 munications concerning that offense will be obtained through the  
18 interception.

19 (c) Normal investigative procedures have been tried and have  
20 failed.

21 (d) There is probable cause to believe that the facilities  
22 from which, or the place where, the wire, oral, or electronic  
23 communication is to be intercepted are being used, or are about  
24 to be used, in connection with the commission of the offense, or  
25 are leased to, listed in the name of, or commonly used by the  
26 person described in subsection (1)(b)(iv).

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

4       (a) The identity, if known, of the person whose communica-  
5 tion 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 identity of the agency authorized to intercept the  
15 communication and of the person authorizing the application.

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

20       (5) If an application for an order authorizing the intercep-  
21 tion of a wire, oral, or electronic communication states that  
22 certain specific information, facilities, or technical assistance  
23 is needed from a particular provider of electronic communication  
24 service, landlord, custodian, or other person to accomplish the  
25 interception unobtrusively and with a minimum of interference  
26 with the services that the service provider, landlord, custodian,  
27 or person is according the person whose communications are to be

1 intercepted, the order authorizing the interception shall direct  
2 that the particular service provider, landlord, custodian, or  
3 other person immediately furnish the applicant the specified  
4 information, facilities, or technical assistance. A provider of  
5 electronic communication service, landlord, custodian, or other  
6 person furnishing facilities or technical assistance shall be  
7 compensated by the applicant for reasonable expenses incurred in  
8 providing the facilities or assistance. A person shall not be  
9 civilly liable under section 12 for furnishing information,  
10 facilities, or assistance as required pursuant to this  
11 subsection.

12 (6) An order entered under this section shall not authorize  
13 or approve the interception of a wire, oral, or electronic commu-  
14 nication for a period longer than is necessary to achieve the  
15 authorized investigative objective, or in any event for longer  
16 than 30 days. The 30-day period begins on the day on which the  
17 investigative or law enforcement officer first begins to conduct  
18 an interception under the order or 10 days after the order is  
19 entered, whichever day is earlier. Extensions of an order may be  
20 granted, but only upon application for an extension made in  
21 accordance with subsection (1) and upon the judge of competent  
22 jurisdiction making the findings required by subsection (3). The  
23 period of extension shall be no longer than the judge of compe-  
24 tent jurisdiction considers necessary to achieve the purposes for  
25 which the order was granted or, in any event, no longer than 30  
26 days. Not more than 2 extensions of an order may be granted.  
27 Upon termination of a second extension of an order, an

1 investigative or law enforcement officer may apply for and be  
2 granted, in the manner provided in this section, an order autho-  
3 rizing the interception of a wire or oral communication based on  
4 the information contained in the application for the terminated  
5 order only if new evidence, in addition to that described in the  
6 previous application, justifying the officer's belief that an  
7 order should be issued is included in the new application.

8       (7) Each order and extension shall contain a provision that  
9 the authorization to intercept shall be executed as soon as prac-  
10 ticable, shall be conducted in such a way as to minimize the  
11 interception of communications not otherwise subject to intercep-  
12 tion under this act, and shall terminate upon attainment of the  
13 authorized objective or, in any event, in 30 days.

14       (8) If an order authorizing interception is entered pursuant  
15 to this act, the order shall require reports to be made to the  
16 judge of competent jurisdiction who issued the order showing what  
17 progress has been made toward achievement of the authorized  
18 objective and the need for continued interception. The reports  
19 shall be made weekly or at shorter intervals as the judge of com-  
20 petent jurisdiction requires.

21       (9) The contents of a wire, oral, or electronic communica-  
22 tion intercepted by any means authorized by this act shall be  
23 recorded on tape or wire or other comparable device. The record-  
24 ing of the contents of a wire, oral, or electronic communication  
25 under this subsection shall be done in a way that will protect  
26 the recording from editing or other alterations. Immediately  
27 upon the expiration of the period of each order and each

1 extension of an order, all recordings shall be made available to  
2 the judge issuing the order and sealed under his or her  
3 directions. Custody of the recordings shall be wherever the  
4 judge orders. The recordings shall not be destroyed except upon  
5 an order of the judge and shall be retained for 10 years.

