



# HOUSE BILL No. 4235

February 11, 1993, Introduced by Reps. Martin, Hoffman, Weeks, Lowe, London, Hill, Hammerstrom, Jamian, Rocca, Whyman, Bullard, Bodem, Gernaat, Walberg, Nye, Stille, Munsell, Middleton, Fitzgerald, Jersevic, Goschka, Dalman, Horton, Galloway, Kukuk, McManus, Porreca, Dolan, McBryde, Llewellyn, Brackenridge, Gnodtke, Middaugh, Bender, Sikkema, Shugars and Bankes and referred to the Committee on Judiciary.

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 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, while so engaged, a communication common  
8 carrier.

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

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

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

20 (ii) A wire or oral communication.

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

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

1 (f) "Electronic communication service" means a service that  
2 provides to the service's users 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 transmitting electronic communications, and computer facilities  
7 or related electronic equipment for the electronic storage of  
8 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 backup protection of the  
9 communication.

10       Sec. 2. As used in this act:

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

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

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

21       (d) "Oral communication" means a communication uttered by a  
22 person exhibiting an expectation that the communication is not  
23 subject to interception under circumstances justifying the  
24 expectation. Oral communication does not include an electronic  
25 communication.

1 (e) "Person" means an employee or agent of this state or a  
2 political subdivision of this state or an individual,  
3 partnership, association, corporation, or other legal entity.

4 (f) "Political subdivision" means a county, city, township,  
5 or village.

6 (g) "Prosecutor" means the attorney general of this state, a  
7 single designated assistant attorney general, the principal pros-  
8 ecuting attorney of the county in which the facility or place  
9 where the communication to be intercepted is located, or a single  
10 designated assistant prosecuting attorney of the county in which  
11 the facility or place where the communication to be intercepted  
12 is located.

13 (h) "Readily accessible to the general public" means, with  
14 respect to a radio communication, the communication is not any of  
15 the following:

16 (i) Scrambled or encrypted.

17 (ii) Transmitted using modulation techniques whose essential  
18 parameters have been withheld from the public to preserve the  
19 privacy of the communication.

20 (iii) Carried on a subcarrier or other signal subsidiary to  
21 a radio transmission.

22 (iv) Transmitted over a communication system provided by a  
23 communication common carrier, unless the communication is a  
24 tone-only paging system communication.

25 (v) Transmitted on a frequency allocated under 47  
26 C.F.R. part 25, subpart D, E, or F of 47 C.F.R. part 74, or 47  
27 C.F.R. part 94 unless, in the case of a communication transmitted

1 on a frequency allocated under 47 C.F.R. part 74 that is not  
2 exclusively allocated to broadcast auxiliary services, the commu-  
3 nication is a 2-way voice communication by radio.

4 (i) "User" means a person who uses an electronic communica-  
5 tion service and is authorized by the provider of the service to  
6 engage in that use.

7 (j) "Wire communication" means an aural transfer made in  
8 whole or in part through the use of facilities for transmitting  
9 communications by wire, cable, or other substantially similar  
10 connection between the point of origin and the point of recep-  
11 tion, including the use of such a connection in a switching sta-  
12 tion, which facilities are furnished or operated by a person  
13 engaged in providing or operating those facilities for the trans-  
14 mission of communications. Wire communication also includes an  
15 electronic storage of such a communication, but does not include  
16 the radio portion of a cordless telephone communication transmit-  
17 ted between the cordless telephone handset and the base unit.

18 Sec. 3. (1) Except as otherwise provided in this act or as  
19 authorized or approved under chapter 119 of part I of title 18 of  
20 the United States Code, 18 U.S.C. 2510 to 2521, a person shall  
21 not do any of the following:

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

25 (b) Intentionally use, attempt to use, or procure another  
26 person to use or endeavor to use an electronic, mechanical, or

1 other device to intercept an oral communication if 1 or more of  
2 the following occur:

3 (i) The device is affixed to, or otherwise transmits a  
4 signal through, a wire, cable, or other substantially similar  
5 connection used in wire communication.

6 (ii) The device transmits, or interferes with the transmis-  
7 sion of, radio communications.

8 (c) Intentionally disclose or attempt to disclose to another  
9 person the contents of a wire, oral, or electronic communication,  
10 knowing or having reason to know that the information was  
11 obtained through an interception of a wire, oral, or electronic  
12 communication in violation of this section.

13 (d) Intentionally use or attempt to use the contents of a  
14 wire, oral, or electronic communication, knowing or having reason  
15 to know the information was obtained through an interception of  
16 the wire, oral, or electronic communication in violation of this  
17 section.

