

REPRINT

**SUBSTITUTE FOR  
SENATE BILL NO. 7**

(As Passed the Senate February 17, 1999)

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
(MCL 750.1 to 750.568) by adding section 145d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 145D. (1) A PERSON SHALL NOT USE THE INTERNET OR A  
2 COMPUTER, COMPUTER PROGRAM, COMPUTER NETWORK, OR COMPUTER SYSTEM  
3 TO COMMUNICATE WITH ANY PERSON FOR THE PURPOSE OF DOING ANY OF  
4 THE FOLLOWING:

5        (A) COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT,  
6 OR SOLICITING ANOTHER PERSON TO COMMIT CONDUCT PROSCRIBED UNDER  
7 SECTION 145C, 349, 411H, 411I, 520B, 520C, 520D, 520E, OR 520G IN  
8 WHICH THE VICTIM OR INTENDED VICTIM IS A MINOR.

9        (B) COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT,  
10 OR SOLICITING ANOTHER PERSON TO COMMIT CONDUCT PROSCRIBED UNDER  
11 SECTION 145A, 157C, OR 350.

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1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO  
2 VIOLATES SUBSECTION (1) IS GUILTY OF A FELONY PUNISHABLE BY  
3 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN  
4 \$2,000.00, OR BOTH.

5 (3) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 1 OR  
6 MORE PRIOR CONVICTIONS IS GUILTY OF A FELONY PUNISHABLE BY  
7 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN  
8 \$5,000.00, OR BOTH.

9 (4) THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED  
10 UNDER THIS SECTION BE SERVED CONSECUTIVELY TO AND PRECEDING ANY  
11 TERM OF IMPRISONMENT IMPOSED FOR CONVICTION OF THE UNDERLYING  
12 OFFENSE.

13 (5) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING  
14 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION  
15 OF LAW COMMITTED BY THAT PERSON WHILE VIOLATING OR ATTEMPTING TO  
16 VIOLATE THIS SECTION, INCLUDING THE UNDERLYING OFFENSE.

17 (6) THIS SECTION APPLIES REGARDLESS OF WHETHER THE PERSON IS  
18 CONVICTED OF COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO  
19 COMMIT, OR SOLICITING ANOTHER PERSON TO COMMIT THE UNDERLYING  
20 OFFENSE.

21 (7) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION  
22 OCCURS IF THE COMMUNICATION ORIGINATES, TERMINATES, OR BOTH ORIG-  
23 INATES AND TERMINATES IN THIS STATE.

24 (8) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION MAY  
25 BE PROSECUTED IN ANY JURISDICTION IN WHICH THE COMMUNICATION  
26 ORIGINATED OR TERMINATED.

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1 (9) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED  
2 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR  
3 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COM-  
4 PLAIN AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION  
5 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVIC-  
6 TION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A  
7 JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE  
8 BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE  
9 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,  
10 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

11 (A) A COPY OF THE JUDGMENT OF CONVICTION.

12 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR  
13 SENTENCING.

14 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

15 (D) THE DEFENDANT'S STATEMENT.

16 (10) AS USED IN THIS SECTION:

17 (A) "COMPUTER" MEANS ANY CONNECTED, DIRECTLY INTEROPERABLE  
18 OR INTERACTIVE DEVICE, EQUIPMENT, OR FACILITY THAT USES A COM-  
19 PUTER PROGRAM OR OTHER INSTRUCTIONS TO PERFORM SPECIFIC OPERA-  
20 TIONS INCLUDING LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS WITH OR  
21 ON COMPUTER DATA OR A COMPUTER PROGRAM AND THAT CAN STORE,  
22 RETRIEVE, ALTER, OR COMMUNICATE THE RESULTS OF THE OPERATIONS TO  
23 A PERSON, COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COM-  
24 PUTER NETWORK.

25 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWIRE  
26 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE

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1 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED  
2 COMPUTERS.

3 (C) "COMPUTER PROGRAM" MEANS A SERIES OF INTERNAL OR EXTER-  
4 NAL INSTRUCTIONS COMMUNICATED IN A FORM ACCEPTABLE TO A COMPUTER  
5 THAT DIRECTS THE FUNCTIONING OF A COMPUTER, COMPUTER SYSTEM, OR  
6 COMPUTER NETWORK IN A MANNER DESIGNED TO PROVIDE OR PRODUCE PRO-  
7 DUCTS OR RESULTS FROM THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER  
8 NETWORK.

9 (D) "COMPUTER SYSTEM" MEANS A SET OF RELATED, CONNECTED OR  
10 UNCONNECTED, COMPUTER EQUIPMENT, DEVICES, SOFTWARE, OR HARDWARE.

11 (E) "DEVICE" INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC,  
12 MAGNETIC, ELECTROCHEMICAL, BIOCHEMICAL, HYDRAULIC, OPTICAL, OR  
13 ORGANIC OBJECT THAT PERFORMS INPUT, OUTPUT, OR STORAGE FUNCTIONS  
14 BY THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

15 (F) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF  
16 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652, 110  
17 STAT. 137, 47 U.S.C. 230.

18 (G) "MINOR" MEANS AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF  
19 AGE.

20 (H) "PRIOR CONVICTION" MEANS A CONVICTION FOR A VIOLATION OR  
21 ATTEMPTED VIOLATION OF SUBSECTION (1) OR A LAW OF THE UNITED  
22 STATES OR ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO SUBSECTION  
23 (1).

24 [Enacting section 1. This amendatory act takes effect August  
25 1, 1999.]