

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 497 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Senator Mike Rogers

Committee: Judiciary

CONTENT

The bill would create the "Electronic Surveillance Act" to permit the interception of wire, oral, or electronic communication pursuant to judicial authorization in the investigation of specific drug-related offenses; gambling, racketeering, or money laundering violations; using the Internet to commit certain crimes against children or explosives violations (as proposed by Senate Bill 562); or an offense for which the maximum penalty is life in prison. The bill also would:

- Permit applications for the interception of communication to be authorized by a prosecutor, and approved by the judge, if other investigative techniques had failed or reasonably appeared to be unlikely to succeed, if tried, or to be dangerous.
- Allow entry to the premises covered under an interception order in order to install, maintain, or remove an interception device.
- Permit the contents of an intercepted communication or evidence derived from it to be used or disclosed by an investigative or law enforcement officer in the performance of his or her duties, or to be disclosed by a person giving testimony.
- Prohibit the disclosure or use of a wrongfully intercepted communication.
- Prohibit the manufacture, possession or sale (except by providers of an electronic communication service and governmental officials and employees), or advertisement of devices primarily used for the interception of communication.
- Require that persons named in an order be given notice of its approval and implementation after the judge was notified of the investigation's termination.
- Allow a party to an intercepted communication, or a person against whom interception was directed, to move to suppress evidence of the communication.
- Require the development of a communication interception training program for law enforcement officers.
- Establish various reporting requirements.
- Require employees of a provider of electronic communication service to report the existence of an interception device to the Department of State Police.
- Create a civil cause of action for victims of a wrongful interception and make good faith reliance on an authorization a defense to civil or criminal liability.
- Require that purchases of any interception device be recorded as a separate line item on any State or local appropriation bill.
- Specify penalties for various violations of the proposed act, and exemptions for various electronic interceptions otherwise allowed by law.
- Repeal eavesdropping provisions of the Michigan Penal Code.

The bill would take effect 90 days after its enactment.

Legislative Analyst: P. Affholter

FISCAL IMPACT

State Police/Law Enforcement: The bill would require the Department of State Police to develop a wiretapping and electronic surveillance course for local law enforcement agencies and provide certification and periodic recertification of law enforcement personnel in the State who would request it. The expense to State and local law enforcement would depend to a great extent on the interest of the law enforcement community to engage in the activities authorized under the bill. The cost to wiretap a phone involves equipment costs, phone company charges, and personnel costs. The required equipment could cost \$15,000, depending upon the

choice of electronic hardware. To set up a tap, the phone company must be employed to set up a second phone line to an existing line. This involves a charge from the phone company, which is \$600 per tap in the Chicago area. Personnel costs can amount to the single largest cost component of a phone tap, depending on the length and complexity of a tap operation. This involves live monitoring of a phone line as well as the handling and administrative requirements of dealing with a piece of legal evidence.

Training, certification, and reporting duties assigned to the Department could require additional administrative, equipment, and supply costs, depending upon to what extent the Department would wish to use existing personnel who currently engage in similar duties. Investigative personnel would have to be trained in wiretapping and electronic surveillance in order to qualify to instruct other law enforcement personnel. Training costs for local law enforcement are not known, but it is possible that training sessions could cost up to \$1,000 per week, with registration funds being used to offset departmental training costs.

State Police personnel would incur additional costs to investigate reports of electronic surveillance to determine their legality and would be responsible for informing those who were under unauthorized electronic surveillance.

The Department also would incur additional cost to the extent that it would take part in electronic surveillance activities. It is not known whether the Department would choose to use existing personnel within its criminal investigation division to perform these activities or whether the administration would request from the Legislature additional funds to establish a new specialty unit for this purpose.

Corrections: There are no data available to indicated how many people would be convicted of the new crimes proposed by the bill. However, these crimes may be similar to existing eavesdropping offenses. In 1997, there were 11 offenders convicted of crimes or attempted crimes related to eavesdropping. Of those, three received prison sentences. Assuming that the number of offenders committing the new crimes would be similar to the 1997 data and that three offenders were committed to a State prison for a period of 20 months, given that the annual cost of incarceration on average is \$22,000, the cost to the State for incarceration would be \$110,000 per year. If the remaining eight offenders received a jail sentence of six months, given that the cost varies by county between \$27 and \$65 per day, local costs would vary between \$38,880 and \$93,600 per year.

In addition, to the extent that the bill resulted in increased convictions, State and local criminal justice costs would increase. For example, in 1997, there were 1,919 offenders committed for drug-related offenses with an average minimum prison sentence of 2.4 years, excluding life sentences. Assuming an increase in annual convictions of 10 offenders, each receiving a 2.4-year sentence, costs of incarceration would increase by \$528,000 per year in the long run.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.