



HOUSE BILL No. 4869

September 28, 1999, Introduced by Reps. Schermesser, Wojno, O'Neill, Basham, DeHart, Julian, Hale, Daniels, Scott, Bovin, Bogardus, Sanborn and Schauer and referred to the Committee on Criminal Law and Corrections.

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

1 section 83, 91, 145a, 157c, ~~or~~ 316, 317, 349, 350, 411H, 411I,
2 520B, 520C, 520D, 520E, OR 520G.

3 (C) THREATENING TO KILL OR PHYSICALLY INJURE ANOTHER
4 PERSON.

5 (D) THREATENING TO DAMAGE THE PROPERTY OF ANOTHER PERSON OR
6 OTHERWISE INTENTIONALLY HARASSING, INTIMIDATING, OR FRIGHTENING
7 ANOTHER PERSON.

8 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CRIME
9 AS FOLLOWS:

10 (A) Except as provided in ~~subsection (3)~~ SUBDIVISION (B),
11 a person who violates subsection ~~(1)~~ (1)(A), (B), OR (C) is
12 guilty of a felony punishable by imprisonment for not more than
13 ~~2~~ 4 years or a fine of not more than ~~\$2,000.00~~ \$5,000.00, or
14 both.

15 (B) ~~(3)~~ A person who violates subsection ~~(1)~~ (1)(A),
16 (B), OR (C) and who has 1 or more prior convictions is guilty of
17 a felony punishable by imprisonment for not more than 5 years or
18 a fine of not more than \$5,000.00, or both.

19 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), A PERSON WHO VIO-
20 LATES SUBSECTION (1)(D) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
21 IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR A FINE OF NOT MORE
22 THAN \$500.00, OR BOTH.

23 (D) A PERSON WHO VIOLATES SUBSECTION (1)(D) AND WHO HAS 1 OR
24 MORE PRIOR CONVICTIONS IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
25 IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN
26 \$1,000.00, OR BOTH.

1 (3) ~~—(4)—~~ The court may order that a term of imprisonment
2 imposed under this section be served consecutively to and
3 preceding any term of imprisonment imposed for conviction of the
4 underlying offense.

5 (4) ~~—(5)—~~ This section does not prohibit a person from being
6 charged with, convicted of, or punished for any other violation
7 of law committed by that person while violating or attempting to
8 violate this section, including the underlying offense.

9 (5) ~~—(6)—~~ This section applies regardless of whether the
10 person is convicted of committing, attempting to commit, conspir-
11 ing to commit, or soliciting another person to commit the under-
12 lying offense.

13 (6) ~~—(7)—~~ A violation or attempted violation of this section
14 occurs if the communication originates, terminates, or both orig-
15 inates and terminates in this state.

16 (7) ~~—(8)—~~ A violation or attempted violation of this section
17 may be prosecuted in any jurisdiction in which the communication
18 originated or terminated.

19 (8) ~~—(9)—~~ If the prosecuting attorney intends to seek an
20 enhanced sentence based upon the defendant having 1 or more prior
21 convictions, the prosecuting attorney shall include on the com-
22 plaint and information a statement listing the prior conviction
23 or convictions. The existence of the defendant's prior convic-
24 tion or convictions shall be determined by the court, without a
25 jury, at sentencing or at a separate hearing for that purpose
26 before sentencing. The existence of a prior conviction may be

1 established by any evidence relevant for that purpose, including,
2 but not limited to, 1 or more of the following:

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

4 (b) A transcript of a prior trial, plea-taking, or
5 sentencing.

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

8 (9) ~~-(10)-~~ As used in this section:

9 (a) "Computer" means any connected, directly interoperable
10 or interactive device, equipment, or facility that uses a com-
11 puter program or other instructions to perform specific opera-
12 tions including logical, arithmetic, or memory functions with or
13 on computer data or a computer program and that can store,
14 retrieve, alter, or communicate the results of the operations to
15 a person, computer program, computer, computer system, or com-
16 puter network.

17 (b) "Computer network" means the interconnection of hardwire
18 or wireless communication lines with a computer through remote
19 terminals, or a complex consisting of 2 or more interconnected
20 computers.

21 (c) "Computer program" means a series of internal or exter-
22 nal instructions communicated in a form acceptable to a computer
23 that directs the functioning of a computer, computer system, or
24 computer network in a manner designed to provide or produce pro-
25 ducts or results from the computer, computer system, or computer
26 network.

1 (d) "Computer system" means a set of related, connected or
2 unconnected, computer equipment, devices, software, or hardware.

3 (e) "Device" includes, but is not limited to, an electronic,
4 magnetic, electrochemical, biochemical, hydraulic, optical, or
5 organic object that performs input, output, or storage functions
6 by the manipulation of electronic, magnetic, or other impulses.

7 (f) "Internet" means that term as defined in section 230 of
8 title II of the communications act of 1934, chapter 652, 110
9 Stat. 137, 47 U.S.C. 230.

10 (g) "Minor" means an individual who is less than 18 years of
11 age.

12 (h) "Prior conviction" means a conviction for a violation or
13 attempted violation of subsection (1) or a law of the United
14 States or another state substantially corresponding to subsection
15 (1).