

SENATE BILL NO. 562

May 4, 1999, Introduced by Senators ROGERS, GOSCHKA, DUNASKISS, GAST, STEIL, SHUGARS, HAMMERSTROM, BENNETT, JOHNSON, SIKKEMA, BULLARD, STILLE, GOUGEON, MC MANUS, NORTH, MC COTTER, SCHWARZ, VAN REGENMORTER, JAYE, MILLER, SCHUETTE and DE GROW and referred to the Committee on Judiciary.

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.

1 (C) COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT,
2 OR SOLICITING ANOTHER PERSON TO COMMIT CONDUCT PROSCRIBED UNDER
3 CHAPTER XXXIII.

4 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO VIO-
5 LATES SUBSECTION (1) IS GUILTY OF A FELONY PUNISHABLE BY IMPRIS-
6 ONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
7 \$2,000.00, OR BOTH.

8 (3) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 1 OR
9 MORE PRIOR CONVICTIONS IS GUILTY OF A FELONY PUNISHABLE BY
10 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN
11 \$5,000.00, OR BOTH.

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

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

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

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

1 (8) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION MAY
2 BE PROSECUTED IN ANY JURISDICTION IN WHICH THE COMMUNICATION
3 ORIGINATED OR TERMINATED.

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

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

15 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
16 SENTENCING.

17 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

18 (D) THE DEFENDANT'S STATEMENT.

19 (10) AS USED IN THIS SECTION:

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

1 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWARE
2 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
3 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
4 COMPUTERS.

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

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

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

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

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

22 (H) "PRIOR CONVICTION" MEANS A CONVICTION FOR A VIOLATION OR
23 ATTEMPTED VIOLATION OF SUBSECTION (1) OR A LAW OF THE UNITED
24 STATES OR ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO SUBSECTION
25 (1).

26 Enacting section 1. This amendatory act takes effect 90
27 days after the date this amendatory act is enacted.