



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 918 (as enrolled)
House Bills 5692 and 5693 (as enrolled)
Sponsor: Senator Alan Sanborn (S.B. 918)
Representative Fran Amos (H.B. 5692)
Representative Sandra Caul (H.B. 5693)
Senate Committee: Judiciary
House Committee: Criminal Justice

Date Completed: 3-29-05

RATIONALE

Until recently, Michigan law dealing with various forms of voyeurism had not kept pace with developments in technology. The law contained criminal penalties for installing or using an installed device to observe, photograph, or eavesdrop on the sounds or events in a private place, and for trespassing for the purpose of eavesdropping or surveilling. Improvements in photographic and telecommunications technology in recent years, however, have enabled people to compromise someone's privacy by observing or photographing the individual without necessarily installing a device in a private place or trespassing. Technological developments also have made it easier to share images and information on a broad scale, such as via e-mail and on internet websites. To keep pace with the technological capabilities of potential voyeurs and to ensure that inappropriate voyeuristic behavior is prohibited and punished, it was suggested that Michigan law should proscribe surveilling or photographing an unclad or partially clad individual who has a reasonable expectation of privacy, that the prohibition against installing a device for recording or eavesdropping should be expanded, and that distributing, disseminating, or transmitting illegally obtained recordings or photographs be prohibited.

CONTENT

Senate Bill 918 and House Bill 5692 amended the Michigan Penal Code to do all of the following:

- **Prohibit and prescribe criminal penalties for surveilling or photographing an undressed individual, or someone dressed only in undergarments, under circumstances in which the individual has a reasonable expectation of privacy.**
- **Expand the prohibition against installing a device in a private place to observe, photograph, or eavesdrop on the sounds or events there, without the consent of those entitled to privacy, and establish increased penalties for a second or subsequent violation.**
- **Prohibit and prescribe criminal penalties for distributing, disseminating, or transmitting a recording or visual image obtained in violation of either of the prohibitions described above.**

House Bill 5693 amended the Code of Criminal Procedure to include felony offenses enacted by Senate Bill 918 and House Bill 5692 in the sentencing guidelines.

Senate Bill 918 and House Bill 5692 were tie-barred and took effect on September 1, 2004. House Bill 5693 was tie-barred to those bills and took effect on June 16, 2004.

Senate Bill 918

The bill added Section 539j to the Penal Code to prohibit a person from doing any of the following:

- Surveilling another individual clad only in undergarments, another individual's unclad genitalia or buttocks, or a female individual's unclad breasts under circumstances in which the individual has a reasonable expectation of privacy.
- Photographing, or otherwise capturing or recording, the visual image of the undergarments worn by another individual, another individual's unclad genitalia or buttocks, or a female individual's unclad breasts under circumstances in which the individual has a reasonable expectation of privacy.
- Distributing, disseminating, or transmitting for access by any other person a recording, photograph, or visual image that the person knows or has reason to know was obtained in violation of this section.

A first-time surveilling violation is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. A second or subsequent surveilling violation is punishable by up to five years and/or \$5,000. A violation that involves photographing, or otherwise capturing or recording a visual image, or distributing, disseminating, or transmitting is punishable by up to five years and/or \$5,000.

The bill states that Section 539j does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

The bill specifies that Section 539j does not prohibit security monitoring in a residence, if conducted by or at the direction of the owner or principal occupant of the residence, unless conducted for a lewd or lascivious purpose. Section 539j does not apply to a Michigan or U.S. peace officer, or the officer's agent, while in the performance of the officer's duties.

Under the bill, "surveil" means "to secretly observe the activities of another person for the purpose of spying upon and invading the privacy of the person observed".

House Bill 5692

The bill amended Section 539d of the Penal Code to expand the prohibition against installing in any private place, without the consent of the person or people entitled to privacy in that place, any device for observing, photographing, or eavesdropping upon the sounds or events in that place. Under the bill, the prohibition applies to installing, placing, or using any device for observing, recording, transmitting, photographing, or eavesdropping. A violation continues to be a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. Under the bill, however, a second or subsequent violation is punishable by up to five years and/or \$5,000.

