

Legislative Analysis



PROHIBIT TAKING OF CERTAIN VISUAL IMAGES

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House Bill 5692 (Substitute H-3)
Sponsor: Rep. Fran Amos

House Bill 5693 as introduced
Sponsor: Rep. Sandra Caul

Committee: Criminal Justice
First Analysis (3-30-04)

BRIEF SUMMARY: The bills would prohibit the use of camera phones, video recorders, and other devices to look at or record images of people under certain circumstances and to provide penalties for a violation.

FISCAL IMPACT: Fiscal information is not available at present.

THE APPARENT PROBLEM:

As telecommunication technology advances, the ingenuity of individuals to abuse the new technology also advances. In particular, laws have not kept pace with the illicit use of video recorders and camera phones. For example, Michigan prohibits the unauthorized installation of devices in private places for the purpose of observing, photographing, or eavesdropping upon unsuspecting persons; a violation is a two-year felony with a possible fine of up to \$2,000. In recent years, stories of maintenance workers installing cameras in bedrooms and bathrooms of apartments in order to “spy” or record the occupants in the act of dressing, bathing, and so forth have made the news, as have stories of store employees watching women try on clothes in changing rooms. At times, these images have even appeared on the Internet, as did the images of athletes changing in locker rooms at various universities just a few years ago.

However, the smaller, mobile video recorders, digital cameras, and camera phones are already presenting a problem here and abroad. According to media reports, a man was arrested in Texas last year for sliding his camera phone underneath women’s skirts, and another man was arrested in a Seattle grocery store for the same offense. In Michigan, prosecutors already have been frustrated in fitting existing laws to crimes such as the incident in which a man placed a small video recorder in a gym-type bag and walked down the street swinging the bag seemingly in a random manner; however, in reality, he was swinging the camera in such a manner as to videotape glimpses under the skirts of passing women. As the camera was neither installed nor being used in a “private place”, prosecutors were forced to charge him with a much lower misdemeanor offense.

As to the improper use of camera phones, Asian and European countries already have been reporting problems of people using them to snap shots of others in bathrooms,

locker rooms, and under the clothing of strangers in public places such as crowded subway cars. Some schools in other countries have banned camera phones as students use them as yet another way to bully or harass other students. In a matter of minutes, images are quickly emailed, posted to the Internet, or sent to other camera phones. The potential for harassment and pornography is huge, and some fear that camera phones will also be used by pedophiles.

According to a Reuters news service report, a recent survey done by Strategy Analytics, a U.S.-based market research group, found that one in six mobile phones sold in 2003 worldwide were camera phones – an almost five-fold increase over the previous year. Experts believe that by 2008, at least one half of the mobile phones in use will be camera phones. Camera phones have only recently come into use in the U.S. However, some local municipalities, a handful of states, schools, and businesses are drafting and adopting laws and policies prohibiting certain uses of camera phones and similar devices. Legislation has been offered to update Michigan statutes to address the abuses of the newer technology.

THE CONTENT OF THE BILLS:

Currently, it is illegal to install in any private place, without the consent of the person entitled to privacy, any device for observing, photographing, or eavesdropping upon the sounds or events in that place. A “private place” is defined in the code as a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or substantial group of the public has access. If convicted, a person is guilty of a felony punishable by up to two years imprisonment and/or a fine of not more than \$2,000.

House Bill 5692 would amend the Penal Code (MCL 750.539d) to expand the current prohibition to include the actions of placing or using a device and would also include recording and transmitting the sounds or events as prohibited acts. The penalty would remain the same. Moreover, the bill would expand the scope of the statute to include acts that occurred in places other than a private place.

Under the bill, it would be illegal to surveil another person who was clad only in his or her undergarments, the unclad genitalia or buttocks of any individual, or the unclad breasts or a female individual under circumstances in which the person would have a reasonable expectation of privacy. “Surveil” would mean the same as “surveillance” which is defined in the code to mean secretly observing the activities of another person for the purpose of spying upon and invading the privacy of the person being observed.

It would also be illegal to record, transmit or otherwise capture the visual image of the undergarments worn by another, the unclad genitalia or buttocks of any individual, or the unclad breasts or a female individual under circumstances in which the person would have a reasonable expectation of privacy.

A violation of the new provisions would be a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$5,000.

The bill would not apply to security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

The bill would take effect 90 days after enactment.

House Bill 5693 would amend the Code of Criminal Procedure (MCL 777.16z) to specify that surveillance in a private place would be a Class H felony against the public order with a maximum term of imprisonment of two years and that lewd surveillance and capturing lewd images would be Class E felonies against the public order with a maximum term of imprisonment of five years.

ARGUMENTS:

For:

Michigan's laws have not kept pace with technological advances in the area of telecommunication devices. As a result, prosecutors may be hard-pressed to find a punishment that fits the crime of using these newer devices on the market to see or record people showering or changing in locker rooms and dressing rooms, or to prosecute those who would stick these devices under bathroom stall doors or up women's skirts on public streets.

House Bill 5692 would expand the current statute to include devices that are not installed, such as hand-held camcorders (or camcorders hidden in gym bags, etc.), digital and other small cameras, camera phones, and so forth. Also, the bill would appear to include incidents that did not occur in the traditional places deemed to be private, such as bedrooms, bathrooms, and changing rooms, but also in public places such as on the street or when using public transportation if the act involved photographing, recording, transmitting, etc. images of a person's undergarments or private areas without authorization. In so doing, Michigan will be proactive in creating penalties to both deter such behaviors and also to appropriately punish offenders.

Response:

The bill does not define "reasonable expectation of privacy"; therefore, there may be a problem in enforcing the proposed changes in House Bill 5692. Some may argue that there is no expectation of privacy when in a public place, where others may argue that a person does indeed have a "reasonable expectation of privacy" regarding his or her undergarments or certain body parts. Without a definition, some feel it may be up to a court's interpretation when a case comes to trial.

POSITIONS:

The Prosecuting Attorneys Association supports the bills. (3-24-04)

A representative of the Michigan Council of Private Investigators testified in support of the bills. (3-24-04)

A representative of the Michigan Contract Security Association testified in support of the bills. (3-24-04)

Legislative Analyst: S. Stutzky

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