



SENATE BILL No. 986

April 30, 1996, Introduced by Senators CISKY, SCHUETTE, MC MANUS, GOUGEON, DINGELL, NORTH, STEIL and SCHWARZ and referred to the Committee on Judiciary.

A bill to authorize certain interceptions of communications and the use of interception devices for offenses involving controlled substances; to provide for and regulate the application, issuance, and execution of electronic interception warrants; to prescribe the powers and duties of certain agencies, officers, and employees; to regulate the use and disclosure of communications and evidence intercepted or obtained pursuant to this act; to provide remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Aggrieved person" means a person who was a party to an
3 intercepted wire, oral, or electronic communication or a person
4 against whom the interception was directed.

1 (b) "Aural transfer" means a transfer containing the human
2 voice at any point between the point of origin and the point of
3 reception, including those points.

4 (c) "Communication common carrier" means a person engaged as
5 a common carrier for hire in communication by wire or radio or in
6 radio transmission of energy. A person engaged in radio broad-
7 casting is not, while so engaged, a communication common
8 carrier.

9 (d) "Contents" means, when used with respect to a wire,
10 oral, or electronic communication, any information concerning the
11 substance, purport, or meaning of the communication.

12 (e) "Electronic communication" means a transfer of signs,
13 signals, writing, images, sounds, data, or intelligence of any
14 nature transmitted in whole or in part by a wire, radio, electro-
15 magnetic, photoelectronic, or photooptical system. Electronic
16 communication does not include any of the following:

17 (i) The radio portion of a cordless telephone communication
18 transmitted between the cordless telephone handset and the base
19 unit.

20 (ii) A wire or oral communication.

21 (iii) A communication made through a tone-only paging
22 device.

23 (iv) A communication from a tracking device as defined in
24 section 3117 of chapter 205 of title 18 of the United States
25 Code, 18 U.S.C. 3117.

1 (f) "Electronic communication service" means a service that
2 provides to the service's users the ability to send or receive
3 wire or electronic communications.

4 (g) "Electronic communications system" means wire, radio,
5 electromagnetic, photooptical, or photoelectronic facilities for
6 transmitting electronic communications, and computer facilities
7 or related electronic equipment for the electronic storage of
8 electronic communications.

9 (h) "Electronic, mechanical, or other device" means a device
10 or apparatus that can be used to intercept a wire, oral, or elec-
11 tronic communication, other than the following:

12 (i) A telephone or telegraph instrument, equipment, or
13 facility, or any component of that instrument, equipment, or
14 facility, that is 1 or more of the following:

15 (A) Furnished to the subscriber or user by a provider of
16 wire or electronic communication service in the ordinary course
17 of its business and being used by the subscriber or user in the
18 ordinary course of its business.

19 (B) Furnished by the subscriber or user for connection to
20 the facilities of a provider of wire or electronic service and
21 being used in the ordinary course of the business of the sub-
22 scriber or user.

23 (C) Being used by a provider of wire or electronic communi-
24 cation service in the ordinary course of its business.

25 (D) Being used by an investigative or law enforcement offi-
26 cer in the ordinary course of the officer's duties.

1 (ii) A hearing aid or similar device that is used to correct
2 subnormal hearing to not better than normal.

3 (i) "Electronic storage" means either of the following:

4 (i) Temporary, intermediate storage of a wire or electronic
5 communication incidental to the electronic transmission of the
6 wire or electronic communication.

7 (ii) Storage of a wire or oral communication by an elec-
8 tronic communication service for backup protection of the
9 communication.

10 Sec. 2. As used in this act:

11 (a) "Intercept" means the aural or other acquisition of the
12 contents of a wire, oral, or electronic communication through the
13 use of an electronic, mechanical, or other device.

14 (b) "Investigative or law enforcement officer" means an
15 officer of this state or a political subdivision of this state
16 who is empowered by law to conduct investigations of or to make
17 arrests for offenses described in section 7 and who is certified
18 pursuant to section 9.

19 (c) "Judge of competent jurisdiction" means a court of
20 appeals judge or a judge of the circuit court.

21 (d) "Oral communication" means a communication uttered by a
22 person exhibiting an expectation that the communication is not
23 subject to interception under circumstances justifying the
24 expectation. Oral communication does not include an electronic
25 communication.

1 (e) "Person" means an employee or agent of this state or a
2 political subdivision of this state or an individual,
3 partnership, association, corporation, or other legal entity.

4 (f) "Political subdivision" means a county, city, township,
5 or village.

6 (g) "Prosecutor" means the attorney general of this state, a
7 single designated assistant attorney general, the principal pros-
8 ecuting attorney of the county in which the facility or place
9 where the communication to be intercepted is located, or a single
10 designated assistant prosecuting attorney of the county in which
11 the facility or place where the communication to be intercepted
12 is located.

