House Bill 5184 (Substitute S-1 as reported)
House Bill 5185 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 5186 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 5187 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative Gene DeRossett (House Bill 5184)
          Representative William O'Neil (House Bill 5185)
          Representative Jim Howell (House Bill 5186)
          Representative Ruth Jamnick (House Bill 5187)
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

CONTENT

The bills would amend the Code of Criminal Procedure and Public Act 53 of 1979 (which prohibits access to computers for certain fraudulent purposes and the intentional and unauthorized access to, and alteration, damage, and destruction of computers) to include violations of Public Act 53 in the Code's sentencing guidelines and impose new penalties for certain violations of that Act.

House Bill 5184 (S-1) would include in the sentencing guidelines criminal offenses contained in Public Act 53 of 1979, along with new penalties proposed by House Bill 5186 (S-1) for some of those offenses. Unlawful access to a computer, computer system, or computer program would be a Class E property felony with a statutory maximum of five years' imprisonment. Unlawful access with a prior conviction would be a Class D property felony with a 10-year maximum. The bill also would establish the class and statutory maximum for using a computer to commit a crime, according to the maximum term of imprisonment applicable to the crime committed, as shown in Table 1.

Table 1

Maximum Term of Crime (Years)	Felony Class	Statutory Maximum
At least 1 but less than 2	G	2
At least 2 but less than 4	F	4
At least 4 but less than 10	D	7
At least 10 but less than 20	C	10
At least 20 or life	C	20

The sentencing court would have to determine the offense category, offense variable level, and prior record level based on the underlying offense.

House Bill 5185 (S-2) would amend Section 6 of Public Act 53 of 1979, which prohibits the use of a computer or a computer program, system, or network to commit a crime. The bill also would prohibit computer use to attempt, conspire, or solicit another person to commit a crime. The bill specifies that Section 6 would not prohibit a person from being convicted of any other violation, including the underlying offense. Section 6 would apply regardless of whether the person was convicted of the underlying offense.

House Bill 5186 (S-1) would revise penalties for a violation of Public Act 53, which currently are graduated and based on the "aggregate amount" involved and prior convictions. Under the bill, those penalties would apply only to a violation of Section 4 of the Act, which prohibits a person from intentionally gaining access or causing access to be made to a computer or a computer program, system, or network "to devise or execute a scheme or artifice with the intent to defraud or to obtain money, property, or a service by a false or fraudulent pretense, representation, or promise".

Section 5 of the Act prohibits a person from gaining access or causing access to be made to a computer or

computer program, system, or network to acquire, alter, damage, delete, or destroy property or inserting or attaching or knowingly creating the opportunity for an insertion or attachment of a set of instructions or a computer program into a computer or computer program, system, or network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property. A violation of Section 5 would be a felony punishable by up to five years' imprisonment and/or a maximum fine of $10,000. If the offender had a prior conviction, the felony would be punishable by up to 10 years and/or $50,000.

The bill would establish penalties for a violation of Section 6 (described in the summary of House Bill 5185 (S-2), above) based upon the maximum term of imprisonment for the underlying crime, as shown in Table 2.

Table 2

Maximum Term of the Underlying Crime (years)	Proposed Maximum Fine	Proposed Maximum Term (years)
Misdemeanor or Felony		
1 or less	$5,000	1
At least 1 but less than 2	5,000	2
At least 2 but less than 4	5,000	4
Felony		
At least 4 but less than 10	5,000	7
At least 10 but less than 20	10,000	10
At least 20 or life	20,000	20

If the underlying crime were a misdemeanor punishable by one year or less, the violation of Section 6 would be a misdemeanor. The remaining violations would be felonies. A court could order consecutive terms.

The bill also would authorize a sentencing court to order a person convicted of a Public Act 53 violation to reimburse the State or a local unit for expenses incurred in relation to the investigation and prosecution of the violation.

House Bill 5187 (S-1) would revise the definition of "aggregate amount" in Public Act 53. Currently, that term means any loss incurred by a victim, including the value of any money, property or service lost, stolen, or rendered unrecoverable, or any actual expenditure incurred to verify that a computer or a computer program, system, or network was not altered, acquired, damaged, deleted, disrupted, or destroyed. The bill specifies that losses incurred in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value of the loss. The bill also would refer to a victim or a "group of victims".

All of the bills would take effect 90 days after their enactment, and are tie-barred to Senate Bills 893, 894, and 1162. (Senate Bill 893 would amend the Revised Judicature Act to allow the seizure of property used in crimes committed by use of a computer. Senate Bill 894 would amend the Michigan Penal Code to revise offenses and penalties for certain offenses involving use of a computer, and provide for reimbursement of the costs of investigation and prosecution. Senate Bill 1162 would amend the Code of Criminal Procedure to include the revised penalties in the sentencing guidelines.) House Bill 5184 (S-1) also is tie-barred to House Bills 5185, 5186, and 5187. House Bills 5185 (S-2), 5186 (S-1), and 5187 (S-1) are tie-barred to each other.

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    752.796 (H.B. 5185)
    752.797 (H.B. 5186)
    752.792 (H.B. 5187)

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people may be convicted of unlawful access to a computer. The new penalties would be incorporated into the sentencing guidelines as a Class E crime for first offenses and a Class D crime for second or subsequent offenses. Also, there are no data available to indicate how many people may be convicted of using a computer to commit a crime. The new penalties would range from Class C to Class G based on the maximum penalty for the underlying crime. The minimum sentence ranges are shown in Table 3.

Table 3

Crime Class	Minimum Sentence Range (Months)	
	From	To
C	0-11	62-114
D	0-6	43-76
E	0-3	24-38
F	0-3	17-30
G	0-3	7-23

Assuming that five offenders a year would be convicted of unlawful access to a computer for the first time and given the highest minimum sentence, the cost of incarceration, assuming an average cost of $22,000 per year, would be $348,300. Assuming that five offenders a year would be convicted of using a computer to commit a crime for which the maximum penalty is 20 years or life and that they would receive the highest minimum sentence, the cost of incarceration would be $1,045,000, which could be in addition to other incarceration costs for the underlying crime. Assuming that five offenders a year would be convicted of using a computer to commit a crime for which the maximum penalty is at least one year but not greater than two years, and that these offenders would receive the maximum penalty, the cost would be $210,800, which could be in addition to other incarceration costs for the underlying crime. A local sanction is appropriate for offenders who score sentencing guideline recommendations where the lowest minimum sentence is less than 12 months. Local units of government would incur the cost of a local sanction and the costs vary among the counties.

Date Completed: 3-15-00   Fiscal Analyst: K. Firestone