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House Bill 5043 (Substitute H-1 as passed by the House) House Bill 5044 (Substitute H-1 as passed by the House)

Sponsor: Representative Tonya Schuitmaker

House Committee: Judiciary Senate Committee: Judiciary

Date Completed: 12-12-05

CONTENT

House Bills 5043 (H-1) and 5044 (H-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to do all of the following:

- -- Delete current prohibitions against interfering with telegraph and telephone communications.
- -- Establish new prohibitions against interfering with any electronic medium of communication.
- -- Retain the current penalty but make the offense a felony.
- -- Revise the sentencing guidelines description of the offense.

The bills would take effect February 1, 2006. House Bill 5044 (H-1) is tie-barred to House Bill 5043.

House Bill 5043 (H-1)

The Penal Code prohibits 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 is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both.

The bill would delete those prohibitions and penalties, and instead would prohibit a person from doing any of the following:

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- -- 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 gained 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.

A violation of the bill would be a felony punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. The bill specifies that it would 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 bill.

The prohibition against cutting, breaking, disconnecting, interrupting, tapping, or making an unauthorized connection would not apply to an individual who owned the electronic medium of communication, unless it was being used by an individual to report a crime, to report the illness of or injury to any person, or to report domestic violence.

Under the bill, "internet" would mean that term as it is defined in Title II of the Federal Communications Act (47 USC 230), and would include "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", and "computer system", and "device".

House Bill 5044 (H-1)

Currently, tapping or cutting telephone lines is a Class H felony against the public order, with a statutory maximum sentence of two years' imprisonment. The bill would change the description of that sentencing guidelines classification to damaging, destroying, or using an electronic medium of communication without authorization.

MCL 750.540 (H.B. 5043) 777.16z (H.B. 5044) Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. Convictions under the current law have increased significantly since 2000. In 2000, four offenders were sentenced to probation under the current law. (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 under the current law, 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 increases in convictions would occur with proposed inclusion of additional communication equipment, or how many of the sentences would be for prison, probation, jail, or other sanctions. An offender convicted of the Class H offense would receive a sentencing guidelines minimum sentence range of 0-1

month to 5-17 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur 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 would 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.