

Legislative Analysis



REQUIRE SEARCH WARRANT FOR USE OF SURVEILLANCE DEVICES TO INTERCEPT MOBILE DEVICE INFORMATION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5572 as introduced
Sponsor: Rep. Steven Johnson

House Bill 5573 as introduced
Sponsor: Rep. David LaGrand

Committee: Communications and Technology
Complete to 4-7-20

SUMMARY:

House Bill 5572 would amend 1966 PA 189, which prescribes procedures for search warrants, to require a search warrant for the use of a surveillance device to track a mobile device or capture or collect certain user information. House Bill 5573 would make complementary changes to the sentencing guidelines provisions of the Code of Criminal Procedure.

Currently, 1966 PA 189 lists the grounds for issuing a warrant and allows search warrants to be used for the search and seizure of hair, tissue, blood, or other fluids.

House Bill 5572 would add a new section to the act to require a search warrant for the use of a *surveillance device* to track a mobile device or to capture or collect a mobile device user's location, conversation, text message, or web browser activity or the unique identifier of a mobile device.

Surveillance device would mean a device intended to be used by a person other than a telephone service provider to intercept any data or voice communications, including communications to or from cellular telephones or other mobile devices.

An application for such a warrant would have to contain a description of the capabilities of the surveillance device and the manner in which the device would be deployed.

Additionally, if an officer intentionally or unintentionally obtained any of the above data of a person not named in the warrant, the officer would have to notify the person via United States mail within 30 days after obtaining the data. The notice would have to contain a description and disposition of the data that were collected.

An officer who intentionally violated any of the above would be guilty of a crime as follows:

- For a first offense: a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.
- For a second or subsequent offense: a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.

MCL 750.652b

House Bill 5573 would amend the Code of Criminal Procedure to place the felony penalty provisions described above in the sentencing guidelines.

Under the bill, a second or subsequent intentional violation of HB 5572's provisions concerning search warrants, search warrant applications, or notices that data were collected from persons not listed in the search warrant would be a Class F felony against the public trust with a maximum term of imprisonment of four years.

The bill is tie-barred to HB 5572, which means that it could not take effect unless HB 5572 were also enacted.

MCL 777.17f

FISCAL IMPACT:

House Bill 5572 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations could be either misdemeanors or felonies, depending on whether they are first offenses or second or subsequent offenses. New misdemeanor convictions for first offenses would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions for second or subsequent offenses would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5573 is a companion bill to HB 5572 and amends sentencing guidelines to include intentionally using a surveillance device without a warrant, intentionally failing to provide notice after use of a surveillance device, or intentionally filing a deficient application for a warrant to use a surveillance device. The bill would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin RIsko

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