

**SUBSTITUTE FOR  
SENATE BILL NO. 803**

A bill to authorize certain interceptions of communications and the use of interception devices for certain offenses; to provide for and regulate the application, issuance, and execution of interception orders; 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 under this act; to provide remedies and exemptions from liability; to prescribe penalties; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "criminal communications intercept act".

3           Sec. 1a. As used in this act:

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

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

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

11 (d) "Computer trespasser" means a person who accesses a com-  
12 puter without authorization and thus has no reasonable expecta-  
13 tion of privacy in any communication transmitted to, through, or  
14 from the computer.

15 (e) "Contents" means any information concerning the sub-  
16 stance, purport, or meaning of a wire, oral, or electronic  
17 communication.

18 (f) "Electronic communication" means a transfer of signs,  
19 signals, writing, images, sounds, data, or intelligence of any  
20 nature transmitted in whole or in part by a wire, radio, electro-  
21 magnetic, photoelectronic, or photooptical system. Electronic  
22 communication does not include any of the following:

23 (i) A wire or oral communication.

24 (ii) A communication made through a tone-only paging  
25 device.

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1           (iii) A communication from an electronic or mechanical  
2 device that permits the tracking of an individual's or object's  
3 movement.

4           (iv) Electronic transfer information stored by a financial  
5 institution in a communication system used for electronic storage  
6 and transfer of funds.

7           (v) Stored electronic or stored wire communication governed  
8 by section 2703 of title 18 of the United States Code, 18  
9 U.S.C. 2703.

10          (g) "Electronic communication service" means a service that  
11 provides to the service's users the ability to send or receive  
12 wire or electronic communications.

13          (h) "Electronic communications system" means wire, radio,  
14 electromagnetic, photooptical, or photoelectronic facilities for  
15 transmitting wire or electronic communications and computer  
16 facilities or related electronic equipment for the electronic  
17 storage of wire or electronic communications.

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

19           (i) Temporary, intermediate storage of a wire or electronic  
20 communication incidental to its electronic transmission.

21           (ii) Storage of a wire or electronic communication by an  
22 electronic communication service for backup protection of the  
23 communication.

24          (j) "Interception device" means a device, computer software, or  
25 apparatus that  
26 can be used to intercept a wire, oral, or electronic  
27 communication. Interception device does not include any of the  
following:

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

4           (A) Furnished to the user by an electronic communication  
5 service provider in the ordinary course of its business and being  
6 used in the ordinary course of the user's business.

7           (B) Furnished by the user for connection to the facilities  
8 of an electronic communication service provider and being used in  
9 the ordinary course of the user's business.

10          (C) Being used by an electronic communication service pro-  
11 vider in the ordinary course of its business.

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

14          (ii) A hearing aid or similar device used to correct subnor-  
15 mal hearing to not better than normal.

16          (k) "Intercept" or "interception" means the aural or other  
17 acquisition of the contents of a wire, oral, or electronic commu-  
18 nication through the use of an interception device.

19          (l) "Investigative or law enforcement officer" means an  
20 officer of this state or a political subdivision who is empowered  
21 by law to conduct investigations of or to make arrests for  
22 offenses described in section 7 and who is certified under  
23 section 10.

24          Sec. 2. As used in this act:

25          (a) "Judge of competent jurisdiction" means a judge  
26 appointed under section 2a.

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1 (b) "Oral communication" means a communication uttered by a  
2 person with a reasonable expectation that the communication is  
3 not subject to interception. Oral communication does not include  
4 an electronic communication.

5 (c) "Pen register" means a device that records or decodes  
6 electronic or other impulses which identify the numbers dialed or  
7 otherwise transmitted on the telephone line to which the device  
8 is attached, but does not include any device used by a provider  
9 or customer of a wire or electronic communication service for  
10 billing, or recording as an incident to billing, for communica-  
11 tions services provided by that provider or any device used by a  
12 provider or customer of a wire communication service for cost  
13 accounting or other substantially similar purposes in the ordi-  
14 nary course of its business.

15 (d) "Person" means an employee or agent of this state or a  
16 political subdivision or an individual, partnership, association,  
17 limited liability company, corporation, or other legal entity.

18 (e) "Political subdivision" means a county, city, township,  
19 or village of this state.

20 (f) "Prosecutor" means the attorney general of this state or  
21 1 assistant attorney general he or she designates or the princi-  
22 pal prosecuting attorney of the county in which the facility or  
23 place where the communication to be intercepted is located or 1  
24 assistant prosecuting attorney of that county he or she  
25 designates.

26 (g) "Readily accessible to the general public" means the  
27 communication is not any of the following:

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1           (i) Scrambled or encrypted.

2           (ii) Transmitted using modulation techniques whose essential  
3 parameters have been withheld from the public to preserve the  
4 communication's privacy.

5           (iii) Carried on a subcarrier or other signal subsidiary to  
6 a radio transmission.

7           (iv) Transmitted over a communication system provided by a  
8 communication common carrier, unless the communication is a  
9 tone-only paging system communication.

