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SFA**BILL ANALYSIS**

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Senate Bill 562 (as enrolled)
Sponsor: Senator Mike Rogers
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 235 of 1999

Date Completed: 2-16-00

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 worldwide, with more than 6 million users being minor children. Many children are exposed to the Internet through school, public libraries, and homes. 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, bomb threats, and gambling law violations. The Internet's anonymous nature and lack of monitoring can enable molesters, pedophiles, terrorists, and those who operate illegal gambling operations to pursue their illicit activities.

Public Act 32 of 1999, which took effect on August 1, 1999, addressed part of this problem by establishing felony penalties for individual who use the Internet to commit certain crimes involving minors, such as stalking, criminal sexual conduct, or kidnapping. While Public Act 32 deals with use of the Internet or other computer connections to commit various child-exploitation crimes, the Internet also may be ripe for use in committing, attempting, or threatening various bombing offenses and violating gaming laws. After last year's widely publicized incident at Columbine High School in Littleton, Colorado, there were many school-based bomb threats in Michigan, including threats that apparently were communicated over the Internet. In addition, Michigan is now experiencing a growth period in commercial gaming enterprises, both with the development of casinos in Detroit and in the increasing popularity of tribal casinos throughout the State. To ensure the legitimacy of these enterprises, it is considered necessary that the State closely enforce penal laws against illicit gaming operations. Some people believe that the use of the Internet or other computer connections in committing bombing, bomb threat, or various gambling offenses should be subject to enhanced penalties, just as

child exploitation and endangerment offenses are under Public Act 32.

CONTENT

The bill amended the Michigan Penal Code to prohibit use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following:

- An explosives offense listed in Chapter 33 of the Code; causing a death by explosives (MCL 750.327 or 750.328); selling explosives to a minor (MCL 750.327a); or intentionally reporting a crime relating to a bombing, attempted bombing, or threat to bomb, knowing that the report is false (MCL 750.411a(2)).
- Accepting money or other valuables contingent on an uncertain event (MCL 750.301); keeping or occupying a gambling house or gambling apparatus, or manufacturing or possessing a gambling apparatus for sale, except as otherwise allowed (MCL 750.302); illegally keeping or maintaining a gaming room, gaming table or game of skill or chance for hire, gain, or reward (MCL 750.303); selling pools and registering bets (MCL 750.304); publication or distribution of betting odds (MCL 750.305); unlawful use of a teletype ticker or other machine for communicating information concerning racing results (MCL 750.305a); gambling in stocks, bonds, or other commodities by the pretended buying or selling of shares (MCL 750.311); or various violations of the Michigan Gaming Control and Revenue Act (MCL 432.218).

A violation involving a gambling offense is a felony, punishable by up to two years' imprisonment, a

maximum fine of \$2,000, or both. A violation involving a bombing or bomb threat offense, or a second or subsequent gambling conviction, is a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both.

In addition, under the provision added to the Code by Public Act 32, use of the Internet or a computer to commit, attempt to commit, conspire to commit, or solicit another to commit stalking or aggravated stalking qualified for enhanced penalties only if the victim or intended victim was a minor. Under Senate Bill 562, enhanced penalties apply to those offenses regardless of the victim's age.

Also, Public Act 32 specified that a violation or attempted violation occurred if the communication originated, terminated, or both originated and terminated in Michigan. Under Senate Bill 562, a violation or attempted violation occurs if the communication originates, is intended to terminate, or both originates and terminates in Michigan.

MCL 750.145d

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 bill expands recently enacted provisions calling for enhanced penalties to deal with people who use the Internet to commit certain crimes. As with Public Act 32 of 1999, this law will provide police and prosecutors with an additional tool to use in enforcing and prosecuting these violations. The bill should deter offenders from using the Internet and other computer connections to commit bombing, bomb threat, and gambling offenses. In addition, the enhanced and graduated penalty provisions can be used to exact greater punishment on those who do use this technology in furtherance of their crimes, just as the law applies greater penalties for the use of a firearm in committing a felony.

Opposing Argument

The bill was unnecessary. The law already provided ample punishment for the specified crimes. Enhancing the penalties merely because a computer or the Internet is used seems unreasonable. Other forms of communication, such as the telephone and direct, face-to-face contact do not make the violations any less objectionable, so imposing extra prison time or heftier fines for Internet or computer

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use is unwarranted.

Response: The millions of Internet users create a vast population of potential victims, and the ease of communicating electronically with relative anonymity makes the Internet a unique forum for would-be perpetrators.

Opposing Argument

The offenses included in the bill seem arbitrary. If bombing, bomb threat, and gambling offenses are to be treated more harshly due to use of the Internet or a computer, perhaps other crimes, such as embezzlement, also should receive enhanced penalties.

Response: Bombing and bomb threats involve acts of violence, destruction, and terror, while gaming is a State-regulated activity that can be prone to organized violations.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government.

According to the 1997 Department of Corrections Statistical Report, 22 convictions involved Section 411a(2), 301, 302, or 303 of the Penal Code, and there were no felony convictions for Section 327, 328, 327a, 304, 305, or 305a of the Penal Code or Section 218 of the Michigan Gaming Control and Revenue Act. There are no data available to indicate how many of the convicted offenders may have used the Internet or a computer to commit their crime. Of the 22 offenders convicted, three received prison sentences. Assuming that most offenders convicted of these crimes are not sentenced to prison based on the 1997 statistics, local units of government absorb the costs of the sanction. If their length of sentence increases as the result of a second conviction resulting from the same act, offenders who otherwise may have been sanctioned locally, may be incarcerated in State facilities. The bill provides for the maximum penalty; however, the length of incarceration and the resulting cost of incarceration are based on the minimum sentence imposed.

In addition, in 1997, there were 2,224 convictions for violation of Section 145c, 349, 520b, 520c, 520d, 520e, or 520g of the Penal Code dealing with child abusive commercial activity, stalking, or criminal sexual conduct. There are no data available to indicate the age of the crime victim or if the Internet or a computer was used. Thus, the cost of imposing an additional penalty is indeterminate.

Fiscal Analyst: K. Firestone