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

19 (a) The interception, disclosure, or use of a wire communi-  
20 cation by an operator of a switchboard, or an officer, employee,  
21 or agent of a provider of wire or electronic communication serv-  
22 ice in the normal course of his or her employment while engaged  
23 in an activity necessarily incident to rendering his or her serv-  
24 ice or to the protection of the service provider's rights or  
25 property, unless the interception results from the service  
26 provider's use of service observing or random monitoring for

1 purposes other than mechanical or service quality control  
2 checks.

3       (b) Interception of a wire or electronic communication, or  
4 oral communication transmitted by radio, or disclosure or use of  
5 the information obtained through the interception, by an officer,  
6 employee, or agent of the federal communications commission, in  
7 the normal course of his or her employment and in discharge of  
8 the monitoring responsibilities exercised by the commission in  
9 the enforcement of the communications act of 1934, chapter 652,  
10 48 Stat. 1064.

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

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

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

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



1 configured so the electronic communication is readily accessible  
2 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 a station and is for  
6 the general public's use or relates to a ship, aircraft, vehicle,  
7 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, but not limited to, police or  
11 fire system, that is readily 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 ama-  
14 teurs, 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 providing or  
2 using 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 (4) Recording by a provider of electronic communication  
6 service the fact that a wire or electronic communication was ini-  
7 tiated 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 any other person, may pro-  
14 vide 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 that sets forth the period of time  
22 during which the provision of the information, facilities, or  
23 technical assistance is authorized and specifies the information,  
24 facilities, or technical assistance required. A provider of  
25 electronic communication service, an officer, employee, or agent  
26 of a provider of electronic communication service, a landlord, a  
27 custodian, or other person shall not disclose the existence of

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

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

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

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

25 (a) If the communication was intercepted as described in  
26 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 punishable by imprisonment for not more than 4 years or a  
12 fine of not more than \$2,000.00, or both.

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

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

19 (b) Either of the following applies:

20 (i) The satellite transmission is transmitted to a broad-  
21 casting station for retransmission to the general 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 do any of the following:

3 (a) Manufacture, assemble, possess, or sell an electronic,  
4 mechanical, or other device, knowing or having reason to know the  
5 device's design renders it primarily useful for surreptitiously  
6 intercepting wire, oral, or electronic communications.

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

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

16 (2) An electronic communication service provider or an offi-  
17 cer, agent, or employee of, or a person under contract with, an  
18 electronic communication service provider, in the normal course  
19 of the business of providing that electronic communication serv-  
20 ice, may manufacture, assemble, possess, or sell an electronic,  
21 mechanical, or other device, knowing or having reason to know the  
22 device's design renders it primarily useful for surreptitiously  
23 intercepting wire or oral communications.

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

1 state, may manufacture, assemble, possess, or sell an electronic,  
2 mechanical, or other device, knowing or having reason to know the  
3 device's design renders it primarily useful for surreptitiously  
4 intercepting wire, oral, or electronic communications.

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

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

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

26 (2) An investigative or law enforcement officer who, by any  
27 means authorized by this act, has obtained knowledge of the

1 contents of a wire, oral, or electronic communication or evidence  
2 derived from a wire, oral, or electronic communication may use  
3 the communication's contents or the evidence to the extent the  
4 use is appropriate to proper performance of his or her official  
5 duties.

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

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

17 (5) Except as otherwise provided in this subsection, if an  
18 investigative or law enforcement officer, while engaged in inter-  
19 cepting a wire, oral, or electronic communication in the manner  
20 authorized by this act, intercepts a wire, oral, or electronic  
21 communication relating to an offense other than an offense speci-  
22 fied in the order of authorization or approval, the  
23 communication's contents and evidence derived from the communica-  
24 tion may be disclosed or used as provided in subsections (1) and  
25 (2). The communication's contents and any evidence derived from  
26 the communication may be used under subsection (3) if authorized  
27 or approved by a judge of competent jurisdiction, if the judge

1 finds on subsequent application the contents were otherwise  
2 intercepted in accordance with this act. The subsequent applica-  
3 tion shall be made as soon as practicable after intercepting the  
4 communication. This subsection does not authorize the disclosure  
5 or use in any manner of the contents of, or evidence derived  
6 from, a wire or oral communication relating to an offense punish-  
7 able by imprisonment for 4 years or less or punishable only by a  
8 fine.

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

17       (a) A violation of section 7401(2)(a) or (b), 7402(2)(a), or  
18 7403(2)(a)(i), (ii), or (iii) of the public health code, Act  
19 No. 368 of the Public Acts of 1978, being sections 333.7401,  
20 333.7402, and 333.7403 of the Michigan Compiled Laws.

