

ALLOW PARENTAL EAVESDROPPING

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House Bill 4891 (H-3) as reported from committee

Sponsor: Rep. Peter J. Lucido

Committee: Families, Children and Seniors

Complete to 3-7-18

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

SUMMARY:

House Bill 4891 would amend the Michigan Penal Code to allow custodial parents, foster parents, or guardians to eavesdrop on conversations in which their minor children are participants.

Sections 539a to 539f of the Code prohibit and provide penalties for eavesdropping under various circumstances. Section 539g provides the following exceptions, thereby permitting any of the following:

- Eavesdropping or surveillance by a peace officer, the federal government, or the officer's agent while in the performance his or her duties.
- Hearing a communication transmitted by common carrier facilities by an employee when acting in the course of his or her employment.
- Recording by a public utility of telephone communications to it requesting service or registering a complaint by a customer if a record of the communication is required for legitimate business, among other things.
- Routine monitoring (including recording) by employees of the Department of Corrections of telephone communications on telephones available for use by prisoners in state correctional facilities.

The bill would add to the list of allowable exceptions eavesdropping not otherwise prohibited by law on a minor child by the custodial parent, foster parent, or guardian of the minor child during a private conversation to which the minor child is a participant. However, the exception allowing the eavesdropping would not extend to a private conversation with any of the following:

- The minor child's attorney or guardian ad litem.
- A child custody investigator or peace officer.
- The other custodial parent, unless there is a good-faith, objectively reasonable basis to believe that eavesdropping is necessary to protect the well-being or safety of the minor child.

MCL 750.539g

FISCAL IMPACT:

To the extent that provisions of the bill result in fewer people being convicted of eavesdropping crimes, the bill could result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced costs related to the state correctional system and reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Citizens for Parental Rights-PAC supports the bill. (2-22-18)

The ACLU of Michigan opposes the bill. (10-5-17)

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