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## BILL ANALYSIS



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Senate Bill 463 (as introduced 8-28-19)  
Sponsor: Senator Peter J. Lucido  
Committee: Judiciary and Public Safety

Date Completed: 2-12-20

**CONTENT**

**The bill would amend Chapter 82 (Telegraph and Telephone) of the Michigan Penal Code to allow eavesdropping not otherwise prohibited by law by a custodial parent, foster parent, or guardian of a minor child on that minor child during a private conversation to which the minor child was a participant, subject to certain restrictions.**

The Code specifies that Sections 539a to 539f do not prohibit any of the following:

- Eavesdropping or surveillance not otherwise prohibited by law by a peace officer of the State or of the Federal government, or the officer's agent, while in the performance of the officer's duties.
- Hearing a communication transmitted by common carrier facilities by an employee of a communications common carrier when acting in the course of his or her employment.
- The recording by a public utility of a telephone communications to it requesting service or registering a complaint by a customer, if a record of the communications is required for legitimate business purposes and the agents, servants, and employees of the public utility are aware of the practice or surveillance by an employee safeguarding property owned by, or in custody of, his or her employer on his or her employer's property.
- The routine monitoring, including recording, by employees of the Department of Corrections of telephone communications on telephones available for use by prisoners in State correctional facilities, if the monitoring is conducted in a specified manner.

(Section 539a lists definitions used in Sections 539a to 539i. Section 539b specifies that a person who trespasses on property owned or under the control of another person to subject that person to eavesdropping or surveillance is guilty of a misdemeanor.

Section 539c states that any person who is present or who is not present during a private conversation and who willfully uses any device to eavesdrop on the conversation without the consent of all parties, or who knowingly aids, employs, or procures another person to do the same, is guilty of a felony punishable by imprisonment in a State prison for no more than two years or by a fine of no more than \$2,000, or both.

Among other things, Section 539d prohibits a person from doing the following:

- Installing, placing, or using in any private place, without the consent of the person or people entitled to privacy in that place, any device for observing, recording, transmitting, photographing, or eavesdropping on the sounds or events in that place.

- Distributing, disseminating, or transmitting for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of Section 539d.

Section 539e specifies that any person who uses or divulges any information that he or she knows or reasonably should know was obtained in violations of Sections 539b, 539c, or 539d is guilty of a felony, punishable by imprisonment in a State prison for no more than two years, or by a maximum fine of \$2,000.

Under Section 539f, any person who manufactures, possesses, or transfers to another any device, contrivance, machine, or apparatus designed or commonly used for eavesdropping with the intent to unlawfully use or employ or allow the same to be so used or employed for eavesdropping, and knowing the same is intended to be so used, is guilty of a felony, punishable by imprisonment in a State prison for no more than two years, or by a fine of no more than \$2,000, or both.)

Under the bill, Sections 539a to 539f also would not prohibit eavesdropping not otherwise prohibited by law by a custodial parent, foster parent, or guardian of a minor child on that minor child during a private conversation to which the minor child was a participant. However, eavesdropping permitted by this provision would not extend to a private conversation with any of the following:

- The minor child's attorney or guardian ad litem.
- A child custody investigator or peace officer.
- The other custodial parent, unless there was a good-faith, objectively reasonable basis for believing that eavesdropping was necessary to protect the well-being or safety of the minor child.

MCL 750.539g

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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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.