10           (v) Transmitted on a frequency allocated under 47  
11 C.F.R. part 25, subpart D, E, or F of 47 C.F.R. part 74, or 47  
12 C.F.R. part 94 unless, in the case of a communication transmitted  
13 on a frequency allocated under 47 C.F.R. part 74 that is not  
14 exclusively allocated to broadcast auxiliary services, the commu-  
15 nication is a 2-way voice communication by radio.

16           (h) "Trap and trace device" means a device that captures the  
17 incoming electronic or other impulses that identify the originat-  
18 ing number of an instrument or device from which a wire or elec-  
19 tronic communication was transmitted.

20           (i) "User" means a person who subscribes to or uses an elec-  
21 tronic communication service and is authorized to engage in that  
22 use.

23           (j) "Wire communication" means an aural transfer made in  
24 whole or in part through the use of facilities for transmitting  
25 communications by wire, cable, or other substantially similar  
26 connection between the point of origin and the point of reception  
27 that are furnished or operated by a person engaged in providing

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1 or operating those facilities for the transmission of  
2 communications and includes the use of such a connection in a  
3 switching station. Wire communication does not include storage  
4 of that communication, electronic or otherwise. Wire communica-  
5 tion does not include electronic communication.

6 Sec. 2a. The supreme court shall appoint not less than 5  
7 circuit court judges in each of the judicial districts designated  
8 for the election of judges of the court of appeals as judges of  
9 competent jurisdiction under this act.

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

14 (a) Intercept, attempt to intercept, or solicit another  
15 person to intercept or attempt to intercept a wire, oral, or  
16 electronic communication.

17 (b) Disclose or attempt to disclose to another person the  
18 contents of a wire, oral, or electronic communication knowing or  
19 having reason to know that the information was obtained through  
20 the interception of a wire, oral, or electronic communication in  
21 violation of this act.

22 (c) Use or attempt to use the contents of a wire, oral, or  
23 electronic communication knowing or having reason to know the  
24 information was obtained through the interception of a wire,  
25 oral, or electronic communication in violation of this act.

26 (2) Except as provided in subsection (3), a person who  
27 violates subsection (1) is guilty of a felony punishable by

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1 imprisonment for not more than 4 years or a fine of not more than  
2 \$2,000.00, or both.

3 (3) If both of the following apply, conduct prohibited by  
4 subsection (1) is not punishable under subsection (2) unless it  
5 is for direct or indirect commercial advantage or private finan-  
6 cial gain:

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

9 (b) Either of the following applies:

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

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

15 (4) A person who trespasses on property owned or under the  
16 control of another person with the intent to intercept or facili-  
17 tate intercepting a wire, oral, or electronic communication is  
18 guilty of a misdemeanor punishable by imprisonment for not more  
19 than 90 days or a fine of not more than \$100.00, or both.

20 (5) This act does not prohibit any of the following:

21 (a) Interception, disclosure, or use of a wire or electronic  
22 communication by a switchboard operator or an officer, employee,  
23 or agent of an electronic communication service provider in the  
24 normal course of his or her duties or employment while engaged in  
25 an activity necessarily incident to rendering service or protect-  
26 ing the provider's rights or property, unless the interception  
27 results from the provider's use of service observing or random



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1 monitoring for purposes other than mechanical or service quality  
2 control checks, or the interception is in adherence to federal or  
3 state laws pertaining to the monitoring and reporting of illegal  
4 terrorist activity as defined by federal law.

5 (b) Interception of a wire or electronic communication, or  
6 an oral communication transmitted by radio, or disclosure or use  
7 of the information obtained through the interception by an offi-  
8 cer, employee, or agent of the federal communications commission  
9 in the normal course of his or her employment and the  
10 commission's monitoring responsibilities to enforce the communi-  
11 cations act of 1934, chapter 652, 48 Stat. 1064.

12 (c) A person intercepting a wire, oral, or electronic commu-  
13 nication while acting under color of law if the person is a party  
14 to the communication or 1 of the parties to the communication  
15 gives prior consent to the interception.

16 (d) A person intercepting a wire, oral, or electronic commu-  
17 nication while not acting under color of law if the person is a  
18 party to the communication or 1 of the parties to the communica-  
19 tion gives prior consent to the interception, unless the communi-  
20 cation is intercepted to commit a criminal or tortious act in  
21 violation of the constitution or laws of the United States or  
22 this state.

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

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1 (f) Intercepting or accessing an electronic communication  
2 made through an electronic communication system that is config-  
3 ured so the electronic communication is readily accessible to the  
4 general public.

5 (g) Intercepting a radio communication transmitted by any of  
6 the following:

7 (i) A station if the communication is for the general  
8 public's use or relates to a ship, aircraft, vehicle, or person  
9 in distress.

10 (ii) A governmental, law enforcement, civil defense, private  
11 land mobile, fire, or public safety communications system that is  
12 readily accessible to the general public.

