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SFA**BILL ANALYSIS**

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Senate Bill 562 (as introduced 5-4-99)
Sponsor: Senator Mike Rogers
Committee: Judiciary

Date Completed: 5-5-99

CONTENT

The bills would amend the Michigan Penal Code to establish felony penalties for use of the Internet to commit certain crimes involving either a minor or bombs and explosives. The bill would take effect 90 days after its enactment.

Prohibited Communication

The bill 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); 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).
- Committing, attempting to commit, conspiring to commit, or soliciting another person to commit an explosives offense enumerated in Chapter 33 of the Michigan Penal Code.

Penalties

A violation of the bill 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 the 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.

Proposed MCL 750.145d

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 562 would 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, 53% were sentenced to prison and the 47% were sentenced to 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. 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 Sections 350 or 145a of the Penal Code, dealing with child kidnapping and enticement. In addition, there were 41 dispositions involving violation of Chapter 33 of the Penal Code involving bombing. Of those, 24% received prison sentences.

Given that the average cost of incarcerating a prisoner is \$22,000 and that under current law an offender with a two-year maximum sentence would spend about 16 months in prison, the added penalty under the proposed legislation would increase the cost of a prison term about \$29,300. The prison term for a second or subsequent offense, under current sentencing practices, would increase a prison term by about 40 months, for an additional cost of \$73,300. Although there is no way of knowing how many of the 1997 criminal dispositions involved minors and Internet facilitation, if one assumed that 5% of the 1997 criminal dispositions with prison terms involved minors, the Internet, and nonconcurrent sentences, and that half were second or subsequent offenses, prison term costs would increase by \$3,283,200 in the long run.

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.