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

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

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



1 communication shall be made in writing upon oath or affirmation  
2 to a judge of competent jurisdiction and shall state the  
3 applicant's authority to make the application. Each application  
4 shall include all of the following information:

5 (a) The identity of the investigative or law enforcement  
6 officer making the application, and the prosecutor authorizing  
7 the application.

8 (b) A full and complete statement of the facts and circum-  
9 stances the applicant relies upon to justify his or her belief  
10 that an order should be issued, including all of the following:

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

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

16 (iii) A particular description of the type of communication  
17 sought to be intercepted.

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

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

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

26 (d) A statement of the time period for which the  
27 interception must be maintained. If the investigation's nature

1 is such that the authorization for interception should not  
2 automatically terminate when the described type of communication  
3 has been obtained, a particular description of facts establishing  
4 probable cause to believe additional communications of the same  
5 type will occur after that time.

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

8 (f) A full and complete statement of the facts concerning  
9 all previous applications known to the individuals authorizing  
10 and making the application made to a judge of competent jurisdic-  
11 tion or federal judge for authorization to intercept or for  
12 approval of an interception of a wire, oral, or electronic commu-  
13 nication involving any of the same persons, facilities, or places  
14 specified in the application, and the action taken by the judge  
15 on each previous application.

16 (g) If the application is for extension of an order, a  
17 statement setting forth the results obtained from the intercep-  
18 tion or a reasonable explanation of the failure to obtain any  
19 results.

20 (h) Unless the investigative or law enforcement officer  
21 making the application is employed by the department of state  
22 police, a statement that the department of state police has been  
23 notified of the application and of the information described in  
24 subdivision (b)(ii) and (iv).

25 (2) The judge of competent jurisdiction may require the  
26 applicant to furnish additional testimony or documentary evidence  
27 in support of the application.

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

7 (a) There is probable cause to believe an individual is com-  
8 mitting, has committed, or is about to commit a particular  
9 offense described in section 7.

10 (b) There is probable cause to believe particular communica-  
11 tions concerning that offense will be obtained through the  
12 interception.

13 (c) Usual investigative procedures have been tried and have  
14 failed.

15 (d) There is probable cause 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 the person described in subsec-  
20 tion (1)(b)(iv).

21 (4) Each order authorizing or approving interception of a  
22 wire, oral, or electronic communication shall specify all of the  
23 following:

24 (a) The identity, if known, of the person whose communica-  
25 tion is to be intercepted.

1 (b) The nature and location of the communication facilities  
2 as to which, or the place where, authority to intercept is  
3 granted.

4 (c) A particular description of the type of communication  
5 sought to be intercepted and a statement of the particular  
6 offense to which it relates.

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

9 (e) The identity of the agency authorized to intercept the  
10 communication and the person authorizing the application.

11 (f) The time period during which interception is authorized  
12 or approved, including a statement as to whether interception  
13 shall automatically terminate when the described communication  
14 has been obtained.

15 (5) If an application for an order authorizing the intercep-  
16 tion of a wire, oral, or electronic communication states certain  
17 specific information, facilities, or technical assistance is  
18 needed from a particular electronic communication service provid-  
19 er, landlord, custodian, or other person to accomplish the inter-  
20 ception unobtrusively and with minimum interference with the  
21 services the service provider, landlord, custodian, or person is  
22 according the person whose communications are to be intercepted,  
23 the order authorizing the interception shall direct the particu-  
24 lar service provider, landlord, custodian, or other person to  
25 immediately furnish the applicant the specified information,  
26 facilities, or technical assistance. An electronic communication  
27 service provider, landlord, custodian, or other person furnishing

1 facilities or technical assistance shall be compensated by the  
2 applicant for reasonable expenses incurred in providing the  
3 facilities or assistance. A person is not civilly liable under  
4 section 12 for furnishing information, facilities, or assistance  
5 pursuant to this subsection.