13 (iii) A station operating on a authorized frequency within  
14 the bands allocated to amateurs, citizens band, or general mobile  
15 radio services.

16 (iv) A marine or aeronautical 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) Intercepting a wire or electronic communication whose  
24 transmission is causing harmful interference to a lawfully oper-  
25 ating station or consumer electronic equipment to the extent nec-  
26 essary to identify the source of the interference.

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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) Using a pen register.

7           (l) Using a trap and trace device.

8           (m) An electronic communication service provider recording  
9 the fact that a wire or electronic communication was initiated or  
10 completed to protect the provider, another provider furnishing  
11 service in connection with the wire or electronic communication,  
12 or a user from fraudulent, unlawful, or abusive use of the  
13 service.

14           (n) It is not unlawful under this act for a person acting  
15 under the color of law to intercept the wire or electronic commu-  
16 nications of a computer trespasser if all of the following cir-  
17 cumstances exist:

18           (i) The owner or operator of the computer authorizes the  
19 interception of the computer trespasser's communications on the  
20 computer.

21           (ii) The person acting under color of law is lawfully  
22 engaged in an investigation.

23           (iii) The person acting under color of law has reasonable  
24 grounds to believe that the content of the computer trespasser's  
25 communications will be relevant to the investigation.

26           (iv) The interception does not acquire communications other  
27 than those transmitted to or from the computer trespasser.

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1           (6) A person may provide information, facilities, or  
2 technical assistance to a person authorized by law to intercept a  
3 wire, oral, or electronic communication if that person was pro-  
4 vided with a court order described in section 8 directing that  
5 assistance. The person assisting shall not disclose the exis-  
6 tence of any interception, surveillance, or interception device  
7 relating to the order described in this subsection except as oth-  
8 erwise required by lawful process and then only after notifying  
9 the prosecutor who obtained the order before disclosure.

10           (7) Except as otherwise provided in subsections (8) and (9),  
11 a person providing an electronic communication service to the  
12 public shall not intentionally disclose the contents of a commu-  
13 nication while it is being transmitted on that service to a  
14 person other than the addressee or intended recipient of the com-  
15 munication or an agent of the addressee or intended recipient.

16           (8) Subsection (7) does not apply if the service provider or  
17 the provider's agent is the addressee or intended recipient of  
18 the communication.

19           (9) A service provider described in subsection (7) may dis-  
20 close the contents of a communication as follows:

21           (a) If the communication was intercepted as described in  
22 subsection (5).

23           (b) As authorized under this act.

24           (c) With the lawful consent of the originator, an addressee,  
25 or an intended recipient of the communication.

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

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1 (e) To a law enforcement agency, if the service provider  
2 obtains the contents inadvertently and believes they pertain to  
3 the commission of a crime.

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

8 (a) Manufacture, assemble, possess, or sell or otherwise  
9 deliver an interception device knowing or having reason to know  
10 the device's design renders it primarily useful for surrepti-  
11 tiously intercepting wire, oral, or electronic communications.

12 (b) Advertise or offer to sell or otherwise deliver an  
13 interception device knowing or having reason to know the device's  
14 design renders it primarily useful for surreptitiously intercept-  
15 ing wire, oral, or electronic communications.

16 (c) Advertise or offer to sell or otherwise deliver any  
17 device by promoting the use of the device to surreptitiously  
18 intercept wire, oral, or electronic communications.

19 (2) In the normal course of its business, an electronic com-  
20 munication service provider or an officer, agent, or employee of  
21 or a person under contract with that service provider may manu-  
22 facture, assemble, possess, or sell an interception device know-  
23 ing or having reason to know the device's design renders it pri-  
24 marily useful for surreptitiously intercepting wire, oral, or  
25 electronic communications.

26 (3) Under a warrant or order issued by a court of competent  
27 jurisdiction or a comparable court of the United States, an

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1 officer, agent, or employee of the United States, this state, or  
2 a political subdivision may manufacture, assemble, possess, or  
3 sell an interception device knowing or having reason to know the  
4 device's design renders it primarily useful for surreptitiously  
5 intercepting wire, oral, or electronic communications.

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

9 Sec. 5. If a wire, oral, or electronic communication is  
10 intercepted, its contents and any evidence derived from the com-  
11 munication shall not be received in evidence in a trial, hearing,  
12 or other proceeding before a court, grand jury, tribunal, depart-  
13 ment or regulatory agency, legislative committee, or other  
14 authority of this state or a political subdivision if disclosure  
15 of the communication or evidence would violate this act unless  
16 otherwise authorized by federal law or the law of this state.

17 Sec. 6. (1) An investigative or law enforcement officer who  
18 knows the contents of a wire, oral, or electronic communication  
19 or evidence derived from the communication may do any of the fol-  
20 lowing if he or she obtained that knowledge by a means authorized  
21 under this act:

22 (a) Disclose the contents or evidence to another investiga-  
23 tive or law enforcement officer or to an officer, agent, or offi-  
24 cial of a law enforcement agency of the United States government  
25 to the extent appropriate for proper performance of the official  
26 duties of the person making or receiving the disclosure.

