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BILL



ANALYSIS

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Senate Bill 927 (Substitute S-2 as reported)
Senate Bill 928 (Substitute S-2 as reported)
Sponsor: Senator Mike Kowall (S.B. 927)
Senator Ken Horn (S.B. 928)
Committee: Judiciary

CONTENT

Senate Bill 927 (S-2) would amend Public Act 53 of 1979, which prohibits access to computers, computer systems, and computer networks for certain fraudulent purposes, to do the following:

- Expand current prohibitions to include access to disrupt, impair, or gain control of the service of a computer program, computer, computer system, or computer network.
- Apply the prohibitions to the unlawful access of communications systems, as well as computers and computer programs, systems, or networks.
- Prohibit unauthorized access, or causing access to be made, to a motor vehicle electronic system for certain purposes, including injuring people or damaging other property, and specify exceptions to that prohibition.
- Prescribe a criminal penalty for a violation that resulted in serious impairment of a body function or death.

In addition to revising the current prohibitions, the bill would prohibit a person, intentionally and without authorization or by exceeding valid authorization, from gaining access, or causing access to be made, to a motor vehicle electronic system to alter, damage, delete, disrupt, impair, destroy, or otherwise use or control a motor vehicle electronic system, vehicle telematics services, or vehicle communications systems, if the purpose were to damage the systems or services or to injure people or damage other property through unauthorized movement of a vehicle. The prohibition would not apply to the actions of a motor vehicle manufacturer, a licensed motor vehicle dealer, or licensed mechanic, or its employees or contractors, when servicing, repairing, updating, or upgrading a motor vehicle electronic system, vehicle communications system, or vehicle telematics services if the purpose of the action were not to injure the vehicle or other property or people. That prohibition also would not apply to the actions of a researcher, if the research were conducted under safe and controlled conditions and the purpose were to test, refine, or improve a motor vehicle electronic system, vehicle communications system, or vehicle telematics services and not to damage the critical highway infrastructure or other property or to injure people.

Currently, a person who violates the computer access prohibitions is guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. Under the bill, if the person did not, and did not intend to, acquire, alter, damage, delete, disrupt, impair, destroy, or otherwise use or gain control of the service of a computer, computer program, system, or network, communications system, motor vehicle electronic system, or other property, and the effect of the violation could be reversed or cured without injury or damage, the person would be guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.

Currently, if the offender has a prior conviction, he or she is guilty of a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$50,000. Under the bill, that penalty

would apply if the person had a prior conviction other than the misdemeanor described above. The 10-year/\$50,000 maximum penalty also would apply if the violation resulted in serious impairment of a body function.

If a violation resulted in death, the felony would be punishable by imprisonment for life or any term of years.

Senate Bill 928 (S-2) would amend the Code of Criminal Procedure to include the felonies proposed by Senate Bill 927 (S-2) in the sentencing guidelines, as shown in Table 1.

Table 1

Current Violation	Proposed Violation	Class & Category	Statutory Max.
Unlawful access of computer, computer system, or computer program	Unlawful access of computer, computer system, computer program, or motor vehicle electronic system	E-Property	5 years
Unlawful access (as described above), with a prior conviction	Unlawful access (as described above), with a prior conviction or resulting in serious impairment of a body function	D-Property ¹	10 years
N/A	Unlawful access (as described above), resulting in death	A-Person	Life

¹Under the bill, the category would be "Variable".

Senate Bill 928 (S-2) is tie-barred to Senate Bill 927.

MCL 752.792 et al. (S.B. 927)
777.17c (S.B.928)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 927 (S-2) would have a negative fiscal impact on State and local government. An increase in felony prosecutions and convictions could increase resource demands on local court systems, law enforcement, and prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any increase in fine revenue would be dedicated to public libraries.

Senate Bill 928 (S-2) would have no fiscal impact of local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction would depend on judicial decisions.

Date Completed: 9-29-16

Fiscal Analyst: Ryan Bergan

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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.