



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5692 (Substitute H-3 as passed by the House)
House Bill 5693 (as passed by the House)
Sponsor: Representative Fran Amos (H.B. 5692)
Representative Sandra Caul (H.B. 5693)
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 5-3-04

CONTENT

House Bill 5692 (H-3) would amend the Michigan Penal Code to prohibit and provide criminal penalties for surveilling another person clad only in undergarments or surveilling the unclad genitalia or buttocks of any individual, or the unclad breasts of a female, or recording, transmitting, or otherwise capturing such a visual image, if the individual had a reasonable expectation of privacy.

House Bill 5693 would amend the Code of Criminal Procedure to include the violations proposed by House Bill 5692 (H-3) in the sentencing guidelines.

House Bill 5692 (H-3)

Under the Penal Code, it is a felony, punishable by up to two years' imprisonment and/or a maximum fine of \$2,000, for a person to install in any private place any device for observing, photographing, or eavesdropping on the sounds or events in that place, without the consent of the person entitled to privacy in that place. Under the bill, that violation would apply to installing, placing, or using any device for observing, recording, transmitting, photographing, or eavesdropping.

In addition, the bill would prohibit an individual from doing either of the following:

- Surveilling another person who was clad only in his or her undergarments, or surveilling the unclad genitalia or buttocks of any individual or the unclad breasts of a female, under circumstances in which the person would have a reasonable expectation of privacy.
- Recording, transmitting, or otherwise capturing the visual image of the undergarments worn by another person, or the unclad genitalia or buttocks of any individual or the unclad breasts of a female, under circumstances in which the person would have a reasonable expectation of privacy.

A violation would be a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both.

The bill specifies that the current and proposed provisions would not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant, unless conducted for a lewd or lascivious purpose.

Under the bill, "surveil" would mean the same as "surveillance" as defined in Section 539a of the Code, i.e., "to secretly observe the activities of another person for the purpose of spying upon and invading the privacy of the person observed".

House Bill 5693

The bill would include the felony offenses proposed by House Bill 5692 (H-3) in the sentencing guidelines. Lewd surveillance and capturing lewd images each would be a Class E felony against the public order with a maximum statutory sentence of five years' imprisonment.

MCL 750.539d (H.B. 5692)
777.16z (H.B. 5693)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. According to the Department of Corrections Statistical Report, 20 offenders were convicted of violating this section of the Penal Code in 2001. Ten offenders were sentenced to prison, and 10 received probation or other penalties. There are no data to indicate how many additional offenders would be convicted under the expanded circumstances or the additional offenses proposed by the bills. Under sentencing guidelines, a Class H offense has a recommended minimum sentence range of 0-1 month to 5-17 months while a Class E offense has a recommended minimum sentence range of 0-3 months to 24-38 months. Local units of government incur the cost of incarceration in a local facility, which varies by county. The State incurs the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. For each additional offender convicted of the current Class H felony, sentenced to prison, and given the longest recommended minimum sentence, it would cost the State approximately \$37,300. For each offender convicted of either of the proposed Class E offenses, sentenced to prison, and given the longest recommended minimum sentence, it would cost the State \$88,700.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.