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1 (b) Use those contents or the evidence to the extent  
2 appropriate for proper performance of his or her official  
3 duties.

4 (2) A person who receives information concerning a wire,  
5 oral, or electronic communication intercepted in accordance with  
6 this act or evidence derived from the communication may disclose  
7 the contents or evidence while giving testimony under oath or  
8 affirmation in a proceeding held under the authority of the  
9 United States, this state, or a political subdivision or in a  
10 civil proceeding under section 13 if the person received the  
11 information by a means authorized under this act.

12 (3) A privileged wire, oral, or electronic communication  
13 intercepted in accordance with or in violation of this act does  
14 not lose its privileged character by that interception.

15 (4) Except as otherwise provided in this subsection, if an  
16 investigative or law enforcement officer intercepting wire, oral,  
17 or electronic communications in the manner authorized by this act  
18 intercepts a wire, oral, or electronic communication relating to  
19 an offense other than an offense specified in the order under  
20 section 8, the communication's contents and evidence derived from  
21 the communication may be disclosed or used as provided in subsec-  
22 tion (1) or (2). The communication's contents and any evidence  
23 derived from the communication may be used under subsection (3)  
24 if authorized or approved by a judge of competent jurisdiction on  
25 subsequent application after determining that the contents were  
26 otherwise intercepted in accordance with this act. The  
27 subsequent application shall be made as soon as practicable after

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1 intercepting the communication. This subsection does not  
2 authorize the disclosure or use in any manner of the contents of  
3 or evidence derived from a wire, oral, or electronic communica-  
4 tion relating to an offense punishable by imprisonment for 4  
5 years or less or punishable only by a fine.

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

9 Sec. 7. (1) A prosecutor may authorize an application to a  
10 judge of competent jurisdiction for an order authorizing or  
11 approving the interception of wire, oral, or electronic communi-  
12 cations by the investigative or law enforcement officer responsi-  
13 ble for the investigation of the offense for which the applica-  
14 tion is made if the interception may provide or has provided evi-  
15 dence of any of the following offenses:

16 (a) A violation of section 7401(2)(a)(i), (ii), or (iii) or  
17 (b), 7401c, 7402(2)(a) or (e), or 7403(2)(a)(i), (ii), or (iii)  
18 or (b) of the public health code, 1978 PA 368, MCL 333.7401,  
19 333.7401c, 333.7402, and 333.7403.

20 (b) A violation of section 145d(2)(d), (e), or (f) of the  
21 Michigan penal code, 1931 PA 328, MCL 750.145d, unless the under-  
22 lying offense is a violation of section 411i(3)(a) of the  
23 Michigan penal code, 1931 PA 328, MCL 750.411i, a violation of  
24 section 411s (2)(b)(iii) or (v) of the Michigan penal code, 1931  
25 PA 328, MCL 750.411s, or a violation of section 7(1)(d) or (3)(e)  
26 or (f) of 1979 PA 53, MCL 752.797.



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1 (c) A violation of section 200i, 200j, 204, 207, 209(1),  
2 209a, 210, 211, 212a, 327, or 328 of the Michigan penal code,  
3 1931 PA 328, MCL 750.200i, 750.200j, 750.204, 750.207, 750.209,  
4 750.209a, 750.210, 750.211, 750.212a, 750.327, and 750.328, or a  
5 violation of chapter LXXXIII-A of the Michigan penal code, 1931  
6 PA 328, MCL 750.543a to 750.543z.

7 (d) A violation of section 83, 91, 157b(2), 316, 317, 349,  
8 350, or 436(2)(d) or (e) of the Michigan penal code, 1931 PA 328,  
9 MCL 750.83, 750.91, 750.157b, 750.316, 750.317, 750.349, 750.350,  
10 and 750.436.

11 (e) A conspiracy to commit an offense described in  
12 subdivisions (a) to (d).

13 (f) An offense other than an offense described in subdivi-  
14 sions (a) to (d) in the manner and to the extent permitted under  
15 section 6(4).

16 (2) The principal prosecuting attorney for a county or his  
17 or her designated assistant prosecuting attorney shall not autho-  
18 rize an application for a violation unless the attorney general  
19 or his or her designated assistant attorney general approves the  
20 authorization. The attorney general or his or her designated  
21 assistant attorney general shall approve or deny the authoriza-  
22 tion within 7 days after the request for authorization is made.

23 (3) Unless the investigative or law enforcement officer  
24 described in subsection (1) is employed by the department of  
25 state police, the prosecutor authorizing the application shall  
26 notify the director of the department of state police, or a  
27 person the director designates, of the application and the

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1 information described in section 8(1)(b)(ii) and (iv). If the  
2 proposed interception will overlap, conflict with, hamper, or  
3 interfere with another interception proposed or authorized, the  
4 director or his or her designee shall advise the judge of compe-  
5 tent jurisdiction for each application and shall coordinate any  
6 subsequent interceptions.