13 (h) "Readily accessible to the general public" means, with
14 respect to a radio communication, the communication is not any of
15 the following:

16 (i) Scrambled or encrypted.

17 (ii) Transmitted using modulation techniques whose essential
18 parameters have been withheld from the public to preserve the
19 privacy of the communication.

20 (iii) Carried on a subcarrier or other signal subsidiary to
21 a radio transmission.

22 (iv) Transmitted over a communication system provided by a
23 communication common carrier, unless the communication is a
24 tone-only paging system communication.

25 (v) Transmitted on a frequency allocated under 47
26 C.F.R. part 25, subpart D, E, or F of 47 C.F.R. part 74, or 47
27 C.F.R. part 94 unless, in the case of a communication transmitted

1 on a frequency allocated under 47 C.F.R. part 74 that is not
2 exclusively allocated to broadcast auxiliary services, the commu-
3 nication is a 2-way voice communication by radio.

4 (i) "User" means a person who uses an electronic communica-
5 tion service and is authorized by the provider of the service to
6 engage in that use.

7 (j) "Wire communication" means an aural transfer made in
8 whole or in part through the use of facilities for transmitting
9 communications by wire, cable, or other substantially similar
10 connection between the point of origin and the point of recep-
11 tion, including the use of such a connection in a switching sta-
12 tion, which facilities are furnished or operated by a person
13 engaged in providing or operating those facilities for the trans-
14 mission of communications. Wire communication also includes an
15 electronic storage of such a communication, but does not include
16 the radio portion of a cordless telephone communication transmit-
17 ted between the cordless telephone handset and the base unit.

18 Sec. 3. (1) Except as otherwise provided in this act or as
19 authorized or approved under chapter 119 of title 18 of the
20 United States Code, 18 U.S.C. 2510 to 2522, a person shall not do
21 any of the following:

22 (a) Intentionally intercept, endeavor to intercept, or pro-
23 cure another person to intercept or endeavor to intercept a wire,
24 oral, or electronic communication.

25 (b) Intentionally use, attempt to use, or procure another
26 person to use or endeavor to use an electronic, mechanical, or

1 other device to intercept an oral communication if 1 or more of
2 the following occur:

3 (i) The device is affixed to, or otherwise transmits a
4 signal through, a wire, cable, or other substantially similar
5 connection used in wire communication.

6 (ii) The device transmits, or interferes with the transmis-
7 sion of, radio communications.

8 (c) Intentionally disclose or attempt to disclose to another
9 person the contents of a wire, oral, or electronic communication,
10 knowing or having reason to know that the information was
11 obtained through an interception of a wire, oral, or electronic
12 communication in violation of this section.

13 (d) Intentionally use or attempt to use the contents of a
14 wire, oral, or electronic communication, knowing or having reason
15 to know the information was obtained through an interception of
16 the wire, oral, or electronic communication in violation of this
17 section.

18 (2) This act does not prohibit any of the following:

19 (a) The interception, disclosure, or use of a wire communi-
20 cation by an operator of a switchboard, or an officer, employee,
21 or agent of a provider of wire or electronic communication serv-
22 ice in the normal course of his or her employment while engaged
23 in an activity necessarily incident to rendering his or her serv-
24 ice or to the protection of the service provider's rights or
25 property, unless the interception results from the service
26 provider's use of service observing or random monitoring for

1 purposes other than mechanical or service quality control
2 checks.

3 (b) Interception of a wire or electronic communication, or
4 oral communication transmitted by radio, or disclosure or use of
5 the information obtained through the interception, by an officer,
6 employee, or agent of the federal communications commission, in
7 the normal course of his or her employment and in discharge of
8 the monitoring responsibilities exercised by the commission in
9 the enforcement of the communications act of 1934, chapter 652,
10 48 Stat. 1064.

11 (c) Interception of a wire, oral, or electronic communica-
12 tion by a person acting under color of law, if the person is a
13 party to the communication or 1 of the parties to the communica-
14 tion has given prior consent to the interception.

15 (d) Interception of a wire or oral communication by a person
16 not acting under color of law, if the person is a party to the
17 communication or 1 of the parties to the communication has given
18 prior consent to the interception, unless the communication is
19 intercepted to commit a criminal or tortious act in violation of
20 the constitution or laws of the United States or of this state.

21 (e) Conducting of electronic surveillance, as defined in
22 section 101 of title I of the foreign intelligence surveillance
23 act of 1978, Public Law 95-511, 50 U.S.C..1801, by an officer,
24 employee, or agent of the United States in the normal course of
25 his or her official duty.

26 (f) Interception or accessing of an electronic communication
27 made through an electronic communication system that is

1 configured so the electronic communication is readily accessible
2 to the general public.

