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INTERNET/COMPUTER USE FOR CRIME

House Bill 4345 (Substitute H-2)

Sponsor: Rep. Jim Howell

**Committee: Criminal Law and
Corrections**

**Senate Bill 7 with House committee
amendment**

Sponsor: Sen. Mike Rogers

Senate Committee: Judiciary

**House Committee: Criminal Law and
Corrections**

First Analysis (3-18-99)

THE APPARENT PROBLEM:

The Internet includes e-mail, chat rooms, news groups, and Web servers that provide vast amounts of information and opportunities for interactive communication to millions of people through the use of a computer. Reportedly, Internet use is approximately 40 million world-wide, with 6 million users being minor children. Many children access the Internet at school, at public libraries, and in their homes, where they can demonstrate highly advanced computer proficiency.

Despite the beneficial and educational advantages of the Internet's growing network of information, it also can provide a powerful avenue for potential public hazards such as the exchange of pornographic materials, child exploitation, kidnaping, and other crimes. The Internet's anonymous nature and lack of monitoring can enable molesters and pedophiles to lure children into chat rooms and e-mail correspondence and to entice them into real-world situations where the child would be vulnerable.

According to a child pornography tipline, pedophiles and molesters often befriend lonely children by contacting them on an electronic bulletin board and exchanging private messages on the Internet to find out about the child's relationship with parents and friends. The pedophile then breaks down the child's inhibitions, sometimes misrepresenting himself or herself as a child, and offers love and affection to convince the child to agree to an encounter. Reportedly, there have been such incidents in

Michigan, including one involving a 13-year-old girl in Livingston County who was sexually assaulted by a father and son whom she met over the Internet. In another reported incident, a man was accused of traveling to Massachusetts to have a sexual encounter with a 16-year-old girl whom he had met on-line.

It has been suggested that establishing criminal penalties for using the Internet to exploit and prey upon children would help curb further victimization of minors, discourage child predators, and keep the Internet safe for children.

THE CONTENT OF THE BILL:

Senate Bill 7 and House Bill 4345 would amend the Michigan Penal Code (MCL 750.145d) and the Code of Criminal Procedure (MCL 777.16g), respectively, to establish felony penalties for individuals who use the Internet to commit certain crimes involving a minor.

Prohibited Communication. Senate Bill 7 would prohibit the use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of doing any of the following:

-- Committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following crimes, when the victim or intended victim was a minor: involvement in child sexually abusive

activity or material (MCL 750.145c); kidnaping (MCL 750.349); stalking or aggravated stalking (MCL 750.411h and 750.411i); first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) (MCL 750.520b-750.520e); or assault with intent to commit CSC (MCL 750.520g).

-- Committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following: solicitation of a child for immoral purposes (MCL 750.145a); recruitment or inducement of a minor to commit a felony (MCL 750.157c); or kidnaping of a child under the age of 14 (MCL 750.350).

Penalties. A violation would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. If a person had one or more prior convictions, the offense would be punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both. ("Prior conviction" would include a violation or attempted violation of the bill, or a law of the United States or another state substantially corresponding to the bill.) A sentencing court could order that a term of imprisonment imposed for a violation of the bill be served consecutively to and preceding any term of imprisonment imposed for the underlying offense.

If the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor would have to include a statement listing the prior conviction or convictions on the complaint and information. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

The bill specifies that it would not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed while violating or attempting to violate the bill, including the underlying

offense. The bill's penalties would apply regardless of whether the person was convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

A violation or attempted violation of the bill would occur if the communication originated, terminated, or both originated and terminated in Michigan, and could be prosecuted in any jurisdiction in which the communication either originated or terminated.

Definitions. "Internet" would mean that term as defined in Title II of the Federal Communications Act (47 USC 230). That act defines "Internet" as "the international computer network of both federal and non-federal interoperable packet switched data networks".