7       Sec. 8. (1) An application for an order authorizing or  
8 approving the interception of a wire, oral, or electronic commu-  
9 nication shall be in writing upon oath or affirmation to a judge  
10 of competent jurisdiction and shall state the applicant's author-  
11 ity to apply. An application shall include all of the following  
12 information:

13       (a) The identity of the investigative or law enforcement  
14 officer applying and the prosecutor authorizing the application.

15       (b) A comprehensive statement of the facts and circumstances  
16 the applicant relies upon to justify his or her belief that an  
17 order should be issued, including all of the following:

18       (i) Details of the particular offense that has been, is  
19 being, or is about to be committed.

20       (ii) Except as provided in section 9, a particular descrip-  
21 tion of the nature and location of the facilities from which, or  
22 the place where, the communication is to be intercepted.

23       (iii) A particular description of the type of communication  
24 sought to be intercepted.

25       (iv) If known, the identity of any person committing or  
26 about to commit the offense and whose communication is to be  
27 intercepted.

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1           (v) A statement of the facts indicating the specific  
2 instances of conduct demonstrating probable cause to believe the  
3 particular offense has been, is being, or is about to be  
4 committed.

5           (c) Comprehensive statements of each of the following:

6           (i) Whether other investigative procedures have been tried  
7 and have failed or reasonably appear to be unlikely to succeed if  
8 tried or to be dangerous.

9           (ii) The time period for which the interception must be  
10 maintained. If the investigation's nature is such that the  
11 authorization for interception should not automatically terminate  
12 when the described type of communication has been obtained, the  
13 statement shall include a particular description of the facts  
14 establishing probable cause to believe additional communications  
15 of the same type will occur after that time.

16           (iii) The legitimate investigative objective to be expected  
17 by the interception.

18           (iv) The facts concerning all previous applications known to  
19 the individuals authorizing and making the application that were  
20 made for authorization to intercept or for approval of an inter-  
21 ception of a wire, oral, or electronic communication involving  
22 any of the same persons, facilities, or places specified in the  
23 application and the action taken by the judge on each previous  
24 application.

25           (d) If the application is for extension of an order, a  
26 statement setting forth the results obtained from the

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1 interception or a reasonable explanation of the failure to obtain  
2 any results.

3 (e) Unless the applying investigative or law enforcement  
4 officer is employed by the department of state police, a state-  
5 ment that the director of the department of state police or an  
6 individual the director designates has been notified of the  
7 application and of the information described in subdivision  
8 (b)(ii) and (iv).

(f) A statement of the estimated cost of the manpower and other  
resources used in the interception for the period of time the  
interception is authorized.

9 (2) The judge of competent jurisdiction may require the  
10 applicant to furnish additional testimony or documentary evidence  
11 to support the application.

12 (3) Based upon an application under subsection (1), the  
13 judge of competent jurisdiction may enter an ex parte order, as  
14 requested or as modified, authorizing or approving interception  
15 of a wire, oral, or electronic communication if the judge deter-  
16 mines all of the following on the basis of the facts submitted by  
17 the applicant:

18 (a) Probable cause exists to believe an individual is com-  
19 mitting, has committed, or is about to commit a particular  
20 offense described in section 7.

21 (b) Except as provided in section 9, probable cause exists  
22 to believe the facilities from which, or the place where, the  
23 wire, oral, or electronic communication is to be intercepted are  
24 being used, or are about to be used, in connection with the  
25 offense or are leased to, listed in the name of, or commonly used  
26 by a person described in subsection (1)(b)(iv).

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1           (c) Probable cause exists to believe particular  
2 communications concerning that offense will be obtained through  
3 the interception.

4           (d) Usual investigative procedures have been tried and have  
5 failed or reasonably appear to be unlikely to succeed if tried or  
6 to be dangerous.

7           (4) Each order authorizing or approving interception of a  
8 wire, oral, or electronic communication shall specify all of the  
9 following:

10           (a) If known, the identity of the person whose communication  
11 is to be intercepted.

12           (b) The nature and location of the communication facilities  
13 as to which, or the place where, authority to intercept is  
14 granted.

15           (c) A particular description of the type of communication  
16 sought to be intercepted and a statement of the particular  
17 offense to which it relates.

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

20           (e) The agency authorized to intercept the communication and  
21 the person authorizing the application.

22           (f) The time period during which interception is authorized  
23 or approved, including a statement as to whether interception  
24 shall automatically terminate when the described communication  
25 has been obtained.

26           (5) If the application states that specific information,  
27 facilities, or technical assistance is needed from a particular

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1 person to accomplish the interception unobtrusively and with  
2 minimum interference with the services that person is according a  
3 person whose communications are to be intercepted, the order  
4 authorizing the interception shall direct the particular person  
5 to immediately furnish the information, facilities, or technical  
6 assistance specified in the order to the applicant. The order  
7 shall specify the time period during which the person is required  
8 to provide information, facilities, or technical assistance. The  
9 agency conducting the interception shall compensate the person  
10 furnishing facilities or technical assistance for reasonable  
11 expenses incurred in providing the facilities or assistance. A  
12 person is not civilly liable for providing information, facili-  
13 ties, or assistance under this subsection.

