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BILL ANALYSIS

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Senate Bill 7 (as enrolled)
House Bill 4345 (as enrolled)
Sponsor: Senator Mike Rogers (Senate Bill 7)
Representative Jim Howell (House Bill 4345)
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 32 of 1999**PUBLIC ACT 39 of 1999**

Date Completed: 1-27-00

RATIONALE

The Internet includes e-mail, chat rooms, news groups, and Web servers that provide vast information and interactive communication to millions of people through the use of a computer. Reportedly, over 40 million use the Internet world-wide, with more than 6 million users being minor children. Many children are exposed to the Internet through school, public libraries, and homes, where they can learn and 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, kidnapping, 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 having sexual encounters.

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 a 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 was 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.

CONTENT

Senate Bill 7 and House Bill 4345 amended the Michigan Penal Code and the Code of Criminal Procedure, respectively, to establish felony penalties for use of computers or the Internet to commit certain crimes involving a minor.

House Bill 4345 was tie-barred to Senate Bill 7. Both bills took effect on August 1, 1999.

Senate Bill 7**Prohibited Communication**

The bill prohibits 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 is a minor: involvement in child sexually abusive activity or material (MCL 750.145c); kidnapping (MCL 750.349); stalking or aggravated stalking (MCL 750.411h & 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 kidnapping of a child under the age of 14 (MCL 750.350).

Penalties

A violation of the bill is a felony, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. If a person has one or more prior convictions, the offense is punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both. ("Prior conviction" includes 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 may 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 intends to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor must include a statement listing the prior conviction or convictions on the complaint and information. The existence of a prior conviction must 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 may 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 does 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 apply regardless of whether the person is 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 occurs if the communication originates, terminates, or both originates and terminates in Michigan, and may be prosecuted in any jurisdiction in which the communication either originates or terminates.

Definitions

"Internet" means 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" means any connected, directly interoperable or interactive device, equipment, or

facility that uses 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 can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network. "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

"Computer network" means 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" means a series of internal or external instructions communicated in a form acceptable to a computer that directs 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" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

"Minor" means a person who is less than 18 years of age.

House Bill 4345

The bill included in statutory sentencing guidelines the offense of using the Internet or a computer for crimes involving minors, as enacted by Senate Bill 7. A first offense, which is punishable by up to two years' imprisonment, is categorized as a Class G felony against a person; a second or subsequent offense, which is punishable by up to five years' imprisonment, is categorized as a Class E felony against a person.

MCL 750.145d (S.B. 7)
777.16g (H.B. 4345)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills 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 provide police and prosecutors with a strong statutory framework 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 little or no restriction of pornography-related activity on the Internet, sexual predators can manipulate children into examining pornography or participating in pornographic communications. 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 did not go far enough; they should have included more crimes.

Opposing Argument

The bills were unnecessary because prosecutors already had the ability to charge persons for luring minors to sexual activities in any way, including 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 were two 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 are an additional tool to use in enforcing and prosecuting these Penal Code violations. They can deter potential offenders from using the Internet and other computer connections to commit the specified crimes. In addition, they may be used to exact greater punishment on those who do 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.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 7 and House Bill 4345 will result in an indeterminate, yet potential additional cost for State and local government. In 1997, 2,406 criminal dispositions involved Section 145c, 349, 411h, 411i, 520b-520e, or 520g of the Penal Code, dealing with child abusive commercial activity, kidnapping, stalking, or criminal sexual conduct. Of the 2,406

criminal dispositions, a little more than half of the offenders were sentenced to prison and the rest received jail, probation, or other sanctions. It is unknown how many of the victims were minors or how many offenders used the Internet to facilitate the crime. Additionally, in 1997, three criminal dispositions involved Section 157c of the Penal Code dealing with soliciting a minor to commit a crime. It appears that no criminal dispositions involved Section 350 or 145a of the Penal Code, dealing with child kidnapping and enticement.

The minimum sentence range for using the Internet to commit the enumerated crimes will be determined by the "G" sentencing guideline grid for first-time offenders and the "E" sentencing guideline grid for second or subsequent offenders. Minimum sentences on the "G" grid range from 0-3 months to 7-23 months. (According to the sentencing guidelines statute, the minimum sentence cannot exceed two-thirds of the maximum sentence, making the upper limit for first time offenders 16 months.) Minimum sentences on the "E" grid range from 0-3 months to 24-38 months.

There are no data available that indicate how many people may be convicted of this offense, either as first-time or as second or subsequent offenders. Assuming that each year a number equivalent to 5% of the 1997 offenders convicted of the underlying crimes and given a prison sentence also were convicted of using the Internet to commit the underlying crime against a minor victim, that half of the offenders were first-time offenders and that half were second or subsequent offenders, and that the offenders received the highest possible minimum sentence, given that the average annual cost of incarceration is \$22,000, the State cost of incarceration for these offenders would be \$2,229,000 for second or subsequent offenders. First-time offenders will not be sentenced to prison for this crime alone, because the sentencing guidelines statutes require local sanctions for offenders serving less than 18 months. However, assuming that the sentencing would be given nonconcurrently, the additional cost for housing the offenders in a State facility would be \$939,000.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.