

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

SFA

BILL ANALYSIS

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

Senate Bill 803 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

CONTENT

The bill would create the "Criminal Communications Intercept Act" to permit the interception of wire, oral, or electronic communication pursuant to Attorney General approval and judicial authorization in the investigation of specific drug-related offenses; using a computer or the Internet to commit certain crimes; certain explosives violations; violations of the "Michigan Anti-Terrorist Act" (proposed by Senate Bill 930); assault with intent to murder; attempted murder; solicitation to commit murder; first- or second-degree murder; kidnapping; kidnapping a child under 14; or a poisoning offense that resulted in serious impairment or death (as proposed by House Bill 5507). The bill also would:

- Require the Supreme Court to appoint at least five circuit court judges in each Court of Appeals district who could authorize communication intercept applications.
- Provide that, before a prosecuting attorney authorized an application for a communications intercept, the Attorney General's office would have to approve or deny the authorization within seven days.
- Permit the interception of communication only if other investigative techniques had failed or reasonably appeared to be unlikely to succeed, if tried, or to be dangerous.
- Allow entry of the premises covered by an interception order to install, maintain, or remove an interception device.
- Permit the contents of an intercepted communication or evidence derived from it to be used or disclosed by an investigative or law enforcement officer in the performance of his or her duties, or to be disclosed by a person giving testimony.
- Prohibit the disclosure or use of a wrongfully intercepted communication.
- Prohibit the manufacture, possession or sale (except by providers of an electronic communication service and governmental officials and employees), or advertisement of devices primarily used for the interception of communication.
- Require that persons named in an order be given notice of its approval and implementation after the judge was notified of the investigation's termination.
- Allow a party to an intercepted communication, or a person against whom interception was directed, to move to suppress evidence of the communication.
- Require the development of a communication interception training program for law enforcement officers.
- Establish various reporting requirements.
- Create a civil cause of action for victims of a wrongful interception and make good faith reliance on an authorization a defense to civil or criminal liability.
- Require that purchases of any interception device be recorded as a separate line item on any State or local appropriation bill.
- Require the Director of the Department of State Police and county sheriffs to maintain custody of interception devices used by State and local law enforcement, respectively, during periods when the devices were not used under court order.
- Specify penalties for violations of the proposed Act.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

State Police/Law Enforcement: Senate Bill 803 (S-2) would require the Department of State Police to develop a wiretapping and electronic surveillance course for local law enforcement agencies and provide certification and periodic recertification of law enforcement personnel in the State who requested it. The expense to State and local law enforcement would depend to a great extent on the interest of the law enforcement community to engage in the activities authorized under the bill. The cost to a law enforcement agency to wiretap a phone involves equipment costs, phone company charges, and personnel costs. The required equipment could cost \$15,000, depending upon the electronic hardware chosen by a law enforcement agency. To set up a tap, the phone company must be employed to set up a second phone line to an existing line. This involves a charge from the phone company, which is \$600 per tap for such assistance in the Chicago area. Personnel costs can amount to the single largest cost component of a phone tap, depending on the length and complexity of a tap operation. This involves live monitoring of a phone line as well as the handling and administrative requirements of dealing with a piece of legal evidence.

Training (with the Attorney General), certification, investigation, and reporting duties assigned to the Department could result in additional administrative, equipment, and supply costs, depending upon to what extent the Department used existing personnel who currently engage in similar duties. Investigative personnel would have to be trained in wiretapping and electronic surveillance in order to qualify to instruct other law enforcement personnel in the State. The Department would have to determine whether a reported interception device was property authorized, and inform persons who were subject to unauthorized interception.

Training costs for local law enforcement are not known, but it is possible that training sessions could cost up to \$1,000 per week, with registration funds being used to offset departmental training costs.

The State Police also would incur additional cost to the extent that the Department itself would take part in electronic surveillance activities. It is not known whether the Department would choose to use existing personnel or whether the administration would request from the Legislature additional funds to establish a new specialty unit for this purpose.

Corrections: Senate Bills 803 (S-2) and 806 (S-1) would have an indeterminate fiscal impact on State and local government due to the proposed criminal penalties. To the extent that they would increase the number of convictions through the use of wiretapping and electronic surveillance, the bills would increase State and local criminal justice costs. According to the Department of Corrections Statistical Report, in 1999, there were 831 offenders convicted of the applicable offenses with an average minimum prison sentence of 11.6 years. Assuming an increase in annual convictions of 10 offenders, each receiving an 11.6-year sentence, costs of incarceration would increase \$2.9 million.

In addition, by replacing the eavesdropping violations with new offenses and longer sentences, the bills could increase costs for State and local government. According to the Statistical Report, four offenders were convicted of eavesdropping offenses in 1999. Assuming that the number of offenders committing the new crimes would be similar, and that each offender would receive the maximum additional minimum sentence of 13 months, the cost to the State would be \$108,300, given that the average annual cost of incarceration is \$25,000.

The bills also could increase costs by making unauthorized disclosure an offense punishable by imprisonment for up to four years and/or a fine up to \$2,000. The State would incur costs for probation (at \$4.38 per day) and incarceration at an annual average cost of \$25,000.

Date Completed: 2-5-02 Fiscal Analyst: Bruce Baker, Bill Bowerman, Bethany Wicksall

Floor\sb803

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.