14 (6) An order entered under this section shall not authorize  
15 or approve the interception of a wire, oral, or electronic commu-  
16 nication for longer than the time necessary to achieve the autho-  
17 rized investigative objective or 30 days, whichever is earlier.  
18 The period begins on the day an investigative or law enforcement  
19 officer first begins to conduct an interception under the order  
20 or 10 days after the order is entered, whichever is earlier. The  
21 judge may grant extensions of an order only upon application for  
22 an extension in accordance with subsections (1) and (3). The  
23 extension period shall not be longer than the time the judge  
24 determines is necessary to achieve the purposes for which the  
25 order was granted or 30 days, whichever is earlier. Only 2  
26 extensions of an order may be granted. After the second  
27 extension of an order terminates, an investigative or law

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1 enforcement officer may apply for and be granted an order  
2 authorizing the interception of a wire, oral, or electronic com-  
3 munication based on the information contained in the application  
4 for the terminated order only if the new application includes new  
5 evidence, in addition to that described in the previous applica-  
6 tion, justifying the officer's belief that an order should be  
7 issued.

8 (7) Each order and extension shall provide that the authori-  
9 zation to intercept be executed as soon as practicable, be con-  
10 ducted so as to minimize the interception of communications not  
11 otherwise subject to interception under this act, and terminate  
12 when the authorized objective is obtained or, in any event, after  
13 not more than 30 days.

14 (8) An order authorizing interception under this act shall  
15 require reports to the judge who issued the order showing the  
16 progress made toward achieving the authorized objective and any  
17 need for continued interception. The reports shall be made  
18 weekly or at shorter intervals as the judge requires.

19 (9) The contents of a wire, oral, or electronic communica-  
20 tion intercepted as authorized by this act shall be recorded on  
21 tape or by a comparable recording device. Recording under this  
22 subsection shall be done in a way that protects the recording  
23 from editing or other alterations. When an order or extension  
24 expires, all recordings shall immediately be made available to  
25 the judge issuing the order and sealed under his or her  
26 directions. Custody of the recordings shall be where the judge  
27 orders. The recordings shall not be destroyed except upon order

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1 of the judge or his or her successor, but, except as otherwise  
2 provided in this subsection, shall be retained for at least 10  
3 years. However, if evidence is not obtained from the intercep-  
4 tion within 1 year, a party intercepted may move for destruction  
5 of the recordings. Duplicate recordings may be made for use or  
6 disclosure of contents or evidence under section 6(1) for  
7 investigations. The presence of the seal or a satisfactory  
8 explanation for its absence is a prerequisite for use or disclo-  
9 sure of contents or evidence under section 6(2).

10 (10) The judge shall seal applications made and orders  
11 granted under this act. Custody of the applications and orders  
12 shall be where the judge directs. The applications and orders  
13 shall be disclosed only upon a showing of good cause before a  
14 judge of competent jurisdiction. The applications and orders  
15 shall not be destroyed except on order of the judge or his or her  
16 successor, but shall be retained for at least 10 years.

17 (11) Within a reasonable time, but not later than 90 days  
18 after an order or extension terminates, the judge shall cause an  
19 inventory to be served on the persons named in the order and on  
20 other parties to intercepted communications as the judge deter-  
21 mines is in the interest of justice. Upon showing good cause, a  
22 judge may delay the service of the inventory required under this  
23 subsection for 1 or more periods. Each period shall not be  
24 greater than 30 days. The inventory shall include notice of all  
25 of the following:

26 (a) Entry of the order.



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1           (b) The date the order was entered and the period of  
2 authorized or approved interception.

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

5           (12) If a person given an inventory under subsection (11)  
6 files a motion and serves a copy of the motion on the law  
7 enforcement agency described in subsection (11) and other parties  
8 as required by law, the judge shall make available to the person  
9 or his or her attorney for inspection the portions of the inter-  
10 cepted communications to which the person was a party and the  
11 portions of the applications and orders pertaining to communica-  
12 tions to which the person was a party.

13           (13) The contents of a wire, oral, or electronic communica-  
14 tion intercepted under this act or evidence derived from the com-  
15 munication shall not be received in evidence or otherwise dis-  
16 closed in a trial, hearing, preliminary examination, or other  
17 proceeding in a court unless each party has been furnished with a  
18 copy of the application and order authorizing or approving the  
19 interception before the preliminary examination or not less than  
20 21 days before the trial, hearing, or other proceeding. In the  
21 interest of justice, the judge may adjourn the trial, hearing, or  
22 other proceeding to allow the defendant at least 21 days to  
23 review that evidence.