3 (g) Interception of a radio communication to which any of
4 the following apply:

5 (i) The communication is transmitted by a station and is for
6 the general public's use or relates to a ship, aircraft, vehicle,
7 or person in distress.

8 (ii) The communication is transmitted by a governmental, law
9 enforcement, civil defense, private land mobile, or public safety
10 communications system, including, but not limited to, police or
11 fire system, that is readily accessible to the general public.

12 (iii) The communication is transmitted by a station operat-
13 ing on an authorized frequency within the bands allocated to ama-
14 teurs, citizens band, or general mobile radio services.

15 (iv) The communication is transmitted by a marine or aero-
16 nautical communications system.

17 (h) Engaging in conduct that is either prohibited by
18 section 633 of part IV of title VI of the communications act of
19 1934, chapter 652, 98 Stat. 2796, 47 U.S.C. 553, or excepted from
20 the application of section 705(a) of title VII of the communica-
21 tions act of 1934, chapter 652, 48 Stat. 1103, 47 U.S.C. 605, by
22 section 705(b) of title VII of that act.

23 (i) Interception of a wire or electronic communication the
24 transmission of which is causing harmful interference to a law-
25 fully operating station or consumer electronic equipment, to the
26 extent necessary to identify the source of the interference.

1 (j) Interception by other users of the same frequency of a
2 radio communication made through a system that utilizes
3 frequencies monitored by individuals engaged in providing or
4 using the system, if the communication is not scrambled or
5 encrypted.

6 (k) The use of a pen register or a trap and trace device.

7 (l) Recording by a provider of electronic communication
8 service the fact that a wire or electronic communication was ini-
9 tiated or completed to protect the provider, another provider
10 furnishing service toward the completion of the wire or elec-
11 tronic communication, or a user of that service from fraudulent,
12 unlawful, or abusive use of the service.

13 (3) A provider of electronic communication service, an offi-
14 cer, employee, or agent of a provider of electronic communication
15 service, a landlord, a custodian, or any other person, may pro-
16 vide information, facilities, or technical assistance to a person
17 authorized by law to intercept a wire, oral, or electronic commu-
18 nication or to conduct electronic surveillance, as defined in
19 section 101 of title I of the foreign intelligence surveillance
20 act of 1978, Public Law 95-511, 50 U.S.C. 1801, if the service
21 provider, officer, employee, agent, landlord, custodian, or other
22 person has been provided with a court order signed by the autho-
23 rizing judge directing that assistance that sets forth the period
24 of time during which the provision of the information, facili-
25 ties, or technical assistance is authorized and specifies the
26 information, facilities, or technical assistance required. A
27 provider of electronic communication service, an officer,

1 employee, or agent of a provider of electronic communication
2 service, a landlord, a custodian, or other person shall not dis-
3 close the existence of any interception or surveillance or the
4 device used to accomplish the interception or surveillance with
5 respect to which the person has been furnished an order under
6 this subsection except as otherwise required by legal process and
7 then only after prior notification to the attorney general of
8 this state or the principal prosecuting attorney of a county, as
9 appropriate. A provider of electronic communication service, an
10 officer, employee, or agent of the provider of electronic commu-
11 nication service, a landlord, custodian, or other person is not
12 civilly liable for providing information, facilities, or assist-
13 ance in accordance with a court order under this act.

14 (4) Except as otherwise provided in subsections (5) and (6),
15 a person providing an electronic communication service to the
16 public shall not intentionally divulge the contents of a communi-
17 cation while being transmitted on that service to a person or
18 entity other than the addressee or intended recipient of the com-
19 munication or an agent of the addressee or intended recipient.

20 (5) Subsection (4) does not apply if the person or an agent
21 of the person providing the electronic communication service on
22 which the communication is transmitted is the addressee or
23 intended recipient of the communication.

24 (6) A person providing electronic communication service to
25 the public may divulge the contents of a communication as
26 follows:

1 (a) If the communication was intercepted as described in
2 subsection (2).

3 (b) As authorized under section 6.

4 (c) With the lawful consent of the originator or an
5 addressee or intended recipient of the communication.

6 (d) To a person employed or authorized, or whose facilities
7 are used, to forward the communication to its destination.

8 (e) If the contents of the communication were inadvertently
9 obtained by the service provider and appear to pertain to the
10 commission of a crime, if the divulgence is made to a law
11 enforcement agency.

12 (7) A person who violates subsection (1) is guilty of a
13 felony punishable by imprisonment for not more than 4 years or a
14 fine of not more than \$2,000.00, or both.

15 (8) If both of the following apply, conduct prohibited by
16 subsection (1) is not punishable under subsection (7) unless the
17 conduct is for the purpose of direct or indirect commercial
18 advantage or private financial gain:

19 (a) The conduct consists of or relates to the interception
20 of a satellite transmission that is not encrypted or scrambled.

