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House Bill 6052 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Representative Jim Howell

House Committee: Criminal Law and Corrections

Senate Committee: Judiciary

CONTENT

The bill would amend the Michigan Penal Code to specify that a person could not post a message through the use of any medium of communication, including the Internet, a computer, a computer program, system, or network, or other electronic medium, without the consent of the victim, if the person knew or had reason to know that posting the message could cause two or more separate noncontinuous acts of unconsented contact with the victim; posting the message was intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested; conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested; and conduct arising from posting the message caused the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested. The bill states that it would not prohibit constitutionally protected speech or activity.

A violation would be a felony, punishable by up to two years' imprisonment and/or a maximum fine of \$2,500. The penalty would be up to five years and/or \$10,000, if posting the message were in violation of a restraining order, an injunction, or a condition of probation, parole, pretrial release, or release on bond pending appeal; posting the message resulted in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim; the person had been previously convicted of violating the bill, stalking, aggravated stalking or using a computer or the Internet to commit a crime; or the victim were less than 18 years old and the offender were five or more years older than the victim.

A person could be prosecuted under the bill only if he or she posted the message while in Michigan; resulting conduct occurred in Michigan; the victim were present in Michigan at the time of the offense or any element of it; or the offender knew the victim resided in Michigan.

The bill would take effect on April 1, 2001.

Proposed MCL 750.411s

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many offenders would be convicted of the proposed offense. According to the 1998 Department of Corrections statistical report, 97 people were imprisoned for aggravated stalking with an average minimum sentence of 2.8 years. Assuming that each year 10 people who had previously been convicted of aggravated stalking would be convicted of posting a harassing message and that they would serve a sentence equal to the average minimum sentence for aggravated stalking, then the cost of incarceration, given an average annual cost of \$22,000, would be \$623,000.

Date Completed: 12-6-00

Fiscal Analyst: K. Firestone

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Analysis available @ <http://www.michiganlegislature.org>

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.