24           (14) An aggrieved person in a trial, hearing, preliminary  
25 examination, or other proceeding before a court, grand jury, tri-  
26 bunal, department or regulatory agency, legislative committee, or  
27 other authority of this state or a political subdivision may move

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1 to suppress the contents of a wire, oral, or electronic  
2 communication intercepted under this act or evidence derived from  
3 the communication on 1 or more of the following grounds:

4 (a) The communication was unlawfully intercepted.

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

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

9 (15) A motion to suppress under subsection (14) shall be  
10 made before the trial, hearing, preliminary examination, or other  
11 proceeding unless there is no opportunity to make the motion  
12 before the trial, hearing, preliminary examination, or other pro-  
13 ceeding or the aggrieved person making the motion is not aware of  
14 the grounds of the motion before the trial, hearing, preliminary  
15 examination, or other proceeding. If the aggrieved person files  
16 a motion, the judge may make available to the aggrieved person or  
17 his or her attorney for inspection any portion of the intercepted  
18 communication or evidence derived from the intercepted communica-  
19 tion that the judge determines is in the interests of justice.  
20 If the judge grants the motion to suppress under subsection (14),  
21 the intercepted wire, oral, or electronic communication or evi-  
22 dence derived from the communication shall be treated as having  
23 been obtained in violation of this act.

24 (16) The prosecutor may appeal an order granting a motion to  
25 suppress under subsection (14) or the denial of an application  
26 for an order of approval if the prosecutor certifies to the judge  
27 or other official granting the motion or denying the application

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1 that the appeal is not taken for delay. The prosecutor shall  
2 take the appeal within 30 days after the order granting the  
3 motion to suppress is entered or the application is denied and  
4 shall prosecute it diligently.

5 (17) A violation of subsection (9) or (10) may be punished  
6 as contempt of the court that approved or denied the application  
7 for interception.

8 (18) An order authorizing interception under this act shall  
9 also authorize the entry of the premises covered under the order  
10 for the sole purpose of installing, maintaining, or removing an  
11 interception device. The judge who issued the order shall be  
12 notified within 48 hours of the time and method of each entry  
13 allowed by this subsection.

14 Sec. 9. (1) The requirements of section 8(1)(b)(ii) and  
15 (3)(b) relating to the specification of the facilities from  
16 which, or the place where, the communication is to be intercepted  
17 do not apply if any of the following circumstances exist:

18 (a) In the case of an application with respect to the inter-  
19 ception of an oral communication, all of the following circum-  
20 stances exist:

21 (i) The application is by a state or local law enforcement  
22 officer and is approved by the attorney general, designated  
23 assistant attorney general, or principal prosecuting attorney or  
24 designated assistant prosecuting attorney.

25 (ii) The application contains a full and complete statement  
26 as to why the specification is not practical and identifies the

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1 person committing the offense and whose communications are to be  
2 intercepted.

3 (iii) The judge finds that the specification is not  
4 practical.

5 (b) In the case of an application with respect to a wire or  
6 electronic communication, all of the following circumstances  
7 exist:

8 (i) The application is by a state or local law enforcement  
9 officer and is approved by the attorney general, designated  
10 assistant attorney general, or principal prosecuting attorney or  
11 designated assistant prosecuting attorney.

12 (ii) The application identifies the person believed to be  
13 committing the offense and whose communications are to be inter-  
14 cepted and the applicant makes a showing that there is probable  
15 cause to believe that the person's actions could have the effect  
16 of thwarting interception from a specified facility.

17 (iii) The judge finds that the showing has been adequately  
18 made.

19 (iv) The order authorizing or approving the interception is  
20 limited to interception only for the time that is reasonable to  
21 presume that the person identified in the application is or was  
22 reasonably proximate to the instrument through which the communi-  
23 cation will be or was transmitted.

24 (2) An interception of a communication under an order with  
25 respect to which the requirements of section 8(1)(b)(ii) and  
26 (3)(b) of this section do not apply under section 9(1)(a) shall  
27 not begin until the place where the communication is to be

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1 intercepted is ascertained by the person implementing the  
2 interception order. A provider of wire or electronic communica-  
3 tions service that has received an order as provided for in  
4 section 9(1)(b) may move the court to modify or quash the order  
5 on the ground that its assistance with respect to the intercep-  
6 tion cannot be performed in a timely or reasonable fashion. The  
7 court, upon notice to the government, shall decide the motion  
8 expeditiously.

9       Sec. 10. (1) Within 30 days after an order or extension  
10 entered under section 8 expires or the judge denies an order  
11 authorizing or approving interception of a wire, oral, or elec-  
12 tronic communication, the judge shall report all of the following  
13 information to the administrative office of the United States  
14 courts and to the department of state police:

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

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

17       (c) Whether the order or extension was granted as applied  
18 for, modified, or denied.

19       (d) The interception time period authorized and the number  
20 and duration of any extensions of the order.

21       (e) Any offense specified in the application, order or  
22 extension.

23       (f) The identity of the investigative or law enforcement  
24 officer and agency applying and the prosecutor authorizing the  
25 application.