6 Duplicate recordings may be made for use or disclosure pursuant  
7 to section 6(1) and (2) for investigations. The presence of the  
8 seal provided for by this subsection, or a satisfactory explana-  
9 tion for the absence of a seal, is a prerequisite for the use or  
10 disclosure under section 6(3) of the contents of a wire or oral  
11 communication or evidence derived from the communication.

12 (10) The judge shall seal applications made and orders  
13 granted under this act. Custody of the applications and orders  
14 shall be wherever the judge directs. The applications and orders  
15 shall be disclosed only upon a showing of good cause before a  
16 judge of competent jurisdiction and shall not be destroyed except  
17 on order of the judge and, in any event, shall be retained for 10  
18 years.

19 (11) Within a reasonable time, but not later than 90 days  
20 after the filing of an application for an order of approval under  
21 this section that is denied or the termination of the period of  
22 an order or extension of an order, the judge shall cause to be  
23 served on the persons named in the order or the application, and  
24 such other parties to intercepted communications as the judge  
25 determines is in the interest of justice, an inventory that  
26 includes notice of all of the following:

1 (a) The fact of the entry of the order or the application.

2 (b) The date of the entry of the order and the period of  
3 authorized, approved, or disapproved interception, or the denial  
4 of the application.

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

7 (12) Upon the filing of a motion by a person given an inven-  
8 tory pursuant to subsection (11) and upon service of a copy of  
9 the motion on the law enforcement agency described in subsection  
10 (11) and other parties as required by law, the judge shall make  
11 available to the person or his or her counsel for inspection the  
12 portions of the intercepted communications to which the person  
13 was a party and the portions of the applications and orders per-  
14 taining to communications to which the person was a party.

15 (13) The contents of a wire, oral, or electronic communica-  
16 tion intercepted pursuant to this act or evidence derived from  
17 the communication shall not be received in evidence or otherwise  
18 disclosed in a trial, hearing, preliminary examination, or other  
19 proceeding in a court unless each party, not less than 21 days  
20 before the trial, hearing, or other proceeding or not less than  
21 10 days before a preliminary examination, has been furnished with  
22 a copy of the application and order that authorized or approved  
23 the interception.

24 (14) An aggrieved person in a trial, hearing, preliminary  
25 examination, or other proceeding in or before a court, depart-  
26 ment, officer, agency, regulatory body, or other authority of  
27 this state or a political subdivision of this state may move to



1 suppress the contents of a wire, oral, or electronic  
2 communication intercepted pursuant to this act, or evidence  
3 derived from the communication, on 1 or more of the following  
4 grounds:

5 (a) The communication was unlawfully intercepted.

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

8 (c) The interception was not made in conformity with the  
9 order of authorization or approval.

10 (15) A motion made pursuant to subsection (14) shall be made  
11 before the trial, hearing, preliminary examination, or other pro-  
12 ceeding unless there is no opportunity to make the motion before  
13 the trial, hearing, preliminary examination, or other proceeding  
14 or the aggrieved person making the motion is not aware of the  
15 grounds of the motion before the trial, hearing, preliminary  
16 examination, or other proceeding. The judge, upon the filing of  
17 the motion by the aggrieved person, may make available to the  
18 aggrieved person or his or her attorney for inspection any por-  
19 tion of the intercepted communication or evidence derived from  
20 the intercepted communication that the judge determines is in the  
21 interests of justice. If the motion made pursuant to  
22 subsection (14) is granted, the intercepted wire, oral, or elec-  
23 tronic communication or evidence derived from the communication  
24 shall be treated as having been obtained in violation of this  
25 act.

26 (16) In addition to any other right to appeal, the  
27 prosecutor may appeal from an order granting a motion to suppress

1 made under subsection (14), or the denial of an application for  
2 an order of approval, if the prosecutor certifies to the judge or  
3 other official granting the motion or denying the application  
4 that the appeal is not taken for purposes of delay. The appeal  
5 shall be taken within 30 days after the date the order granting  
6 the motion to suppress was entered or the application was denied  
7 and shall be diligently prosecuted.

