

# HOUSE BILL No. 5352

October 25, 2005, Introduced by Reps. Miller, Jones, Meisner, Kehrl, Bennett, Sak, Lemmons, Jr., Sheltroun, Brandenburg, Polidori, Sheen, Stewart, Wojno, Lipsey and Lemmons, III and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 539a and 539g (MCL 750.539a and 750.539g),  
section 539g as amended by 1993 PA 227, and by adding section 539l.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 539a. As used in sections 539a to ~~539i~~ **539l**:
- 2       **(A)** ~~—(1)—~~ "Private place" means a place where one may
- 3 reasonably expect to be safe from casual or hostile intrusion or
- 4 surveillance but does not include a place to which the public or
- 5 substantial group of the public has access.
- 6       **(B)** ~~—(2)—~~ "Eavesdrop" or "eavesdropping" means to overhear,

1 record, amplify or transmit any part of the private discourse of  
2 others without the permission of all persons engaged in the  
3 discourse. Neither this definition ~~or~~ **NOR** any other provision of  
4 this act shall modify or affect any law or regulation concerning  
5 interception, divulgence or recording of messages transmitted by  
6 communications common carriers.

7 (C) ~~-(3)-~~ "Surveillance" means to secretly observe the  
8 activities of another person for the purpose of spying upon and  
9 invading the privacy of the person observed.

10 (D) ~~-(4)-~~ "Person" means any individual, partnership,  
11 corporation or association.

12 Sec. 539g. Sections 539a to 539f do not prohibit any of the  
13 following:

14 (a) Eavesdropping or surveillance not otherwise prohibited by  
15 law by a peace officer of this state or of the federal government,  
16 or the officer's agent, while in the performance of the officer's  
17 duties.

18 (b) Hearing a communication transmitted by common carrier  
19 facilities by an employee of a communications common carrier when  
20 acting in the course of his or her employment.

21 (c) The recording by a public utility of telephone  
22 communications to it requesting service or registering a complaint  
23 by a customer, if a record of the communications is required for  
24 legitimate business purposes and the agents, servants, and  
25 employees of the public utility are aware of the practice or  
26 surveillance by an employee safeguarding property owned by, or in  
27 custody of, his or her employer on his or her employer's property.

1 (d) The routine monitoring, including recording, by employees  
2 of the department of corrections of telephone communications on  
3 telephones available for use by prisoners in state correctional  
4 facilities, if the monitoring is conducted in the manner prescribed  
5 by section 70 of ~~Act No. 232 of the Public Acts of 1953, being~~  
6 ~~section 791.270 of the Michigan Compiled Laws~~ **THE CORRECTIONS CODE**  
7 **OF 1953, 1953 PA 232, MCL 791.270,** and rules promulgated under that  
8 section.

9 (E) **EAVESDROPPING CONDUCTED BY A LAW ENFORCEMENT OFFICER IN AN**  
10 **EMERGENCY SITUATION AS ALLOWED UNDER SECTION 539/.**

11 **SEC. 539/. (1) A LAW ENFORCEMENT OFFICER, UPON APPROVAL OF THE**  
12 **ATTORNEY GENERAL OR AN ASSISTANT ATTORNEY GENERAL, OR WITHOUT THAT**  
13 **APPROVAL IF A REASONABLE EFFORT HAS BEEN MADE TO CONTACT THE**  
14 **ATTORNEY GENERAL OR AN ASSISTANT ATTORNEY GENERAL, MAY USE AN**  
15 **EAVESDROPPING DEVICE IN AN EMERGENCY SITUATION AS DESCRIBED IN**  
16 **SUBSECTION (4). THE USE OF THE EAVESDROPPING DEVICE MUST BE IN**  
17 **ACCORDANCE WITH THIS SECTION AND MAY BE ALLOWED ONLY WHERE THE LAW**  
18 **ENFORCEMENT OFFICER REASONABLY BELIEVES THAT AN ORDER PERMITTING**  
19 **THE USE OF THE DEVICE WOULD ISSUE IF A PRIOR HEARING HAD BEEN HELD.**