6 (6) An order entered under this section shall not authorize  
7 or approve the interception of a wire, oral, or electronic commu-  
8 nication for a period longer than necessary to achieve the autho-  
9 rized investigative objective, or in any event for longer than 30  
10 days. The 30-day period begins on the day the investigative or  
11 law enforcement officer first begins to conduct an interception  
12 under the order or 10 days after the order is entered, whichever  
13 day is earlier. Extensions of an order may be granted, but only  
14 upon application for an extension in accordance with  
15 subsection (1) and upon the judge of competent jurisdiction  
16 making the findings required by subsection (3). The extension  
17 period shall be no longer than the judge of competent jurisdic-  
18 tion considers necessary to achieve the purposes for which the  
19 order was granted or, in any event, not longer than 30 days. Not  
20 more than 2 extensions of an order may be granted. After a  
21 second extension of an order terminates, an investigative or law  
22 enforcement officer may apply for and be granted, in the manner  
23 provided in this section, an order authorizing the interception  
24 of a wire or oral communication based on the information con-  
25 tained in the application for the terminated order only if new  
26 evidence, in addition to that described in the previous

1 application, justifying the officer's belief that an order should  
2 be issued is included in the new application.

3 (7) Each order and extension shall provide that the authori-  
4 zation to intercept shall be executed as soon as practicable,  
5 shall be conducted so as to minimize the interception of communi-  
6 cations not otherwise subject to interception under this act, and  
7 shall terminate upon attainment of the authorized objective or,  
8 not longer than any event, not longer than 30 days.

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

16 (9) The contents of a wire, oral, or electronic communica-  
17 tion intercepted by any means authorized by this act shall be  
18 recorded on tape or wire or other substantially similar device.  
19 The recording of the contents of a wire, oral, or electronic com-  
20 munication under this subsection shall be done in a way that pro-  
21 tects the recording from editing or other alterations.

22 Immediately upon the expiration of the time period of an order or  
23 extension of an order, all recordings shall be made available to  
24 the judge issuing the order and sealed under his or her  
25 directions. Custody of the recordings shall be where the judge  
26 orders. The recordings shall not be destroyed except upon an  
27 order of the judge or his or her successor and shall be retained

1 for 10 years. Duplicate recordings may be made for use or  
2 disclosure pursuant to section 6(1) and (2) for investigations.  
3 The presence of the seal provided for by this subsection, or a  
4 satisfactory explanation for the absence of a seal, is a prereq-  
5 uisite for use or disclosure under section 6(3) of the contents  
6 of a wire or oral communication or evidence derived from the  
7 communication.

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

15 (11) Within a reasonable time, but not later than 90 days  
16 after an application for an order is filed under this section is  
17 denied or the termination of the time period of an order or  
18 extension of an order, the judge shall cause an inventory to be  
19 served on the persons named in the order or the application, and  
20 other parties to intercepted communications as the judge deter-  
21 mines is in the interest of justice. The inventory shall include  
22 notice of all of the following:

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

24 (b) The date of the entry of the order and the period of  
25 authorized, approved, or disapproved interception, or the denial  
26 of the application.

1 (c) The fact that during the period wire, oral, or  
2 electronic communications were or were not intercepted.

3 (12) If a person given an inventory pursuant to subsection  
4 (11) files a motion and serves a copy of the motion on the law  
5 enforcement agency described in subsection (11) and other parties  
6 as required by law, the judge shall make available to the person  
7 or his or her attorney for inspection the portions of the inter-  
8 cepted communications to which the person was a party and the  
9 portions of the applications and orders pertaining to communica-  
10 tions to which the person was a party.

11 (13) The contents of a wire, oral, or electronic communica-  
12 tion intercepted pursuant to this act or evidence derived from  
13 the communication shall not be received in evidence or otherwise  
14 disclosed in a trial, hearing, preliminary examination, or other  
15 proceeding in a court unless each party, before the preliminary  
16 examination or not less than 21 days before the trial, hearing,  
17 or other proceeding, has been furnished with a copy of the appli-  
18 cation and order authorizing or approving the interception.

19 (14) An aggrieved person in a trial, hearing, preliminary  
20 examination, or other proceeding in or before a court, depart-  
21 ment, officer, agency, regulatory body, or other authority of  
22 this state or a political subdivision of this state may move to  
23 suppress the contents of a wire, oral, or electronic communica-  
24 tion intercepted pursuant to this act, or evidence derived from  
25 the communication, on 1 or more of the following grounds:

26 (a) The communication was unlawfully intercepted.



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

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

5 (15) A motion pursuant to subsection (14) shall be made  
6 before the trial, hearing, preliminary examination, or other pro-  
7 ceeding unless there is no opportunity to make the motion before  
8 the trial, hearing, preliminary examination, or other proceeding  
9 or the aggrieved person making the motion is not aware of the  
10 grounds of the motion before the trial, hearing, preliminary  
11 examination, or other proceeding. If the aggrieved person files  
12 a motion, the judge may make available to the aggrieved person or  
13 his or her attorney for inspection any portion of the intercepted  
14 communication or evidence derived from the intercepted communica-  
15 tion the judge determines is in the interests of justice. If the  
16 motion pursuant to subsection (14) is granted, the intercepted  
17 wire, oral, or electronic communication or evidence derived from  
18 the communication shall be treated as having been obtained in  
19 violation of this act.

