

AUDIO RECORDINGS BY HOME SECURITY MONITORS

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House Bill 5421 (H-1) as reported from committee

Sponsor: Rep. Graham Filler

Committee: Judiciary

Complete to 2-26-20

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

SUMMARY:

House Bill 5421 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 Penal 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 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

BRIEF DISCUSSION:

House Bill 5421 would resolve a conundrum of the sort that can be created when technology outpaces statutory restrictions. Simply put, a person who places in a home security cameras capable of recording audio in addition to video instantly violates the prohibition 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. The bill only applies 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 evidence of one that occurs. 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.

FISCAL IMPACT:

House Bill 5421 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 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, including 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 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.

POSITIONS:

A representative of Michigan Realtors testified in support of the bill. (2-11-20)

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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.