

# Legislative Analysis



## AUDIO RECORDINGS BY HOME SECURITY MONITORS

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

**House Bill 4724 as reported from committee**

**Sponsor: Rep. Graham Fuller**

**Committee: Judiciary**

**Complete to 6-17-21**

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

**BRIEF SUMMARY:** House Bill 4724 would amend the Michigan Penal Code to exempt recordings made by a home security monitoring device from the ban on using a device to eavesdrop on a private conversation.

**FISCAL IMPACT:** The bill could result in savings for the state and local governments. (See **Fiscal Information**, below.)

### **THE APPARENT PROBLEM:**

Legislation has been offered to resolve a conundrum of the sort that can be created when technology outpaces statutory restrictions. Simply put, a person who places security cameras in a home that are capable of recording audio in addition to video instantly violates the current prohibition in state law on recording a conversation without the consent of all the parties. Although video-only monitoring equipment can provide some security, it does not capture everything. For instance, a camera may have blind spots where an audio recording may pick up evidence of a crime being committed, such as a threat made to a resident, the sound of someone being attacked, or one thief telling another to grab the jewelry. Many would like to use the enhanced security products that are available but do not want to run afoul of the criminal prohibitions.

### **THE CONTENT OF THE BILL:**

House Bill 4724 would amend the Michigan Penal Code to exempt recordings made by a home security monitoring device from the ban on using a device to eavesdrop on a private conversation. Currently, the Penal Code prohibits using a device to *eavesdrop* on a private conversation unless all the parties to the conversation consent. (*Eavesdrop*, as defined in the code, means to overhear, record, amplify, or transmit the conversation.) A violation is a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both. However, section 539d of the code allows security monitoring in a residence if the monitoring is conducted by or at the direction of the owner or principal occupant of that residence and is not conducted for a lewd or lascivious purpose.

The bill would amend the Michigan Penal Code to exempt the use of a device for purposes of security monitoring of a residence or other structures on residential property, if conducted in conformity with section 539d, from the ban on using a device to eavesdrop on a conversation without the consent of all the parties.

MCL 750.539c

**BACKGROUND INFORMATION:**

House Bill 4724 is a reintroduction of HB 5421 of the 2019-20 legislative session as that bill was passed by the House of Representatives.

**FISCAL INFORMATION:**

House Bill 4724 could result in a savings for the state and for local units of government, but it is not possible to know the extent of the savings, because it is not known how many convictions would be avoided because people are using devices for purposes of security monitoring in residences under provisions of section 539d. Fewer felony convictions would result in a savings for state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, including various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are all financed with state general fund/general purpose revenue. Fewer cases going to court would result in a savings for local court systems. A reduction in the amount of penal fine revenue collected would mean less revenue for public and county law libraries, the constitutionally designated recipients of those revenues.

**ARGUMENTS:*****For:***

The bill would offer a legislative “fix” to a law that creates criminals out of homeowners and realtors who use the latest in security technology to protect their property and themselves. The bill would apply to audio-capable monitoring devices used in homes or in buildings on residential property, such as a garage or barn, and when used for the purpose of security monitoring. In particular, realtors say that the bill could help agents protect their property when staging a home and when conducting an open house. An agent cannot follow every potential buyer around a property to make sure things don’t go missing. When an agent is alone, particularly in rural areas, use of equipment that can record both audio and video can be a strong deterrent in preventing an assault or can provide evidence of one that occurs.

Many families also find the enhanced security products on the market to be helpful in monitoring sleeping children or keeping tabs on elderly or frail parents who maintain separate residences. Homeowners would still be responsible for using the equipment for the intended purposes and not for lewd or lascivious purposes, such as running the equipment in a guest bedroom or bathroom where there is an expectation of privacy.

**POSITIONS:**

A representative of Michigan Realtors testified in support of the bill. (5-18-21)

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (5-18-21)

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■ 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.