

# Legislative Analysis

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## POLICE SCANNER: REVISE BAN

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**House Bill 4544 as enrolled**  
**Public Act 39 of 2006**

**House Bill 4727 as enrolled**  
**Public Act 40 of 2006**  
**Sponsor: Rep. Kevin Elsenheimer**  
**Committee: Judiciary**

### Third Analysis (1-23-07)

**BRIEF SUMMARY:** House Bill 4544 would 1) eliminate the need for a permit before equipping a vehicle with a radio scanner capable of receiving frequencies used by police, 2) prohibit certain convicted felons from possessing a scanner capable of receiving signals used by various public service agencies, 3) prohibit the possession of a radio scanner in the commission of a crime, and 4) create a tiered-penalty system for violations. House Bill 4727 would place the maximum term of imprisonment for a felony conviction within the sentencing guidelines.

**FISCAL IMPACT:** To the extent that House Bill 4544 increased the numbers of offenders sentenced for felony violations, it could increase state costs of prison incarceration, which average about \$30,000 per prisoner per year, or felony probation supervision, which average about \$2,000 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. House Bill 4727 would have no direct fiscal impact.

### **THE APPARENT PROBLEM:**

The Michigan Penal Code makes it a crime to equip a vehicle with a radio receiver (scanner) 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 if they

don't have a permit. 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 to instead make it a criminal offense to possess a scanner in the commission of a crime and to prohibit recently convicted felons from possessing a scanner altogether.

### ***THE CONTENT OF THE BILLS:***

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 (MCL 750.508) to instead prohibit a person who had been convicted of one or more felonies during the preceding five years from carrying or possessing a radio receiving set (scanner) capable of receiving sent on a frequency assigned by the Federal Communications Commission (FCC) for purposes of police or other law enforcement; fire fighting; emergency medical; federal, state, or local corrections; or homeland security. A violation would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000.

The above prohibition would not apply to a person licensed as an amateur radio operator by the FCC.

In addition, the bill would make it illegal for a person to carry or have in his or her possession in the commission or attempted commission of a crime a scanner capable of receiving the signals detailed above. (This prohibition would not apply to misdemeanor crimes with a maximum term of imprisonment of less than 93 days.) The bill would establish a tiered penalty based on the underlying crime that was committed or attempted.

If the underlying crime or attempted crime was a misdemeanor with a maximum term of imprisonment of at least 93 days but 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 or attempted 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.

Under House Bill 4727, carrying or possessing a scanner in the commission of a crime would be classified in sentencing guidelines as a Class G felony against the public order with a two-year maximum term of imprisonment. The bill would amend the Code of Criminal Procedure (MCL 777.16x), and is tie-barred to House Bill 4544.

### **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. Furthermore, 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. Additionally, 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. The bill would eliminate the current permit requirement and properly target criminal usage rather than going after law-abiding citizens engaging in harmless hobbies as the current law does.

House Bill 4544 would focus on the possession of scanners by recently convicted felons and possession of a scanner in the commission or attempted commission of a crime. Under the bill, a person with a felony conviction within the past five years, except for a licensed amateur radio operator, could not even possess a scanner at home or in a vehicle, camp, travel trailer, and so on. And, anyone who had a scanner in his or her possession in the commission or attempted commission of a crime would be guilty of a misdemeanor or felony; the use of information intercepted by the scanner to commit the crime, such as the location of a motorist in distress, would not have to be proven. This is similar to the approach taken in 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, and possessing certain burglary tools, whether or not those tools were used to gain illegal entry. In addition, the bill's provisions do not appear to apply only to vehicle-based or mobile scanners and therefore could apply to crimes in which the offender used information intercepted on home-based equipment to identify potential victims or crime opportunities. However, whereas it would be a *per se* offense for a recently convicted felon to own or possess a scanner, the bill's provisions regarding possession of a scanner

in the commission of a crime would only be triggered if that crime carried a maximum term of imprisonment of more than 93 days; this would eliminate most non-violent crimes.

*Against:*

House Bill 4544 would make it illegal for a person with a felony conviction to possess a radio scanner within five years of his or her conviction. This provision is unlikely to afford the protection to the public it would purport to do. The length of prison sentences for many violent crimes would mean that by the time some felons were released from incarceration, more than five years would have passed since the date of their convictions – meaning that they could buy a scanner to use to identify new victims the same day they were released. A better approach would be to apply the prohibition to five years from the date a person was released from prison or completed his or her parole, whichever came later. This would give time for a person to transition back into society and demonstrate his or her successful rehabilitation.

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