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SFA**BILL ANALYSIS**

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Senate Bill 633 (Substitute S-2 as reported)
Sponsor: Senator Jon Cisky
Committee: Judiciary

CONTENT

The bill would create a new act to permit the interception of wire, oral, or electronic communication pursuant to judicial authorization in the investigation of specific drug-related offenses, and to do all of the following:

- Permit the contents of an intercepted communication or evidence derived from it to be used or disclosed by an investigative or law enforcement officer in the performance of his or her duties, or to be disclosed by a person giving testimony.
- Prohibit a prosecuting attorney from authorizing an application to intercept a communication unless the Attorney General or his or her designee approved the authorization.
- Prohibit the disclosure or use of the contents of a communication that was wrongfully intercepted.
- Prohibit the manufacture, possession, sale, or advertisement of devices primarily used for the interception of communication.
- Require that persons named in an order be given notice of its approval and implementation after the judge was notified of the investigation's termination.
- Allow a party to an intercepted communication, or a person against whom interception was directed, to move to suppress evidence of the contents of the communication or evidence derived from it.
- Establish various reporting requirements.
- Require the development of a communication interception training program for law enforcement officers.
- Require the Department of State Police to be notified of a communication interception application. (If the proposed interception would overlap, conflict with, hamper, or interfere with another proposed or authorized interception, the Department Director would have to advise the judge and coordinate any subsequent interceptions.)
- Create a civil cause of action for victims of a wrongful interception and make good faith reliance on an authorization a defense to civil or criminal liability.

Legislative Analyst: P. Affholter

FISCAL IMPACT

State Police/Law Enforcement: The bill would require the Department of State Police to develop a wiretapping and electronic surveillance course for local law enforcement agencies and provide certification and periodic recertification of law enforcement personnel in the State who would request it. The expense to State and local law enforcement would depend to a great extent on the interest of the law enforcement community to engage in the activities authorized under the bill. The cost to a law enforcement agency to wiretap a phone involves equipment costs, phone company charges, and personnel costs. The equipment required to tap a phone could cost \$15,000, depending upon the choice of electronic hardware made by a law enforcement agency. To set up a tap, the phone company must be employed to set up a second phone line to an existing line. This involves a charge from the phone company, which is \$600 per tap for such assistance in the Chicago area. Personnel costs can amount to the single largest cost component of a phone tap, depending on the length and

complexity of a tap operation. This involves live monitoring of a phone line as well as the handling and administrative requirements of dealing with a piece of legal evidence.

Training, certification, and reporting duties assigned to the Department under the bill could require additional administrative, equipment, and supply costs for the Department, depending upon to what extent the Department would wish to use existing personnel who currently engage in similar duties. Investigative personnel would have to be trained in wiretapping and electronic surveillance in order to qualify to instruct other law enforcement personnel in the State as required under the bill.

Training costs for local law enforcement under the bill are not known, but it is possible that training sessions could cost up to \$1,000 per week, with registration funds being used to offset departmental training costs.

The Department also would incur additional cost to the extent that the Department itself would take part in electronic surveillance activities. It is not known whether the Department would choose to use existing personnel within its criminal investigation division to perform these activities or whether the administration would request from the Legislature additional funds to establish a new specialty unit for this purpose.

Corrections: The repeal of certain sections of the Penal Code with a maximum penalty of two years and the addition of new penalties with a maximum term of four years in prison could result in increased costs for sanctioning violators. Also, the new penalties in the bill for disclosing the contents of a wrongfully intercepted communication, and for manufacturing, possessing or selling an interception device, could increase costs for prosecuting and sanctioning violators. Although insufficient data are available at this time to estimate the potential number of annual violators and the length of sentence imposed, the average cost per prisoner of confinement is approximately \$15,000 per year.

In addition, to the extent that the bill resulted in increased convictions, State and local criminal justice costs would increase. In 1995, there were over 8,100 convictions for a drug-related offense, nearly 1,800 (22%) receiving a prison sentence, with an average minimum sentence of 2.2 years. For example, an increase in annual convictions of 10 offenders, each receiving a two-year sentence, would cost an additional \$300,000 annually.

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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.