21 (b) Either of the following applies:

22 (i) The satellite transmission is transmitted to a broad-
23 casting station for retransmission to the general public.

24 (ii) The satellite transmission is transmitted as an audio
25 subcarrier intended for redistribution to facilities open to the
26 public but is not a data transmission or telephone call.

1 Sec. 4. (1) Except as provided in subsection (2) or (3) or
2 as authorized or approved under chapter 119 of title 18 of the
3 United States Code, 18 U.S.C. 2510 to 2522, a person shall not do
4 any of the following:

5 (a) Manufacture, assemble, possess, or sell an electronic,
6 mechanical, or other device, knowing or having reason to know the
7 device's design renders it primarily useful for surreptitiously
8 intercepting wire, oral, or electronic communications.

9 (b) Place in a newspaper, magazine, handbill, or other pub-
10 lication an advertisement of an electronic, mechanical, or other
11 device knowing or having reason to know the device's design
12 renders it primarily useful for surreptitiously intercepting
13 wire, oral, or electronic communications.

14 (c) Place in a newspaper, magazine, handbill, or other pub-
15 lication an advertisement promoting the use of an electronic,
16 mechanical, or other device for the surreptitious interception of
17 wire or oral communications.

18 (2) An electronic communication service provider or an offi-
19 cer, agent, or employee of, or a person under contract with, an
20 electronic communication service provider, in the normal course
21 of the business of providing that electronic communication serv-
22 ice, may manufacture, assemble, possess, or sell an electronic,
23 mechanical, or other device, knowing or having reason to know the
24 device's design renders it primarily useful for surreptitiously
25 intercepting wire or oral communications.

26 (3) An officer, agent, or employee of the United States,
27 this state, or a political subdivision of this state, pursuant to

1 a warrant issued by a court of competent jurisdiction of the
2 United States, this state, or a political subdivision of this
3 state, may manufacture, assemble, possess, or sell an electronic,
4 mechanical, or other device, knowing or having reason to know the
5 device's design renders it primarily useful for surreptitiously
6 intercepting wire, oral, or electronic communications.

7 (4) A person who violates subsection (1) is guilty of a
8 felony punishable by imprisonment for not more than 4 years or a
9 fine of not more than \$2,000.00, or both.

10 Sec. 5. If a wire or oral communication has been intercept-
11 ed, the communication's contents and any evidence derived from
12 the communication shall not be received in evidence in a trial,
13 hearing, or other proceeding before a court, grand jury, depart-
14 ment, officer, agency, regulatory body, legislative committee, or
15 other authority of this state or a political subdivision of this
16 state if disclosure of the communication or evidence would vio-
17 late this act.

18 Sec. 6. (1) An investigative or law enforcement officer
19 who, by any means authorized by this act, has obtained knowledge
20 of the contents of a wire, oral, or electronic communication or
21 evidence derived from a wire, oral, or electronic communication
22 may disclose the communication's contents or the evidence to
23 another investigative or law enforcement officer or to an offi-
24 cer, agent, or official of a law enforcement agency of the United
25 States government to the extent the disclosure is appropriate to
26 the proper performance of the official duties of the person
27 making or receiving the disclosure.

1 (2) An investigative or law enforcement officer who, by any
2 means authorized by this act, has obtained knowledge of the con-
3 tents of a wire, oral, or electronic communication or evidence
4 derived from a wire, oral, or electronic communication may use
5 the communication's contents or the evidence to the extent the
6 use is appropriate to proper performance of his or her official
7 duties.

8 (3) A person who has received, by any means authorized by
9 this act, any information concerning a wire, oral, or electronic
10 communication intercepted in accordance with this act or evidence
11 derived from the communication may disclose the communication's
12 contents or the evidence if giving testimony under oath or affir-
13 mation in any proceeding held under the authority of the United
14 States, this state, or a political subdivision of this state or
15 in a civil proceeding pursuant to section 12.

16 (4) A privileged wire, oral, or electronic communication
17 intercepted in accordance with or in violation of this act does
18 not lose its privileged character and shall not be disclosed.

19 (5) Except as otherwise provided in this subsection, if an
20 investigative or law enforcement officer, while engaged in inter-
21 cepting a wire, oral, or electronic communication in the manner
22 authorized by this act, intercepts a wire, oral, or electronic
23 communication relating to an offense other than an offense speci-
24 fied in the order of authorization or approval, the
25 communication's contents and evidence derived from the communi-
26 cation may be disclosed or used as provided in subsections (1) and
27 (2). The communication's contents and any evidence derived from

1 the communication may be used under subsection (3) if authorized
2 or approved by a judge of competent jurisdiction, if the judge
3 finds on subsequent application the contents were otherwise
4 intercepted in accordance with this act. The subsequent applica-
5 tion shall be made as soon as practicable after intercepting the
6 communication. This subsection does not authorize the disclosure
7 or use in any manner of the contents of, or evidence derived
8 from, a wire or oral communication relating to an offense punish-
9 able by imprisonment for 4 years or less or punishable only by a
10 fine.