20 (2) **IN ALL CASES DESCRIBED IN SUBSECTION (1), AN APPLICATION**  
21 **FOR AN ORDER APPROVING THE PREVIOUS OR CONTINUING USE OF AN**  
22 **EAVESDROPPING DEVICE SHALL BE MADE WITHIN 48 HOURS AFTER THE**  
23 **COMMENCEMENT OF THAT USE. IF AN ORDER APPROVING THE PREVIOUS OR**  
24 **CONTINUED USE IS NOT OBTAINED, OR IF THE COURT DENIES ISSUANCE OF**  
25 **THE ORDER, THE LAW ENFORCEMENT OFFICER SHALL IMMEDIATELY TERMINATE**  
26 **ANY CONTINUING USE OF THE EAVESDROPPING DEVICE. BEFORE A JUDGE MAY**  
27 **ISSUE AN ORDER APPROVING THE EMERGENCY USE, THE JUDGE MUST MAKE A**

1 DETERMINATION AS TO BOTH OF THE FOLLOWING:

2 (A) THAT THE ORDER WOULD HAVE BEEN GRANTED HAD THE INFORMATION  
3 BEEN BEFORE THE COURT PRIOR TO THE USE OF THE DEVICE.

4 (B) THAT THERE WAS AN EMERGENCY SITUATION AS DESCRIBED IN  
5 SUBSECTION (4).

6 (3) IF AN APPLICATION FOR APPROVAL UNDER SUBSECTION (2) IS  
7 DENIED, THE CONTENTS OF THE CONVERSATIONS OVERHEARD OR RECORDED  
8 SHALL BE TREATED AS HAVING BEEN OBTAINED IN VIOLATION OF THIS  
9 SECTION.

10 (4) AN EMERGENCY SITUATION EXISTS WHEN, WITHOUT PREVIOUS  
11 NOTICE TO THE LAW ENFORCEMENT OFFICER SUFFICIENT TO OBTAIN PRIOR  
12 JUDICIAL APPROVAL, EITHER OR BOTH OF THE FOLLOWING APPLY:

13 (A) THE USE OF THE DEVICE IS NECESSARY FOR THE PROTECTION OF  
14 THE LAW ENFORCEMENT OFFICER.

15 (B) THE CONVERSATION TO BE OVERHEARD OR RECORDED WILL OCCUR IN  
16 A SITUATION INVOLVING A CLEAR AND PRESENT DANGER OF IMMINENT DEATH  
17 OR GREAT BODILY HARM TO PERSONS RESULTING FROM EITHER OF THE  
18 FOLLOWING:

19 (i) A KIDNAPPING OR THE HOLDING OF A HOSTAGE BY FORCE OR THE  
20 THREAT OF THE IMMINENT USE OF FORCE.

21 (ii) THE OCCUPATION BY FORCE, OR THE THREAT OF THE IMMINENT USE  
22 OF FORCE, OF ANY PREMISES, PLACE, VEHICLE, VESSEL, OR AIRCRAFT.

23 (5) AS USED IN THIS SECTION, "LAW ENFORCEMENT OFFICER" MEANS A  
24 SHERIFF OR SHERIFF'S DEPUTY, A VILLAGE OR TOWNSHIP MARSHAL, AN  
25 OFFICER OF THE POLICE DEPARTMENT OF ANY CITY, VILLAGE, OR TOWNSHIP,  
26 AN OFFICER OF THE MICHIGAN STATE POLICE, OR ANY PEACE OFFICER  
27 TRAINED AND CERTIFIED UNDER THE COMMISSION ON LAW ENFORCEMENT

1 STANDARDS ACT, 1965 PA 203, MCL 28.601 TO 28.616.