

Legislative Analysis



USE OF SCANNER TO COMMIT CRIME

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House Bill 4544 (Substitute H-2)
Sponsor: Rep. Kevin Elsenheimer
Committee: Judiciary

First Analysis (5-2-05)

BRIEF SUMMARY: The bill would make it illegal to use information intercepted from public safety communications systems to commit a crime.

FISCAL IMPACT: To the extent that the bill increased the numbers of offenders sentenced for felony violations, it could increase state costs of prison incarceration, which average about \$29,000 per prisoner per year, or felony probation supervision, which average about \$1,977 per offender per year. Sentences that included a term of imprisonment in a county jail could increase local correctional costs, which vary from county to county, as well as costs of misdemeanor probation supervision. Collections of any penal fines under the bill would go to local libraries, which are the constitutionally-designated recipients of penal fine revenues.

THE APPARENT PROBLEM:

The Michigan Penal Code makes it a crime to equip a vehicle with a radio receiver that can intercept frequencies used by police unless the person first obtains a permit from the Department of State Police or unless the vehicle is owned or used by a police officer or licensed amateur radio operator. This provision has proven problematic in implementation.

According to a representative of an amateur radio operators association, several amateur radio operators a year have their equipment confiscated and are placed under arrest by law enforcement officers who do not realize they are permitted by law to have the radios in their vehicles without a permit. Secondly, auto race fans frequently bring scanners to race courses to pick up conversations between members of the pit crews. While some do obtain permits from the DSP first, others are not aware that because the equipment is also capable of picking up police communications, they are in violation of the law without the permits. Further, though the permit application asks applicants if they have been convicted of a misdemeanor or felony, apparently there is no mechanism for the department to deny a permit even if the answer is in the affirmative. And, once a permit is issued, it cannot be revoked unless the applicant supplied false information on the application.

Legislation has been offered to revise the prohibition and place the ban on using information derived from an intercepted message from police, fire fighters, or emergency medical communications systems to commit a crime.

THE CONTENT OF THE BILL:

Currently, it is a misdemeanor to equip a vehicle with a radio receiving set capable of receiving signals for police purposes sent on frequencies assigned by the Federal Communications Commission (FCC) or to use such equipment without first securing a permit to do so (unless the vehicle is used or owned by authorized persons, such as peace officers or licensed amateur radio operators). A violation is punishable by up to one year imprisonment, a fine of not more than \$1,000, or both.

House Bill 4544 would amend the Michigan Penal Code to instead prohibit a person who intercepts a message or transmission made on or over a police, fire, or emergency medical communications system from using the information obtained in the message or transmission to commit or attempt to commit a crime. The bill would establish a tiered penalty based on the underlying crime that was committed.

If the underlying crime was a misdemeanor with a maximum term of imprisonment of less than one year, the person would be guilty of a misdemeanor punishable by not more than one year imprisonment, a fine of not more than \$1,000, or both. If the underlying crime was a misdemeanor or felony with a maximum term of imprisonment of one or more years, the person would be guilty of a felony punishable by imprisonment for not more two years or a fine of not more than \$2,000, or both.

Currently, this provision of law does not apply to the use of radar detectors. The bill would keep this exclusion.

The bill would take effect 90 days after enactment.

MCL 750.508

ARGUMENTS:

For:

Apparently, it is common for auto race fans to bring radio scanners in their vehicles capable of picking up conversations between pit crew members. Most are not aware that because the equipment is also capable of intercepting police communications, under Michigan law it is necessary to first obtain a permit. In addition, licensed ham or citizens band radio operators (who utilize the equipment in their vehicles as tornado spotters and to assist in natural disasters) do not need the permit from the state police, yet several each year have their equipment mistakenly confiscated by law enforcement officers. Further, a representative of the state police testified that the department has no legal basis on which to deny a permit, even if a person has a criminal record. Reportedly, it is a full-time job for one departmental employee to process the sheer number of scanner permit applications – time that could be spent on other important departmental tasks. Plus, the prohibition only applies to scanners in vehicles, not ones in a person's home or garage, regardless of their usage. A conviction carries a penalty of up to one year in jail and/or a fine of up to \$1,000.

Instead of focusing on possession of a scanner in a vehicle, the bill would make it unlawful to use information obtained from receiving a police, fire, or emergency medical communications system transmission to commit or attempt to commit a crime. Therefore, the bill would apply to an illicit use of a scanner regardless of where it was located. It also would tie the penalty to the underlying crime and create a felony level penalty. A person using the information to commit a crime that is a misdemeanor punishable by imprisonment for less than a year (e.g., assault and battery – up to 93 days for a first offense and/or a fine of \$500) would be guilty of a misdemeanor punishable by up to one year in jail and/or a fine of \$1,000. This would be in addition to the penalties attached to the other misdemeanor offense, although the jail time could be served concurrently. If the person used the information to commit a felony or even a misdemeanor punishable by one or more years of imprisonment, then he or she would be guilty of a felony with up to two years imprisonment and/or a \$2,000 fine, in addition to the other penalties for the underlying crime. The bill therefore properly targets criminal usage rather than going after law-abiding citizens engaging in harmless hobbies as the current law does.

Against:

The bill as written could be problematic to enforce. As written, law enforcement would bear the burden of proving that a crime was committed using information obtained illegally under the bill. Unless officers caught the person listening in on police, fire, or emergency medical communications while in the act of committing the crime, it could be a largely unattainable level of proof. Instead, the bill should be fashioned similar to other laws that make possession of certain tools or objects a crime if used when committing another crime – for example, possessing a firearm while committing a robbery whether or not the gun was actually used to commit the crime, or possessing certain burglary tools whether or not those tools were used to gain illegal entry. And, since information intercepted on home-based equipment could also be used to identify potential victims or crime opportunities, how to apply the bill's enhanced penalties to these incidents should also be explored.

POSITIONS:

The Department of State Police supports the bill. (4-27-05)

The Michigan Association of Chiefs of Police supports the bill. (4-22-05)

The American Radio Relay League – Michigan Chapter (ARRL) supports the bill. (4-20-05)

A representative of the Michigan Sheriffs Association testified in support of the bill. (4-27-05)

A representative of the Michigan Court Officers and Deputy Sheriffs Association indicated support for the bill. (4-27-05)

A representative of the Michigan Department of Corrections indicated a position of neutrality on the bill. (4-27-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.