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

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

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

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

11           (i) The approximate nature and frequency of incriminating  
12 communications intercepted.

13           (ii) The approximate nature and frequency of other communi-  
14 cations intercepted.

15           (iii) The approximate number of persons whose communications  
16 were intercepted.

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

19           (c) The number of arrests resulting from the interceptions  
20 described in subdivision (b) and the offenses for which arrests  
21 were made.

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

24           (e) The number of motions to suppress made with respect to  
25 the interceptions described in subdivision (b) and the number  
26 granted or denied.

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1 (f) The number of convictions resulting from the  
2 interceptions described in subdivision (b), the offenses for  
3 which the convictions were obtained, and a general assessment of  
4 the importance of the interceptions.

5 (g) The information required by subdivisions (b) to (f) with  
6 respect to orders or extensions for interception of wire, oral,  
7 or electronic communications obtained in a preceding calendar  
8 year.

9 (3) On or before January 10 of each year, the department of  
10 state police shall report to the attorney general, senate, house  
11 of representatives, and governor all of the information regarding  
12 applications, orders, and interceptions of wire, oral, or elec-  
13 tronic communications required under subsection (2).

14 Sec. 11. The attorney general and the director of the  
15 department of state police shall establish a course of training  
16 in the legal and technical aspects of intercepting wire, oral, or  
17 electronic communications, regulations he or she finds necessary  
18 or appropriate for the training program, and minimum standards  
19 for the certification and periodic recertification of investiga-  
20 tive or law enforcement officers eligible to intercept wire,  
21 oral, or electronic communications under this act. The director  
22 of the department of state police shall charge each officer who  
23 enrolls in this training program a reasonable enrollment fee to  
24 offset the costs of training.

25 Sec. 12. An officer, employee, or agent of an electronic  
26 communication service provider who learns of the existence of an  
27 interception device in the course of his or her employment or

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1 otherwise shall report the device's existence to the department  
2 of state police. The department of state police shall determine  
3 whether placement of the device is authorized by court order. If  
4 placement of the device is not authorized by court order, the  
5 department of state police shall immediately inform the person  
6 whose wire, oral, or electronic communication was intercepted or  
7 intended to be intercepted of the device's existence. This sec-  
8 tion does not diminish or excuse any obligation of the department  
9 of state police, the officer, employee, or agent of the elec-  
10 tronic communication service provider, or any other person to  
11 remove the device or to take any other actions required by law,  
12 regulation, or policy.

13       Sec. 13. (1) Except as provided in section 8(5), a person  
14 whose wire, oral, or electronic communication is intercepted,  
15 disclosed, or used in violation of this act has a civil cause of  
16 action against any person who intercepts, discloses, uses, or  
17 procures another person to intercept, disclose, or use the commu-  
18 nication or its contents. In the civil cause of action, the  
19 person is entitled to recover all of the following:

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

22       (b) Exemplary damages.

23       (c) Reasonable attorney fees and other litigation costs rea-  
24 sonably incurred.

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



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1           Sec. 14. Purchases of an interception device shall be  
2 recorded as a separate line item on any state or local appropria-  
3 tion bill.

4           Sec. 15. This act does not prohibit any of the following:

5           (a) An interception otherwise permitted by law for a peace  
6 officer of this state or of the federal government, or the  
7 officer's agent, while in the performance of the officer's  
8 duties.

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

12           (c) The recording by a public utility of telephone communi-  
13 cations to it requesting service or registering a complaint by a  
14 customer, if a record of the communications is required for  
15 legitimate business purposes and the agents, servants, and  
16 employees of the public utility are aware of the practice by an  
17 employee safeguarding property owned by, or in custody of, his or  
18 her employer on his or her employer's property.

19           (d) The routine monitoring, including recording, by employ-  
20 ees of the department of corrections of telephone communications  
21 on telephones available for use by prisoners in state correc-  
22 tional facilities, if the monitoring is conducted in the manner  
23 prescribed by section 70 of 1953 PA 232, MCL 791.270, and rules  
24 promulgated under that section.

25           Sec. 16. Any court of criminal jurisdiction may enter an  
26 order authorizing the use of a pen register or a trap and trace

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1 device as provided in section 3121 of title 18 of the United

2 States Code, 18 U.S.C. 3121.

Sec. 17. The director of the department of state police or a person designated by the director shall maintain custody of all interception devices to be used by state law enforcement officers during the periods in which those devices are not being used for interception purposes under a court order. The sheriff for a county or a person designated by the sheriff shall maintain custody of all interception devices to be used by local law enforcement officers in that county during periods in which those devices are not being used for interception purposes under a court order. The director of state police and the sheriff for a county or their designees shall maintain a custody log of interception devices that are in their custody under this section. The log shall keep a record of the following information:

(a) Each person who has been granted access to the interception device.

(b) The inclusive dates of access.

(c) The purpose of the access.

(d) If access is pursuant to a court order, the name of the judge who issued the order.

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