11 Sec. 7. (1) A prosecutor may authorize an application to a
12 judge of competent jurisdiction for, and the judge may grant in
13 conformity with this act, an order authorizing or approving the
14 interception of a wire, oral, or electronic communication by the
15 investigative or law enforcement officer having responsibility
16 for the investigation of the offense for which the application is
17 made, if the interception may provide or has provided evidence of
18 any of the following offenses:

19 (a) A violation of section 7401(2)(a) or (b), 7402(2)(a), or
20 7403(2)(a)(i), (ii), or (iii) of the public health code, Act
21 No. 368 of the Public Acts of 1978, being sections 333.7401,
22 333.7402, and 333.7403 of the Michigan Compiled Laws.

23 (b) A violation of section 117 or 118 of the Michigan penal
24 code, Act No. 328 of the Public Acts of 1931, being sections
25 750.117 and 750.118 of the Michigan Compiled Laws.

1 (c) A violation of section 4 or 5 of the health care false
2 claims act, Act No. 323 of the Public Acts of 1984, being
3 sections 752.1004 and 752.1005 of the Michigan Compiled Laws.

4 (d) A conspiracy to commit an offense described in subdivi-
5 sions (a) to (c).

6 (e) An offense other than an offense described in
7 subdivisions (a) to (d), in the manner and to the extent permit-
8 ted under section 6(5).

9 (2) The principal prosecuting attorney for a county or his
10 or her designated prosecuting attorney shall not authorize an
11 application pursuant to subsection (1) unless the attorney gen-
12 eral or his or her designated assistant attorney general has
13 approved the authorization.

14 (3) Unless the investigative or law enforcement officer
15 making the application is employed by the department of state
16 police, the prosecutor authorizing the application shall notify
17 the director of the department of state police, or a person the
18 director designates, of the application and the information
19 described in section 8(1)(b)(*ii*) and (*iv*).

20 Sec. 8. (1) Each application for an order authorizing or
21 approving the interception of a wire, oral, or electronic commu-
22 nication shall be made in writing upon oath or affirmation to a
23 judge of competent jurisdiction and shall state the applicant's
24 authority to make the application. Each application shall
25 include all of the following information:

26 (a) The identity of the investigative or law enforcement
27 officer making the application, and the prosecutor authorizing

1 the application. If authorization for the application by the
2 attorney general or his or her designated assistant attorney gen-
3 eral is required under section 7(2), the application shall
4 include a statement of that authorization.

5 (b) A full and complete statement of the facts and circum-
6 stances the applicant relies upon to justify his or her belief
7 that an order should be issued, including all of the following:

8 (i) Details as to the particular offense that has been, is
9 being, or is about to be committed.

10 (ii) A particular description of the nature and location of
11 the facilities from which, or the place where, the communication
12 is to be intercepted.

13 (iii) A particular description of the type of communication
14 sought to be intercepted.

15 (iv) The identity, if known, of the person committing the
16 offense and whose communication is to be intercepted.

17 (v) A statement of the facts indicating the specific
18 instances of conduct demonstrating probable cause to believe the
19 particular offense has been, is being, or is about to be
20 committed.

21 (c) A full and complete statement as to whether other inves-
22 tigative procedures have been tried and have failed.

23 (d) A statement of the time period for which the intercep-
24 tion must be maintained. If the investigation's nature is such
25 that the authorization for interception should not automatically
26 terminate when the described type of communication has been
27 obtained, a particular description of facts establishing probable

1 cause to believe additional communications of the same type will
2 occur after that time.

3 (e) A statement of the legitimate investigative objective
4 sought to be achieved by the interception.

5 (f) A full and complete statement of the facts concerning
6 all previous applications known to the individuals authorizing
7 and making the application made to a judge of competent jurisdic-
8 tion or federal judge for authorization to intercept or for
9 approval of an interception of a wire, oral, or electronic commu-
10 nication involving any of the same persons, facilities, or places
11 specified in the application, and the action taken by the judge
12 on each previous application.

13 (g) If the application is for extension of an order, a
14 statement setting forth the results obtained from the intercep-
15 tion or a reasonable explanation of the failure to obtain any
16 results.

17 (h) Unless the investigative or law enforcement officer
18 making the application is employed by the department of state
19 police, a statement that the director of the department of state
20 police or an individual the director designates has been notified
21 of the application and of the information described in subdivi-
22 sion (b)(ii) and (iv).

