REPRINT

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 562

(As passed the House, December 1, 1999)

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

by amending section 145d (MCL 750.145d), as added by 1999 PA 32.

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, 411H, OR 411I.

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1   (C) COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT,

2 OR SOLICITING ANOTHER PERSON TO COMMIT CONDUCT PROSCRIBED UNDER

3 CHAPTER XXXIII OR SECTION 327, 327A, 328, OR 411A(2).

4   (D) COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT,

5 OR SOLICITING ANOTHER PERSON TO COMMIT CONDUCT PROSCRIBED UNDER

6 SECTION 301, 302, 303, 304, 305, 305A, OR 311 OF THIS ACT OR SEC-

7 TION 18 OF THE MICHIGAN GAMING CONTROL AND REVENUE ACT, THE INI-

8 TIATED LAW OF 1996, MCL 432.218.

9   (2) Except as provided in subsection (3), a person who vio-

10 lates subsection ~~(1)~~ (1)(A), (B), OR (D) is guilty of a felony

11 punishable by imprisonment for not more than 2 years or a fine of

12 not more than $2,000.00, or both.

13   (3) A person who violates subsection ~~(1)~~ (1)(C) OR WHO

14 VIOLATES SUBSECTION (1)(A), (B), OR (D) and ~~who~~ has 1 or more

15 prior convictions is guilty of a felony punishable by imprison-

16 ment for not more than 5 years or a fine of not more than

17 $5,000.00, or both.

18   (4) The court may order that a term of imprisonment imposed

19 under this section be served consecutively to and preceding any

20 term of imprisonment imposed for conviction of the underlying

21 offense.

22   (5) This section does not prohibit a person from being

23 charged with, convicted of, or punished for any other violation

24 of law committed by that person while violating or attempting to

25 violate this section, including the underlying offense.

26   (6) This section applies regardless of whether the person is

27 convicted of committing, attempting to commit, conspiring to

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1 commit, or soliciting another person to commit the underlying

2 offense.

3   (7) A violation or attempted violation of this section

4 occurs if the communication originates IN THIS STATE,

5 ~~terminates~~ IS INTENDED TO TERMINATE IN THIS STATE, or both

6 originates and terminates in this state.

7   (8) A violation or attempted violation of this section may

8 be prosecuted in any jurisdiction in which the communication

9 originated or terminated.

10   (9) If the prosecuting attorney intends to seek an enhanced

11 sentence based upon the defendant having 1 or more prior convic-

12 tions, the prosecuting attorney shall include on the complaint

13 and information a statement listing the prior conviction or

14 convictions. The existence of the defendant's prior conviction

15 or convictions shall be determined by the court, without a jury,

16 at sentencing or at a separate hearing for that purpose before

17 sentencing. The existence of a prior conviction may be estab-

18 lished by any evidence relevant for that purpose, including, but

19 not limited to, 1 or more of the following:

20   (a) A copy of the judgment of conviction.

21   (b) A transcript of a prior trial, plea-taking, or

22 sentencing.

23   (c) Information contained in a presentence report.

24   (d) The defendant's statement.

25   (10) As used in this section:

26   (a) "Computer" means any connected, directly interoperable

27 or interactive device, equipment, or facility that uses a

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1 computer program or other instructions to perform specific

2 operations including logical, arithmetic, or memory functions

3 with or on computer data or a computer program and that can

4 store, retrieve, alter, or communicate the results of the opera-

5 tions to a person, computer program, computer, computer system,

6 or computer network.

7   (b) "Computer network" means the interconnection of hardwire

8 or wireless communication lines with a computer through remote

9 terminals, or a complex consisting of 2 or more interconnected

10 computers.

11   (c) "Computer program" means a series of internal or exter-

12 nal instructions communicated in a form acceptable to a computer

13 that directs the functioning of a computer, computer system, or

14 computer network in a manner designed to provide or produce pro-

15 ducts or results from the computer, computer system, or computer

16 network.

17   (d) "Computer system" means a set of related, connected or

18 unconnected, computer equipment, devices, software, or hardware.

19   (e) "Device" includes, but is not limited to, an electronic,

20 magnetic, electrochemical, biochemical, hydraulic, optical, or

21 organic object that performs input, output, or storage functions

22 by the manipulation of electronic, magnetic, or other impulses.

23   (f) "Internet" means that term as defined in section 230 of

24 title II of the communications act of 1934, chapter 652, 110

25 Stat. 137, 47 U.S.C. 230.

26   (g) "Minor" means an individual who is less than 18 years of

27 age.

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1   (h) "Prior conviction" means a conviction for a violation or

2 attempted violation of subsection (1) or a law of the United

3 States or another state substantially corresponding to subsection

4 (1).