

A SUMMARY OF HOUSE BILLS 4033 and 4034 AS INTRODUCED 1-28-03

House Bill 4033 would prohibit “peeping,” increase penalties for eavesdropping and surveillance, prohibit the use of devices to surveil, and exempt members of the media while in the performance of their duties from prohibited activities. House Bill 4034 would revise the corresponding sentencing guidelines provisions. Specifically, the bills would do the following:

House Bill 4033 would amend the Michigan Penal Code (MCL 750. 539a et al.) to prohibit anyone from peeping into a private place or from trespassing on property owned or occupied by another person in order to subject any person to peeping. A violation would be a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$100, or both. “Peep” and “peeping” would be defined as any looking of a clandestine, surreptitious, prying, or secretive nature, regardless of whether the person peeping was committing a trespass or was on private or public property. A “private place” would mean a place where a reasonable person would expect to be safe from casual or hostile intrusion or surveillance. A private place would not include a place to which the public or a substantial group of the public has access.

In addition, the bill would revise prohibitions on eavesdropping and increase penalties for violations as follows:

- Trespassing on property for the purpose of subjecting the person who owned or controlled the property to eavesdropping or surveillance would be increased to a felony offense instead of a misdemeanor, and would be punishable by imprisonment for not more than two years or a fine of not more than \$2,000, or both.

- Willfully using a device to eavesdrop upon a conversation without the consent of all parties to the conversation would be a felony punishable by not more than five years imprisonment (increased from two years), a fine of not more than \$5,000 (increased from \$2,000), or both.

- A person who installed, placed, or used (underlining denotes change) a device for observing, photographing, or eavesdropping upon the sounds or events in a private place without the consent of any individual entitled to privacy in that place would be guilty of a felony punishable by not more than five years imprisonment (increased from two years), a fine of not more than \$5,000 (increased from \$2,000), or both. In either a criminal or civil action, proof of the installation, placement, or use in any private place of any device that may be used for violating the act would be prima facie evidence of a violation of this provision.

- Using or divulging any information or any recorded or captured sound or image that the person knew (or should have known) was obtained in violation of the above prohibitions would

be guilty of a felony punishable by not more than five years imprisonment (increased from two years), a fine of not more than \$5,000 (increased from \$2,000), or both.

- Manufacturing, possessing, or transferring to another person any device designed or commonly used for eavesdropping or surveillance with the intent to unlawfully use or allow the device to be so used, and knowing the device is intended to be used for those purposes, would be guilty of a felony punishable by not more than five years imprisonment (increased from two years), a fine of not more than \$5,000 (increased from \$2,000), or both.

In addition, the bill would make it a felony, punishable by up to five years imprisonment, a fine of not more than \$5,000, or both, to willfully use any device to surveil and record or capture the image of another person in any private place. Lastly, besides several editorial changes, the bill would exempt from the above prohibitions eavesdropping or surveillance not otherwise prohibited by law by a representative of the media while in the performance of his or her duties as a media representative.

House Bill 4034 would amend the Code of Criminal Procedure (MCL 777.16z) to specify that trespass for the purpose of eavesdropping would be a Class H felony against the public order with a statutory maximum term of imprisonment of two years and that eavesdropping, installing an eavesdropping device, divulging or using information obtained by eavesdropping, or the manufacture or possession of eavesdropping devices would be Class E felonies against the public order with a statutory maximum term of imprisonment for each offense of five years.

The bill is tie-barred to House Bill 4033.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.