8 (17) A violation of subsection (9) or (10) may be punished  
9 as contempt of the judge who approved or denied the application  
10 for interception of a wire or oral communication.

11 Sec. 9. The director of the department of state police  
12 shall establish a course of training in the legal and technical  
13 aspects of wiretapping and electronic surveillance, regulations  
14 as he or she finds necessary and proper for the training program,  
15 and minimum standards for the certification and periodic recerti-  
16 fication of state investigative officers or officers of a law  
17 enforcement agency who are eligible to conduct wiretapping or  
18 electronic surveillance under this act. The director of the  
19 department of state police shall charge each officer who enrolls  
20 in this training program a reasonable enrollment fee to offset  
21 the costs of training.

22 Sec. 10. (1) Within 30 days after the expiration of an  
23 order, or each extension of an order, entered under section 8, or  
24 the denial of an order authorizing or approving an interception  
25 of a wire, oral, or electronic communication, the issuing or  
26 denying judge shall report all of the following information to

1 the administrative office of the United States courts and to the  
2 department of state police:

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

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

5 (c) The fact that the order or extension was granted as  
6 applied for, was modified, or was denied.

7 (d) The period of the interception authorized by the order  
8 and the number and duration of any extensions of the order.

9 (e) The offense specified in the order or application or  
10 extension of the order.

11 (f) The identity of the investigative or law enforcement  
12 officer and agency making the application and the prosecutor  
13 authorizing the application.

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

16 (2) In January of each year, the attorney general shall  
17 report to the administrative office of the United States courts  
18 all of the following:

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

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

26 (i) The approximate nature and frequency of incriminating  
27 communications intercepted.

1       (ii) The approximate nature and frequency of other  
2 communications intercepted.

3       (iii) The approximate number of persons whose communications  
4 were intercepted.

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

7       (c) The number of arrests resulting from interceptions made  
8 under an order or extension described in subdivision (a) and the  
9 offenses for which arrests were made.

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

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

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

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

23       (3) On or before January 10 of each year, the department of  
24 state police shall report to the attorney general, the state  
25 senate, the state house of representatives, and the governor all  
26 of the information regarding applications, orders, and

1 interceptions of wire, oral, or electronic communications  
2 required under subsection (2).

3       Sec. 11. An officer, employee, or agent of a provider of  
4 electronic communication service who, whether in the course of  
5 his or her employment or otherwise, learns of the existence of an  
6 electronic, mechanical, or other device shall report the exis-  
7 tence of the device to the principal prosecuting attorney of the  
8 county in which the device is located. The prosecuting attorney  
9 shall determine whether the placement of the device is authorized  
10 by court order. If the placement of the device is not authorized  
11 by court order, the prosecuting attorney shall immediately inform  
12 the person whose wire or oral communication was intercepted or  
13 intended to be intercepted by the device of the existence of the  
14 device. This section does not diminish or excuse any obligation  
15 of the prosecuting attorney, the officer, employee, or agent of  
16 the provider of wire or electronic communication service, or any  
17 other person to remove the device or to take any other actions  
18 required by law, regulation, or policy.

19       Sec. 12. (1) Except as provided in section 8(5), a person  
20 whose wire or oral communication is intercepted, disclosed, or  
21 used in violation of this act has a civil cause of action against  
22 any person who intercepts, discloses, or uses, or who procures  
23 any other person to intercept, disclose, or use the communication  
24 or its contents. In the civil cause of action, the person is  
25 entitled to recover all of the following:

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

1 (b) Exemplary damages.

2 (c) Reasonable attorney fees and other litigation costs rea-  
3 sonably incurred.

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

7 Sec. 13. Sections 539a to 539i of the Michigan penal code,  
8 Act No. 328 of the Public Acts of 1931, being sections 750.539a  
9 to 750.539i of the Michigan Compiled Laws, are repealed.

10 Sec. 14. This act is repealed effective upon the expiration  
11 of 3 years after the date of its enactment.