

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7546

BILL NUMBER: SB 411

NOTE PREPARED: Apr 2, 2007

BILL AMENDED: Apr 2, 2007

SUBJECT: Wiretap Law.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Tincher

BILL STATUS: CR Adopted - 2nd House

**FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) The bill includes additional offenses as designated offenses for purposes of intercepting electronic communication. The bill also defines "electronic communication" to include any type of communication transmitted by a wire, a radio, orally, or an electromagnetic, a photoelectronic or a photo-optical system, and replaces references to interception of a telephonic or telegraphic communication. This bill permits the State Police Department to authorize a law enforcement agency that has requested an interception to operate or monitor equipment under the supervision of the State Police Department. The bill specifies that the Superintendent of the State Police Department may terminate an interception if there is probable cause that the allegations on which the interception is based are without merit. The bill also requires a law enforcement agency on whose behalf the State Police Department undertakes an interception to reimburse the state police department in certain circumstances. The bill establishes a procedure to permit a warrant for the interception of electronic communication to be issued without a written affidavit if certain conditions are met. The bill provides that a warrant issued without a written affidavit expires not more than 24 hours after it is issued. The bill also repeals a provision requiring automatic appellate review of warrants issued for an intercept. The bill makes other changes.

Effective Date: July 1, 2007.

Explanation of State Expenditures: This bill could increase expenditures for the State Police Department (ISPD). The increase in expenditures will ultimately depend upon the increase in the number of instances the ISPD attempts to intercept electronic communications (wiretapping) in an investigation.

The bill may cause an increase in wiretapping by increasing the number of criminal offenses which may allow the ISPD or a law enforcement agency to seek a warrant to wiretap for investigation. Under current

law the list of "designated offenses" includes only:

- (1) A Class A, Class B, or Class C felony that is a controlled substance offense (IC 35-48-4).
- (2) Murder (IC 35-42-1-1), while committing or attempting to commit a controlled substance offense under IC 35-48-4-1 through IC 35-48-4-4.

The bill adds:

- (3) Kidnapping (IC 35-42-3-2).
- (4) Criminal confinement (IC 35-42-3-3).
- (5) Robbery (IC 35-42-5-1).
- (6) Arson (IC 35-43-1-1).
- (7) Child solicitation (IC 35-42-4-6).
- (8) Human and sexual trafficking crimes under IC 35-42-3.5.
- (9) Escape as a Class B felony or Class C felony (IC 35-44-3-5).
- (10) An offense that relates to a weapon of mass destruction (as defined in 35-41-1-29.4).
- (11) An attempt or conspiracy to commit an offense described in subsections (1) through (10).
- (12) An offense in another jurisdiction that is substantially similar to an offense described in subdivisions (1) through (11).

The bill also expands the definition of the types of communications that may be intercepted to include all "electronic communications". Under current law, wiretaps may only be used for telephone or telegraphic communications. The bill would allow wiretaps to be used to intercept any "electronic communication" which is defined in the bill as "any transfer of signs, signals, writing, images, sounds, data, digital information, or intelligence of any nature transmitted in whole or in part by a wire, a radio, orally, or an electromagnetic, a photoelectronic, or a photo-optical system."

The costs of wiretapping will only increase expenditures of the ISPD when the wiretapping is being performed by the ISPD on behalf of the ISPD. The bill provides that if the ISPD operates or monitors equipment used to wiretap on behalf of another law enforcement agency, that agency must reimburse the ISPD for expenses related to the wiretapping. Therefore this bill could increase expenditures for all law enforcement agencies to the extent that there is an increase in the number of wiretaps used by the agency.

If additional criminal defendants are convicted as a result of this legislation there could be an increase in expenditures for the Department of Correction (DOC). Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in DOC facilities for all Class A felony offenders is approximately 9.1 years.

Explanation of State Revenues: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase.

Explanation of Local Expenditures: This bill could increase expenditures for all local law enforcement agencies to the extent that there is an increase in the number of wiretaps used by the agency.

If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: All law enforcement agencies; Department of Corrections.

Local Agencies Affected: All local law enforcement agencies; Trial Courts.

Information Sources:

Fiscal Analyst: Adam Brown, 317-232-9854.