"Computer" would mean any connected, directly interoperable or interactive device, equipment, or facility that used a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program and that could store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network. "Device" would include, but not be limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performed input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

"Computer network" would mean the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers. "Computer program" would mean a series of internal or external instructions communicated in a form acceptable to a computer that directed the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network. "Computer system" would mean a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

"Minor" would mean a person who was less than 18 years of age.

Effective Date. The bill would take effect August 1, 1999.

House Bill 4345 would include in statutory sentencing guidelines the offense of using the Internet or a

computer for crimes involving minors, as proposed by Senate Bill 7. A first offense, which would be punishable by up to two years' imprisonment, would be categorized as a Class G felony against a person; a second or subsequent offense, which would be punishable by up to five years' imprisonment, would be categorized as a Class E felony against a person.

The bill is tie-barred to Senate Bill 7, and would take effect August 1, 1999.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bills (Senate Bill 7 and Senate Bill 217 - the Senate version of House Bill 4345) would result in an indeterminate potential increase in cost for state and local governments. The increase in costs would depend upon the number of criminals who were convicted of crimes under Senate Bill 7's provisions. Given that the average cost of incarceration is about \$18,000, and that currently an offender with a two year sentence spends about 16 months in prison, the added penalty proposed in the bills would increase the cost of a prison term about \$24,000. The prison term for a second or subsequent offense would increase the prison term by about 40 months, for an additional cost of \$60,000. Although there is no way of knowing how many of the 2,386 criminal dispositions involving the relevant felonies during 1996 involved minors and Internet facilitation, if one assumed that 5 percent of the 1996 criminal dispositions with prison terms involved minors, the Internet, and nonconcurrent sentences, and that half were second or subsequent offenses, prison term costs could increase by \$2,310,000 in the long run. (2-9-99)

ARGUMENTS:

For:

The bills would address a growing problem of sexual predators taking advantage of children, by making it a felony to use the Internet, a computer, or a computer

program, network, or system to abuse, exploit, kidnap, or solicit a minor child. The bills would provide police and prosecutors with strong statutory standards to support prosecutions in court by subjecting violators to imprisonment and/or fines, and imposing greater penalties for subsequent offenses. While advances in computer technology allow children to explore vast sources of information, the technology also makes them more vulnerable to exploitation by anonymous predators. Since there is reportedly little restriction of pornography-related activity on the

Internet, sexual predators can manipulate children into examining or participating in unrestricted pornography. Although parents should protect children from offensive or sexually explicit material by close supervision of their children's Internet activity, there is still no reliable way to curb minors' access to pornography and sexually explicit conversation on the Internet. With more and more children using the Internet and e-mail, protection is needed against sexual predators who use it as a tool for indecent communication and the exchange of unsuitable material with minors.

Response:

The bills do not go far enough; they should include more crimes.

Against:

The bills are unnecessary. Current law already gives prosecutors the ability to charge persons for luring minors to sexual activities, whether the person committing the crime uses a piece of candy, a pet, or the Internet. Indeed, the father and son who arranged a meeting with a 13-year-old Livingston County girl were convicted of third-degree CSC and given the maximum sentence of 10-15 years imprisonment. In addition, according to a February 5, 1999, article in the Detroit Free Press, there have been two recent arrests in Oakland County in cases in which men lured or attempted to lure young girls into meeting them for sexual encounters.

Response:

The bills would be an additional tool to use in enforcing and prosecuting these Penal Code violations. They could deter potential offenders from using the Internet and other computer connections to commit the specified crimes. In addition, they could be used to exact greater punishment on those who did use this technology in furtherance of their crimes, just as the law provides for greater penalties for the use of a firearm in committing a felony.

POSITIONS:

The Department of State Police supports the bills. (3-16-99)

The Prosecuting Attorneys Association of Michigan supports Senate Bill 7. (3-16-99)

A representative of the Attorney General's Office testified in support of the bills. (3-16-99)

The Criminal Defense Attorneys of Michigan oppose the bills. (3-16-99)

Analyst: W. Flory

■ 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.