In addition, the bill prohibits a person from distributing, disseminating, or transmitting for access by any other person a recording, photograph, or visual image that the person knows or has reason to know was obtained in violation of the prohibition described above. A violation involving distributing, disseminating, or transmitting is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000.

The bill states that Section 539d does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate the section.

The bill specifies that Section 539d does not prohibit security monitoring in a residence, if conducted by or at the direction of the owner or principal occupant of the residence, unless conducted for a lewd or lascivious purpose.

House Bill 5693

The bill included in the sentencing guidelines the felony offenses enacted by Senate Bill 918 and House Bill 5692, as shown below.

Violation	Felony Class	Statutory Maximum
Installing, placing, or using eavesdropping device - subsequent offense	E - Public Order	5 years
Distributing, disseminating, or transmitting recording or image obtained by eavesdropping	E - Public Order	5 years
Lewd surveillance or capturing lewd image	H - Public Order	2 years
Lewd surveillance or capturing lewd image - subsequent offense	E - Public Order	5 years
Distributing, disseminating, or transmitting visual image obtained by surveillance	E - Public Order	5 years

MCL 750.539j (S.B. 918)
750.539d (H.B. 5692)
777.16z (H.B. 5693)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recent technological developments have made it easier to photograph, visually record, or spy upon someone surreptitiously. Without having to install a device in a private place or trespass on private property, a person can use an inconspicuous device, such as a cell phone camera, to capture the image of another in a private situation without that other person's knowledge or consent. In addition, small cameras can be placed in ordinary devices and positioned in a manner that may invade a person's privacy. For example, a camera could be concealed in a briefcase and be held low enough to view under a woman's skirt. Indeed, such incidents reportedly have occurred all over the world, including in Michigan.

Since the law regarding privacy invasion previously applied only to the installation of a device in a private place or to trespassing upon private property, it may not have covered such activities as using a cell phone camera in a locker room or holding a camera low to the ground on a public sidewalk. By prohibiting both surveilling or photographing unclad or partially dressed individuals and capturing the image of the undergarments worn by others, when those people have a reasonable expectation of privacy, Senate Bill 918 will subject voyeurs to criminal penalties even if they do not actually install a device in a private place or trespass on private property.

In addition, House Bill 5692 expanded the prohibition against installing a device for viewing, photographing, or eavesdropping to include placing or using a device for those purposes or to record or transmit the sounds or events in a private place without the consent of a person entitled to privacy. This will cover a person's sharing of inappropriate photographs or visual or audio recordings on internet websites or by e-mail.

The bills' proscriptions should deter the inappropriate behavior that new photographic and video technology has facilitated.

Supporting Argument

By enacting enhanced penalties for subsequent convictions of the new and existing offenses, the bills recognize the seriousness of these privacy invasion violations, and establish appropriate sanctions for repeat offenders.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. According to the Department of Corrections Statistical Report, 20 offenders in 2001 were convicted of violating the section of the Penal Code that prohibits installing a device to observe, photograph, or eavesdrop upon a person in a private place. Ten offenders were sentenced to prison, and 10 received probation or other penalties. There are no data to indicate how many additional offenders will be convicted under the expanded circumstances or the additional offenses created by the bills. Under sentencing guidelines, a Class H offense has a recommended minimum sentence range of 0-1 month to 5-17 months while a Class E offense has a recommended minimum

sentence range of 0-3 months to 24-38 months. Local units of government incur the cost of incarceration in a local facility, which varies by county. The State incurs the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. For each additional offender convicted of a Class H felony, sentenced to prison, and given the longest recommended minimum sentence, it will cost the State approximately \$37,300. For each offender convicted of any of the new Class E offenses, sentenced to prison, and given the longest recommended minimum sentence, it will cost the State \$88,700.

Fiscal Analyst: Bethany Wicksall

A0304\sb918ea

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.