23 (2) The judge of competent jurisdiction may require the
24 applicant to furnish additional testimony or documentary evidence
25 in support of the application.

26 (3) Based upon an application made pursuant to subsection
27 (1), the judge of competent jurisdiction may enter an ex parte

1 order, as requested or as modified, authorizing or approving
2 interception of a wire, oral, or electronic communication, if the
3 judge determines all of the following on the basis of the facts
4 submitted by the applicant:

5 (a) There is probable cause to believe an individual is com-
6 mitting, has committed, or is about to commit a particular
7 offense described in section 7.

8 (b) There is probable cause to believe particular communica-
9 tions concerning that offense will be obtained through the
10 interception.

11 (c) Usual investigative procedures have been tried and have
12 failed.

13 (d) There is probable cause to believe the facilities from
14 which, or the place where, the wire, oral, or electronic communi-
15 cation is to be intercepted are being used, or are about to be
16 used, in connection with the offense or are leased to, listed in
17 the name of, or commonly used by the person described in subsec-
18 tion (1)(b)(iv).

19 (4) Each order authorizing or approving interception of a
20 wire, oral, or electronic communication shall specify all of the
21 following:

22 (a) The identity, if known, of the person whose communica-
23 tion is to be intercepted.

24 (b) The nature and location of the communication facilities
25 as to which, or the place where, authority to intercept is
26 granted.

1 (c) A particular description of the type of communication
2 sought to be intercepted and a statement of the particular
3 offense to which it relates.

4 (d) The legitimate investigative objective for which autho-
5 rization to intercept is granted.

6 (e) The identity of the agency authorized to intercept the
7 communication and the person authorizing the application.

8 (f) The time period during which interception is authorized
9 or approved, including a statement as to whether interception
10 shall automatically terminate when the described communication
11 has been obtained.

12 (5) If an application for an order authorizing the intercep-
13 tion of a wire, oral, or electronic communication states certain
14 specific information, facilities, or technical assistance is
15 needed from a particular electronic communication service provid-
16 er, landlord, custodian, or other person to accomplish the inter-
17 ception unobtrusively and with minimum interference with the
18 services the service provider, landlord, custodian, or person is
19 according the person whose communications are to be intercepted,
20 the order authorizing the interception shall direct the particu-
21 lar service provider, landlord, custodian, or other person to
22 immediately furnish the applicant the specified information,
23 facilities, or technical assistance. An electronic communication
24 service provider, landlord, custodian, or other person furnishing
25 facilities or technical assistance shall be compensated by the
26 applicant for reasonable expenses incurred in providing the
27 facilities or assistance. A person is not civilly liable under

1 section 12 for furnishing information, facilities, or assistance
2 pursuant to this subsection.

3 (6) An order entered under this section shall not authorize
4 or approve the interception of a wire, oral, or electronic commu-
5 nication for a period longer than necessary to achieve the autho-
6 rized investigative objective, or in any event for longer than 30
7 days. The 30-day period begins on the day the investigative or
8 law enforcement officer first begins to conduct an interception
9 under the order or 10 days after the order is entered, whichever
10 day is earlier. Extensions of an order may be granted, but only
11 upon application for an extension in accordance with
12 subsection (1) and upon the judge of competent jurisdiction
13 making the findings required by subsection (3). The extension
14 period shall be no longer than the judge of competent jurisdic-
15 tion considers necessary to achieve the purposes for which the
16 order was granted or, in any event, not longer than 30 days. Not
17 more than 2 extensions of an order may be granted. After a
18 second extension of an order terminates, an investigative or law
19 enforcement officer may apply for and be granted, in the manner
20 provided in this section, an order authorizing the interception
21 of a wire or oral communication based on the information con-
22 tained in the application for the terminated order only if new
23 evidence, in addition to that described in the previous applica-
24 tion, justifying the officer's belief that an order should be
25 issued is included in the new application.

26 (7) Each order and extension shall provide that the
27 authorization to intercept shall be executed as soon as

1 practicable, shall be conducted so as to minimize the
2 interception of communications not otherwise subject to intercep-
3 tion under this act, and shall terminate upon attainment of the
4 authorized objective or, not longer than any event, not longer
5 than 30 days.

6 (8) If an order authorizing interception is entered pursuant
7 to this act, the order shall require reports to the judge of com-
8 petent jurisdiction who issued the order showing what progress
9 has been made toward achievement of the authorized objective and
10 the need for continued interception. The reports shall be made
11 weekly or at shorter intervals as the judge of competent juris-
12 diction requires.

