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House Bill 6052 (Substitute H-1 as passed by the House)
Sponsor: Representative Jim Howell
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 11-29-00

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 all of the following applied:

- The person knew that conduct arising from posting the message could cause continuing or repeated separate noncontinuous acts of "unconsented contact" with the victim or a member of the victim's immediate family by individuals, or a series of three or more separate noncontinuous acts of repeated or continuing unconsented contact with the victim by an individual, or both.
- 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, intimidate, threatened, harassed, or molested.
- Conduct arising from posting the message caused the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

A violation of the bill would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$2,500, or both. If the victim were less than 18 years of age when the violation occurred and the person committing the violation were five or more years older than the victim, the violation would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$10,000, or both. If any of the following applied, the violation would be a felony, punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both:

- Posting the message was in violation of a restraining order and the person had received actual notice of that restraining order, or posting the message was in violation of an injunction or preliminary injunction.
- Posting the message was in violation of 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 or of stalking or aggravated stalking, or a substantially similar law of another state or a political subdivision of another state, or of the United States.

The sentencing court also could order a person convicted of violating the bill to reimburse the State or a local unit of government for the expenses incurred in relation to the violation.

A violation or attempted violation of the bill would occur only if the person posted the message while in Michigan or the person who posted the message knew that the victim lived in Michigan or that the conduct arising from posting the message would occur in Michigan. The bill would not apply to an Internet or computer network service provider who, in good faith and without knowledge of the specific nature of the message posted, provided the medium for disseminating information or communication between persons.

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 by that person while violating or attempting to violate the bill.

The bill would define “credible threat” as a threat to kill another individual or a threat to inflict physical injury upon another individual that was made in any manner or in any context that caused the individual hearing or receiving the threat reasonably to fear for his or her safety of the safety of another.

“Emotional distress” would mean significant mental suffering or distress that could, but would not necessarily, require medical or other professional treatment or counseling.

“Post a message” would mean transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate, or otherwise communicate information that would allow another person to contact the victim or a member of the victim’s immediate family, such as the location or address of residence or employment or other place at which the person knew the victim or a member of the victim’s immediate family could be contacted or a telephone number or electronic address at which the person knew the victim or a member of the victim’s immediate family could be contacted.

“Unconsented contact” would mean any contact with another individual that was initiated or continued without that person’s consent or in disregard of his or her expressed desire that the contact be avoided or discontinued. Unconsented contact would include any of the following:

- Following or appearing within sight of the individual.
- Approaching or confronting the individual in a public place or on private property.
- Appearing at the individual’s workplace or residence.
- Entering onto or remaining on property owned, leased, or occupied by the individual.
- Contacting the individual by telephone.
- Sending mail or electronic communications to the individual through the use of any medium, including the Internet, a computer, or a computer program, system, or network.
- Placing an object on, or delivering or having delivered an object to, property owned, leased, or occupied by the individual.

“Victim” would mean the individual who was the target of a message posted.

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 the number of offenders who could be convicted of posting a harassing message. To the extent that the crime would be a misdemeanor, local units of government would receive fine revenues or incur the costs of incarceration. There are also no data available to indicate how many offenders could be convicted of the felonies in the bill. According to the 1998 Department of Corrections statistical report, 97 people were committed to prison 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 the average minimum sentence would be the same as for aggravated stalking, then the cost of incarceration, given an average annual cost of \$22,000, would be \$623,000.

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.