20 (16) The prosecutor may appeal from an order granting a  
21 motion to suppress under subsection (14), or the denial of an  
22 application for an order of approval, if the prosecutor certifies  
23 to the judge or other official granting the motion or denying the  
24 application the appeal is not taken for delay. The appeal shall  
25 be taken within 30 days after the order granting the motion to  
26 suppress was entered or the application was denied and shall be  
27 diligently prosecuted.

1       (17) A violation of subsection (9) or (10) may be punished  
2 as contempt of the court that approved or denied the application  
3 for interception of a wire or oral communication.

4       Sec. 9. The director of the department of state police  
5 shall establish a course of training in the legal and technical  
6 aspects of intercepting wire, oral, or electronic communications,  
7 regulations he or she finds necessary and proper for the training  
8 program, and minimum standards for the certification and periodic  
9 recertification of state investigative officers or officers of a  
10 law enforcement agency eligible to intercept wire, oral, or elec-  
11 tronic communications under this act. The director of the  
12 department of state police shall charge each officer who enrolls  
13 in this training program a reasonable enrollment fee to offset  
14 the costs of training.

15       Sec. 10. (1) Within 30 days after the expiration of an  
16 order or an extension of an order entered under section 8, or the  
17 denial of an order authorizing or approving an interception of a  
18 wire, oral, or electronic communication, the judge shall report  
19 all of the following information to the administrative office of  
20 the United States courts and to the department of state police:

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

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

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

25       (d) The interception time period authorized by the order and  
26 the number and duration of any extensions of the order.

1 (e) The offense specified in the application, order or  
2 extension.

3 (f) The identity of the investigative or law enforcement  
4 officer and agency applying and the prosecutor authorizing the  
5 application.

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

8 (2) In January of each year, the attorney general shall  
9 report to the administrative office of the United States courts  
10 all of the following:

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

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

18 (i) The approximate nature and frequency of incriminating  
19 communications intercepted.

20 (ii) The approximate nature and frequency of other communi-  
21 cations intercepted.

22 (iii) The approximate number of persons whose communications  
23 were intercepted.

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

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

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

6 (e) The number of motions to suppress made with respect to  
7 the interceptions described in subdivision (b) and the number  
8 granted or denied.

9 (f) The number of convictions resulting from the intercep-  
10 tions described in subdivision (b), the offenses for which the  
11 convictions were obtained, and a general assessment of the impor-  
12 tance of the interceptions.

13 (g) The information required by subdivisions (b) to (f) with  
14 respect to orders or extensions for interception of wire, oral,  
15 or electronic communications obtained in a preceding calendar  
16 year.

17 (3) On or before January 10 of each year, the department of  
18 state police shall report to the attorney general, the state  
19 senate, the state house of representatives, and the governor all  
20 of the information regarding applications, orders, and intercep-  
21 tions of wire, oral, or electronic communications required under  
22 subsection (2).

23 Sec. 11. An officer, employee, or agent of a provider of  
24 electronic communication service who learns of the existence of  
25 an electronic, mechanical, or other device in the course of his  
26 or her employment or otherwise shall report the device's  
27 existence to the prosecuting attorney of the county in which the

1 device is located. The prosecuting attorney shall determine  
2 whether the placement of the device is authorized by court  
3 order. If the placement of the device is not authorized by court  
4 order, the prosecuting attorney shall immediately inform the  
5 person whose wire or oral communication was intercepted or  
6 intended to be intercepted by the device of the existence of the  
7 device. This section does not diminish or excuse any obligation  
8 of the prosecuting attorney, the officer, employee, or agent of  
9 the provider of wire or electronic communication service, or any  
10 other person to remove the device or to take any other actions  
11 required by law, regulation, or policy.

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

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

21 (b) Exemplary damages.

22 (c) Reasonable attorney fees and other litigation costs rea-  
23 sonably incurred.

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

1       Sec. 13. Purchases of any electronic, mechanical, or other  
2 device shall be recorded as a separate line item on any state or  
3 local appropriation bill.

4       Sec. 14. Sections 539a to 539i of the Michigan penal code,  
5 Act No. 328 of the Public Acts of 1931, being sections 750.539a  
6 to 750.539i of the Michigan Compiled Laws, are repealed.

7       Sec. 15. This act is repealed effective upon the expiration  
8 of 3 years after the date of its enactment.