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PROHIBIT USE OF PUBLIC RECORD TO COMMIT CRIME

House Bill 5143 as introduced
Sponsor: Rep. Paul Wojno

House Bill 5144 as introduced
Sponsor: Rep. Jennifer Faunce

First Analysis (5-8-02)
Committee: Criminal Justice

THE APPARENT PROBLEM:

Despite various criminal and consumer protection laws, the problem of identity theft continues to increase. Incidents of identity theft occur about 750,000 times a year, and Michigan ranks sixth in the nation for identity thefts. Identity theft is the practice of using another person's personal information to make fake IDs, open credit card accounts, open cellular phone accounts, access a person's existing credit card or bank accounts, take out loans (that are not paid back), and so forth. Often, the victim of identity theft is unaware until he or she attempts to open a new credit card, secure a mortgage for a home or a loan for a car, or rent a new apartment. The person then discovers that he or she now has a poor credit rating for unpaid debts incurred in his or her name. Reportedly, victims of identity theft spend in excess of 150 hours trying to clear their names, expenses involved in the process can be as high as \$1,000, and it can take many months and even years to undo the damage. Businesses are not exempt from identity theft, either, and losses due to such theft are generally passed on to consumers. In recent years, the majority of states have enacted tougher penalties for stealing someone else's identity. Now, in light of the recent terrorist attacks of September 11, 2001, the dangers posed by identity theft have reached a new level. Thus, legislation is being offered to increase the penalties for using information gleaned from public records in the commission of a crime.

THE CONTENT OF THE BILLS:

House Bill 5143 would amend the Michigan Penal Code (MCL 750.492b) to prohibit the use of a public record to commit a crime. House Bill 5144 would place the corresponding sentencing guideline in the Code of Criminal Procedure (MCL 777.16x). House Bill 5144 is tie-barred to House Bill 5143. Specifically, the bills would do the following:

House Bill 5143 would amend the Penal Code to prohibit a person from knowingly using a public record, or knowingly using information obtainable only through a public record, to commit or attempt to commit a crime. If a person violated this prohibition to commit a crime that is a misdemeanor, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$500, or both. If the underlying offense were a felony, the person would be guilty of a felony punishable by imprisonment for not more than five years, a fine of not more than \$10,000, or both.

"Person" would be defined in the bill as an individual, partnership, corporation, association, governmental entity, or other legal entity. "Public record" would mean that term as defined in Section 2 of the Freedom of Information Act. (The Freedom of Information Act defines "public record" as a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created, but does not include computer software. "Public record" does not include records exempted from disclosure by Section 13 of the act. The judiciary, including the office of the county clerk and employees of the county clerk when acting in the capacity of clerk to the circuit court, is not included in the definition of a public body.)

House Bill 5144 would amend the Code of Criminal Procedure to specify that using a public record to facilitate or further a crime would be a Class E felony against the public trust with a five-year maximum term of imprisonment.

The bill would also reword the description of a violation of Section 483a(2)(b) of the penal code to read "withholding evidence, preventing report of crime, or retaliating for reporting crime", and would

House Bill 5143 and 5144 (5-8-02)

reword the description of a violation of Section 483a(6)(b) to read “tampering with evidence or offering false evidence in case punishable by more than 10 years”. (Underlined text denotes changes.)

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Identity theft is increasing at an alarming rate. National statistics show about 750,000 incidents a year, and Michigan ranks sixth in the nation for most identity thefts. Identity theft is primarily used as a way to steal money and merchandise. A person generally uses personal information obtained from public records posted on the Internet or available from government agencies and then pretends to be that individual while either applying for credit in that name or tapping into already available credit. The thief can run up large debts in a relatively short amount of time. Though the victim is generally not liable to repay those debts, the victim's credit is ruined. Restoring one's "good name" can be a very costly and time-consuming process. Further, the financial institutions, credit card companies, and retailers who bear the costs of the "stolen" funds or merchandise pass those losses on to consumers in the form of higher interest rates, fees, and prices. Therefore, it is time that Michigan joins with the majority of other states and enacts legislation that will send a message that this crime will not be tolerated. The bill would make it a misdemeanor to use a public record or information from a public record to commit a crime. People who violate the bill's provisions to commit identity theft or other crimes, such as stalking, would be guilty of either a misdemeanor or a felony – depending on the level of the underlying crime that was committed.