13 (9) The contents of a wire, oral, or electronic communica-
14 tion intercepted by any means authorized by this act shall be
15 recorded on tape or wire or other substantially similar device.
16 The recording of the contents of a wire, oral, or electronic com-
17 munication under this subsection shall be done in a way that pro-
18 tects the recording from editing or other alterations.
19 Immediately upon the expiration of the time period of an order or
20 extension of an order, all recordings shall be made available to
21 the judge issuing the order and sealed under his or her
22 directions. Custody of the recordings shall be where the judge
23 orders. The recordings shall not be destroyed except upon an
24 order of the judge or his or her successor and shall be retained
25 for 10 years. Duplicate recordings may be made for use or dis-
26 closure pursuant to section 6(1) and (2) for investigations. The
27 presence of the seal provided for by this subsection, or a

1 satisfactory explanation for the absence of a seal, is a
2 prerequisite for use or disclosure under section 6(3) of the con-
3 tents of a wire or oral communication or evidence derived from
4 the communication.

5 (10) The judge shall seal applications made and orders
6 granted under this act. Custody of the applications and orders
7 shall be where the judge directs. The applications and orders
8 shall be disclosed only upon a showing of good cause before a
9 judge of competent jurisdiction and shall not be destroyed except
10 on the judge's order and, in any event, shall be retained for 10
11 years.

12 (11) Within a reasonable time, but not later than 90 days
13 after an application for an order is filed under this section is
14 denied or the termination of the time period of an order or
15 extension of an order, the judge shall cause an inventory to be
16 served on the persons named in the order or the application, and
17 other parties to intercepted communications as the judge deter-
18 mines is in the interest of justice. The inventory shall include
19 notice of all of the following:

20 (a) The fact of the entry of the order or the application.

21 (b) The date of the entry of the order and the period of
22 authorized, approved, or disapproved interception, or the denial
23 of the application.

24 (c) The fact that during the period wire, oral, or elec-
25 tronic communications were or were not intercepted.

26 (12) If a person given an inventory pursuant to subsection
27 (11) files a motion and serves a copy of the motion on the law

1 enforcement agency described in subsection (11) and other parties
2 as required by law, the judge shall make available to the person
3 or his or her attorney for inspection the portions of the inter-
4 cepted communications to which the person was a party and the
5 portions of the applications and orders pertaining to communica-
6 tions to which the person was a party.

7 (13) The contents of a wire, oral, or electronic communica-
8 tion intercepted pursuant to this act or evidence derived from
9 the communication shall not be received in evidence or otherwise
10 disclosed in a trial, hearing, preliminary examination, or other
11 proceeding in a court unless each party, before the preliminary
12 examination or not less than 21 days before the trial, hearing,
13 or other proceeding, has been furnished with a copy of the appli-
14 cation and order authorizing or approving the interception.

15 (14) An aggrieved person in a trial, hearing, preliminary
16 examination, or other proceeding in or before a court, depart-
17 ment, officer, agency, regulatory body, or other authority of
18 this state or a political subdivision of this state may move to
19 suppress the contents of a wire, oral, or electronic communica-
20 tion intercepted pursuant to this act, or evidence derived from
21 the communication, on 1 or more of the following grounds:

22 (a) The communication was unlawfully intercepted.

23 (b) The order of authorization or approval under which the
24 communication was intercepted is insufficient on its face.

25 (c) The interception was not in conformity with the order of
26 authorization or approval.

1 (15) A motion pursuant to subsection (14) shall be made
2 before the trial, hearing, preliminary examination, or other
3 proceeding unless there is no opportunity to make the motion
4 before the trial, hearing, preliminary examination, or other pro-
5 ceeding or the aggrieved person making the motion is not aware of
6 the grounds of the motion before the trial, hearing, preliminary
7 examination, or other proceeding. If the aggrieved person files
8 a motion, the judge may make available to the aggrieved person or
9 his or her attorney for inspection any portion of the intercepted
10 communication or evidence derived from the intercepted communica-
11 tion the judge determines is in the interests of justice. If the
12 motion pursuant to subsection (14) is granted, the intercepted
13 wire, oral, or electronic communication or evidence derived from
14 the communication shall be treated as having been obtained in
15 violation of this act.

16 (16) The prosecutor may appeal from an order granting a
17 motion to suppress under subsection (14), or the denial of an
18 application for an order of approval, if the prosecutor certifies
19 to the judge or other official granting the motion or denying the
20 application the appeal is not taken for delay. The appeal shall
21 be taken within 30 days after the order granting the motion to
22 suppress was entered or the application was denied and shall be
23 diligently prosecuted.

24 (17) A violation of subsection (9) or (10) may be punished
25 as contempt of the court that approved or denied the application
26 for interception of a wire or oral communication.

1 Sec. 9. The director of the department of state police
2 shall establish a course of training in the legal and technical
3 aspects of intercepting wire, oral, or electronic communications,
4 regulations he or she finds necessary and proper for the training
5 program, and minimum standards for the certification and periodic
6 recertification of state investigative officers or officers of a
7 law enforcement agency eligible to intercept wire, oral, or elec-
8 tronic communications under this act. The director of the
9 department of state police shall charge each officer who enrolls
10 in this training program a reasonable enrollment fee to offset
11 the costs of training.

