



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1024 (as enrolled)
House Bills 5043 and 5044 (as enrolled)
Sponsor: Senator Bill Hardiman (S.B. 1024)
Representative Tonya Schuitmaker (H.B. 5043 & 5044)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 60 of 2006
PUBLIC ACTS 61 & 62 of 2006

Date Completed: 9-21-06

RATIONALE

Until recently, the Michigan Penal Code prohibited various acts specifically related to interference with telephone or telegraph communications. While the prohibitions generally addressed damaging or tapping into telephone or telegraph lines, they evidently were often used to prosecute domestic abusers who interfered with a victim's attempt to report the crime or call for help. Given the increasingly more common use of technologically advanced communications equipment, such as computers and cell phones, it was suggested that the prohibitions be updated to reflect current technology.

CONTENT

Senate Bill 1024 and House Bills 5043 amended the Michigan Penal Code, and House Bill 5044 amended the Code of Criminal Procedure, to do all of the following:

- Delete prohibitions against interfering with telegraph and telephone communications.
- Establish new prohibitions against interfering with any electronic medium of communication.
- Retain the existing penalty but make the offense a felony, and add an enhanced felony penalty if the incident to be reported results in injury or death.
- Revise the sentencing guidelines description of the offense, and include the new felony penalty in the sentencing guidelines.

The bills took effect on June 1, 2006. Senate Bill 1024 was tie-barred to both House bills, and House Bill 5044 was tie-barred to House Bill 5043.

Senate Bill 1024 & House Bill 5043

The Penal Code previously prohibited a person from doing any of the following:

- Willfully or maliciously cutting, breaking, tapping, or making any connection with any telegraph or telephone line, wire, or cable.
- Reading or copying any message from an unlawfully cut or tapped telegraph or telephone line, wire, or cable.
- Maliciously preventing, obstructing, or delaying the sending, conveyance, or delivery of any authorized communication by or through any telegraph or telephone line, cable, or wire under the control of any telegraph or telephone company doing business in Michigan.
- Willfully and maliciously aiding, agreeing with, employing, or conspiring with any other person to do any of the above.

A violation was a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both.

The bills deleted those prohibitions, and instead prohibit a person from doing any of the following:

- Willfully and maliciously cutting, breaking, disconnecting, interrupting, tapping, or making any unauthorized

connection with any electronic medium of communication, including a telephone, the internet, or a computer, computer program, computer system, or computer network.

- Willfully and maliciously reading or copying any message from any telegraph, telephone line, wire, cable, computer network, computer program, or computer system, or telephone or other electronic medium of communication that the person gains access to without authorization.
- Willfully and maliciously making unauthorized use of any electronic medium of communication, including a telephone, the internet, or a computer, computer program, computer system, or computer network.
- Willfully and maliciously preventing, obstructing, or delaying by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network.

Under House Bill 5043, a violation is a felony punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. If the incident to be reported results in injury to or the death of any person, a violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. The bill specifies that it does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate the prohibition in Senate Bill 1024 and House Bill 5043.

Under House Bill 5043, "internet" means that term as it is defined in Title II of the Federal Communications Act (47 USC 230), and includes "voice over internet protocol" (VOIP) services. (Under the Federal provision, "internet" means "the international computer network of both Federal and non-Federal interoperable packet switched data networks".) The bill also includes definitions of "computer", "computer network", "computer program", "computer system", and "device".

House Bill 5044

Previously, tapping or cutting telephone lines was a Class H felony against the public order, with a statutory maximum sentence of two years' imprisonment. (Even though the offense was designated as a misdemeanor under the Penal Code, the definition of "felony" under the Code of Criminal Procedure includes a violation for which the offender may be punished by imprisonment for more than one year.) The bill changed the description of that sentencing guidelines classification to damaging, destroying, using, or obstructing the use of an electronic medium of communication.

In addition, under the bill, damaging, destroying, using, or obstructing the use of an electronic medium of communication resulting in injury or death is a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment.

MCL 750.540 (S.B. 1024)
750.540 (H.B. 5043)
777.16z (H.B. 5044)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As new technologies are developed, it sometimes is necessary to update laws to reflect those advances. By applying communications interference prohibitions to actions involving any electronic medium of communication, the bills updated the proscriptions to reflect the use of more advanced communications technology. While the Penal Code's previous prohibitions applied to damaging or interfering with telephone and telegraph lines, the bills recognize the popularity of more modern means of communication, such as cell phones and computers, and allow for future communications technological advances to be included in the prohibitions.

In addition, the communications interference prohibitions apparently are often used in domestic violence prosecutions when an abuser prevents a victim from using a telephone to call for help or even rips the

phone line out of the wall. According to an official representing the Prosecuting Attorneys Association of Michigan, domestic violence is the most prevalent violent crime prosecutors deal with in Michigan, and law enforcement agencies need this tool to help them prosecute domestic violence cases. Since increasing numbers of people rely on technologies other than the standard land-line telephone for personal communications, it makes sense that interfering with another person's communications by such media as cell phones and e-mail also should be prohibited. The bills allow law enforcement officers and prosecutors to use the communications interference provisions of the Penal Code in domestic violence cases in which communications technologies other than land-line telephones are involved.

Supporting Argument

While the standard penalty for the prohibition addressed by the bills remains the same (up to two years' imprisonment and/or a maximum fine of \$1,000), under the bills that violation is categorized consistently as a felony. Previously, the Penal Code called it a misdemeanor while it was considered a felony under the Code of Criminal Procedure's sentencing guidelines provisions. In addition, it stands to reason that a more serious penalty should apply if the violation leads to injury or death. The bills provide for an enhanced penalty of up to four years' imprisonment and/or a maximum fine of \$5,000 in those cases.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. Convictions have increased significantly since 2000, when four offenders were sentenced to probation. (Two of the offenders were convicted of attempting the offense.) Convictions rose to 41 in 2001 and 73 in 2002. In 2003, 105 offenders were sentenced for the violation, resulting in 17 prison sentences, 61 probation sentences, 24 jail sentences, and three other sentences. However, there are no data to indicate whether the same pattern of increased convictions will occur with the inclusion of additional communication equipment, or how many of the sentences will be for prison, probation, jail, or other sanctions. An offender convicted of a Class

H offense receives a sentencing guidelines minimum sentence range of 0-1 month to 5-17 months. An offender convicted of a Class F offense receives a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments incur the costs of incarceration in local facilities, which vary by county. The State incurs the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.