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House Bill 5692 (Substitute S-1 as reported)
House Bill 5693 (Substitute S-1 as reported)
Sponsor: Representative Fran Amos (H.B. 5692)
Representative Sandra Caul (H.B. 5693)

House Committee: Criminal Justice

Senate Committee: Judiciary

## **CONTENT**

House Bill 5692 (S-1) would amend the Michigan 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, that violation would apply to installing, placing, or using any device for observing, recording, transmitting, photographing, or eavesdropping. The violation would continue 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 would be punishable by up to five years and/or \$5,000.

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

The bill would take effect on September 1, 2004. The bill is tie-barred to Senate Bill 918, which would prohibit surveilling or photographing a person clad only in undergarments, a person's unclad genitalia or buttocks, or a female's unclad breasts when the person had a reasonable expectation of privacy.

House Bill 5693 (S-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines the felony offenses proposed by Senate Bill 918 (S-3) and House Bill 5692 (S-1), 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

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House Bill 5693 (S-1) is tie-barred to Senate Bill 918 and House Bill 5692.

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

## **FISCAL IMPACT**

The bills would 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 would be convicted under the expanded circumstances or the additional offenses proposed 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 would cost the State approximately \$37,300. For each offender convicted of any of the proposed Class E offenses, sentenced to prison, and given the longest recommended minimum sentence, it would cost the State \$88,700.

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Date Completed: 5-6-04 Fiscal Analyst: Bethany Wicksall

floor\hb5692 Analysis available @ http://www.michiqanlegislature.org
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.

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