12 Sec. 10. (1) Within 30 days after the expiration of an
13 order or an extension of an order entered under section 8, or the
14 denial of an order authorizing or approving an interception of a
15 wire, oral, or electronic communication, the judge shall report
16 all of the following information to the administrative office of
17 the United States courts and to the department of state police:

18 (a) The fact that an order or extension was applied for.

19 (b) The kind of order or extension applied for.

20 (c) The fact that the order or extension was granted as
21 applied for, modified, or denied.

22 (d) The interception time period authorized by the order and
23 the number and duration of any extensions of the order.

24 (e) The offense specified in the application, order or
25 extension.

1 (f) The identity of the investigative or law enforcement
2 officer and agency applying and the prosecutor authorizing the
3 application.

4 (g) The nature of the facilities from which, or the place
5 where, communications were to be intercepted.

6 (2) In January of each year, the attorney general shall
7 report to the administrative office of the United States courts
8 all of the following:

9 (a) The information required by subsection (1) with respect
10 to each application for an order or extension authorizing or
11 approving an interception of a wire, oral, or electronic communi-
12 cation made during the preceding calendar year.

13 (b) A general description of the interceptions made under
14 each order or extension described in subdivision (a), including
15 all of the following:

16 (i) The approximate nature and frequency of incriminating
17 communications intercepted.

18 (ii) The approximate nature and frequency of other communi-
19 cations intercepted.

20 (iii) The approximate number of persons whose communications
21 were intercepted.

22 (iv) The approximate nature, amount, and cost of the man-
23 power and other resources used in the interceptions.

24 (c) The number of arrests resulting from interceptions made
25 under an order or extension described in subdivision (a) and the
26 offenses for which arrests were made.

1 (d) The number of trials resulting from the interceptions
2 described in subdivision (b).

3 (e) The number of motions to suppress made with respect to
4 the interceptions described in subdivision (b) and the number
5 granted or denied.

6 (f) The number of convictions resulting from the intercep-
7 tions described in subdivision (b), the offenses for which the
8 convictions were obtained, and a general assessment of the impor-
9 tance of the interceptions.

10 (g) The information required by subdivisions (b) to (f) with
11 respect to orders or extensions for interception of wire, oral,
12 or electronic communications obtained in a preceding calendar
13 year.

14 (3) On or before January 10 of each year, the department of
15 state police shall report to the attorney general, the state
16 senate, the state house of representatives, and the governor all
17 of the information regarding applications, orders, and intercep-
18 tions of wire, oral, or electronic communications required under
19 subsection (2).

20 Sec. 11. An officer, employee, or agent of a provider of
21 electronic communication service who learns of the existence of
22 an electronic, mechanical, or other device in the course of his
23 or her employment or otherwise shall report the device's exist-
24 tence to the prosecuting attorney of the county in which the
25 device is located. The prosecuting attorney shall determine
26 whether the placement of the device is authorized by court
27 order. If the placement of the device is not authorized by court

1 order, the prosecuting attorney shall immediately inform the
2 person whose wire or oral communication was intercepted or
3 intended to be intercepted by the device of the existence of the
4 device. This section does not diminish or excuse any obligation
5 of the prosecuting attorney, the officer, employee, or agent of
6 the provider of wire or electronic communication service, or any
7 other person to remove the device or to take any other actions
8 required by law, regulation, or policy.

9 Sec. 12. (1) Except as provided in section 8(5), a person
10 whose wire or oral communication is intercepted, disclosed, or
11 used in violation of this act has a civil cause of action against
12 any person who intercepts, discloses, or uses, or who procures
13 any other person to intercept, disclose, or use the communication
14 or its contents. In the civil cause of action, the person is
15 entitled to recover all of the following:

16 (a) Actual damages, but not less than \$1,000.00 a day for
17 each day of a violation.

18 (b) Exemplary damages.

19 (c) Reasonable attorney fees and other litigation costs rea-
20 sonably incurred.

21 (2) A good faith reliance on a court order or a legislative
22 authorization is a defense to a civil or criminal action brought
23 under this act or any other law.

24 Sec. 13. Purchases of any electronic, mechanical, or other
25 device shall be recorded as a separate line item on any state or
26 local appropriation bill.

1 Sec. 14. Sections 539a to 539i of the Michigan penal code,
2 Act No. 328 of the Public Acts of 1931, being sections 750.539a
3 to 750.539i of the Michigan Compiled Laws, are repealed.

4 Sec. 15. This act shall take effect October 1, 1995.

5 Sec. 16. This act is repealed effective October 1, 1998.