Against:

If the bill is intended to be used to address the problem of identity theft, it may not accomplish what it was intended to do. The bill prohibits using public records or information taken from public records to commit a crime. It would seem, therefore, that the bill is believed to prevent such personal information as birth dates, names, Social Security numbers, driver's license numbers, employer or taxpayer identification numbers, or Medicaid or food stamp account numbers, bank account numbers, etc. from being used to steal another's identity in order to commit a crime.

The problem lies in the fact that the bill prohibits the use of a public record – or information obtained from a public record – to commit a crime, and defines that term as defined in the Freedom of Information Act (FOIA). Under the FOIA, “public record” is generally defined as the work products and documents generated by governmental entities. The FOIA is very explicit as to which documents are considered public records (and therefore accessible by the general public) and which documents are not accessible by the public. In addition, many other statutes contain exemptions to the FOIA, thereby making other types of documents and information off limits to the public. Therefore, the types of public records from which information conducive to committing the crime of identity theft could be gleaned are generally out of reach of the public eye.

Secondly, Public Acts 164, 165, and 166 of 1999 enacted laws that created new felonies related to the application for credit made in another person's name without authorization (up to 4 years imprisonment, a fine up to \$2,500, or both) and the use of instruments and devices (e.g., credit cards and bank cards) of another without authorization (imprisonment up to 4 years, a fine up to \$100,000, or both). Public Act 126 of 2002 significantly increased the penalties for counterfeiting or forging a driver's license, presumably also to reduce the incidents of identity theft. (For more information, see the House Legislative Analysis Section's analyses on House Bills 4413, 4598, and 4670 of 1999 dated 1-11-00 and on House Bill 4037 of this legislative session dated 4-1-02.) House Bills 5143 and 5144 would not require the sentences to run consecutively; therefore, other than possibly increasing the fine an offender would pay, the bills would do little that current law doesn't already do.

Further, the anti-terrorism legislation that has been recently enacted addresses other issues concerning the use of certain information available to the public. Public Act 130 of 2002 (enrolled House Bill 5349) amended the Freedom of Information Act to exempt records or information designed to protect the security or safety of persons or property from public disclosure. These exemptions include building, public works, and public water supply designs under certain circumstances; emergency response plans; and threat assessments, among others. The act also excluded from public disclosure the personal address or telephone number of law enforcement officers or agents or their special skills even if the officers or agents were now retired. Public Act 115 of 2002 (enrolled Senate Bill 939), prohibits a person from obtaining or possessing a blueprint, an architectural

or engineering diagram, security plan, etc. of a vulnerable target. Public Act 140 (enrolled House Bill 5511) expanded the definition of “vulnerable target” to include a stadium; a transportation structure or facility such as a tunnel, bridge, highway, or railroad; an airport; port facilities; a public services facility such as a natural gas refinery, telephone facility, power or water facility, etc.; nuclear power plant; and a building, structure, or other facility owned or operated by a governmental entity. A violation of this act, which is part of the chapter of the Penal Code prohibiting the use of explosive or chemical devices, would allow for enhanced penalties under the code. Therefore, the use of public information for the purposes of committed an act of terrorism has already been adequately addressed.

Response:

Actually, House Bill 5143 could enable certain prosecutions to go forward. For example, many laws relating to the same type crime deal with different aspects of the crime. A person can be charged with attempted murder, aggravated assault, or assault and battery, depending on the evidence gathered. Therefore, the bill could act as enhancement to current law and give prosecutors another option when prosecuting an offender for various crimes involving the use of public records to commit a serious crime.

POSITIONS:

The Department of State Police support the bills. (5-7-02)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.