

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 7 (Substitute S-1 as reported)
Senate Bill 217 (Substitute S-1 as reported)
Sponsor: Senator Mike Rogers (Senate Bill 7)
Senator George Z. Hart (Senate Bill 217)
Committee: Judiciary

Date Completed: 2-9-99

RATIONALE

The Internet includes e-mail, chat rooms, news groups, and Web servers that provide vast information and interactive communication to millions of people through the use of a computer. Reportedly, Internet use is approximately 40 million world-wide, with 6 million users being minor children. Many children are exposed to the Internet through school, public libraries, and homes, where they can demonstrate highly advanced computer proficiency.

Despite the beneficial and educational advantages of the Internet's growing network of information, it also can provide a powerful avenue for potential public hazards such as the exchange of pornographic materials, child exploitation, kidnapping, and other crimes. The Internet's anonymous nature and lack of monitoring can enable molesters and pedophiles to lure children into chat rooms and e-mail correspondence and to entice them into having sexual encounters.

According to a child pornography tipline, pedophiles and molesters often befriend lonely children by contacting them on an electronic bulletin board and exchanging private messages on the Internet to find out about the child's relationship with parents and friends. The pedophile then breaks down the child's inhibitions, sometimes misrepresenting himself or herself as a child, and offers love and affection to convince the child to agree to an encounter. Reportedly, there have been such incidents in Michigan, including one involving a 13-year-old girl in Livingston County who was sexually assaulted by a father and son whom she met over the Internet. In another reported incident, a man was accused of traveling to Massachusetts to have a sexual encounter with a 16-year-old girl whom he had met on-line.

It has been suggested that establishing criminal penalties for using the Internet to exploit and prey upon children would help curb further victimization of minors, discourage child predators, and keep the

Internet safe for children.

CONTENT

Senate Bills 7 (S-1) and 217 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to establish felony penalties for use of the Internet to commit certain crimes involving a minor.

Senate Bill 7 (S-1)

Prohibited Communication

The bill would prohibit the use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of doing any of the following:

- Committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following crimes, when the victim or intended victim was a minor: involvement in child sexually abusive activity or material (MCL 750.145c); kidnapping (MCL 750.349); stalking or aggravated stalking (MCL 750.411h & 750.411i); first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) (MCL 750.520b-750.520e); or assault with intent to commit CSC (MCL 750.520g).
- Committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following: solicitation of a child for immoral purposes (MCL 750.145a); recruitment or inducement of a minor to commit a felony (MCL 750.157c); or kidnapping of a child under the age of 14 (MCL 750.350).

Penalties

A violation of the bill would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. If a person had one or more prior

convictions, the offense would be punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both. ("Prior conviction" would include a violation or attempted violation of the bill, or a law of the United States or another state substantially corresponding to the bill.) A sentencing court could order that a term of imprisonment imposed for a violation of the bill be served consecutively to and preceding any term of imprisonment imposed for the underlying offense.

If the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor would have to include a statement listing the prior conviction or convictions on the complaint and information. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

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 while violating or attempting to violate the bill, including the underlying offense. The bill's penalties would apply regardless of whether the person was convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

A violation or attempted violation of the bill would occur if the communication originated, terminated, or both originated and terminated in Michigan, and could be prosecuted in any jurisdiction in which the communication either originated or terminated.

Definitions

"Internet" would mean that term as defined in the Title II of the Federal Communications Act (47 USC 230). That Act defines "Internet" as "the international computer network of both Federal and non-Federal interoperable packet switched data networks".

"Computer" would mean any connected, directly interoperable or interactive device, equipment, or facility that used a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program and that could store, retrieve, alter, or communicate the results of

the operations to a person, computer program, computer, computer system, or computer network. "Device" would include, but not be limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performed input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

"Computer network" would mean the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers. "Computer program" would mean a series of internal or external instructions communicated in a form acceptable to a computer that directed the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network. "Computer system" would mean a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

"Minor" would mean a person who was less than 18 years of age.

Effective Date

The bill would take effect 90 days after its enactment.

Senate Bill 217 (S-1)

The bill would include in statutory sentencing guidelines the offense of using the Internet or a computer for crimes involving minors, as proposed by Senate Bill 7. A first offense, which would be punishable by up to two years' imprisonment, would be categorized as a Class G felony against a person; a second or subsequent offense, which would be punishable by up to five years' imprisonment, would be categorized as a Class E felony against a person.

The bill is tie-barred to Senate Bill 7, and would take effect 90 days after its enactment.

Proposed MCL 750.145d (S.B. 7)
MCL 777.16g (S.B. 217)

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

The bills would address a growing problem of sexual predators' taking advantage of children, by making it a felony to use the Internet, a computer, or a computer program, network, or system to abuse, exploit, kidnap, or solicit a minor child. The bills

would provide police and prosecutors with strong statutory standards to support prosecutions in court by subjecting violators to imprisonment and/or fines, and imposing greater penalties for subsequent offenses. While advances in computer technology allow children to explore vast sources of information, the technology also makes them more vulnerable to exploitation by anonymous predators. Since there is reportedly little restriction of pornography-related activity on the Internet, sexual predators can manipulate children into examining or participating in unrestricted pornography. Although parents should protect children from offensive or sexually explicit material by close supervision of their children's Internet activity, there is still no reliable way to curb minors' access to pornography and sexually explicit conversation on the Internet. With more and more children using the Internet and e-mail, protection is needed against sexual predators who use it as a tool for indecent communication and the exchange of unsuitable material with minors.

Response: The bills do not go far enough; they should include more crimes.

Opposing Argument

The bills are unnecessary because current law already gives prosecutors the ability to charge persons for luring minors to sexual activities in any way, including the Internet. Indeed, the father and son who arranged a meeting with a 13-year-old Livingston County girl were convicted of third-degree CSC and given the maximum sentence of 10-15 years' imprisonment. In addition, according to a February 5, 1999, article in the *Detroit Free Press*, there have been two recent arrests in Oakland County in cases in which men lured or attempted to lure young girls into meeting them for sexual encounters.

Response: The bills would be an additional tool to use in enforcing and prosecuting these Penal Code violations. They could deter potential offenders from using the Internet and other computer connections to commit the specified crimes. In addition, they could be used to exact greater punishment on those who did use this technology in furtherance of their crimes, just as the law provides for greater penalties for the use of a firearm in committing a felony.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 7 (S-1) and 217 (S-1) would result in an indeterminate, yet potential additional cost for State and local government. In 1996, 2,386 criminal dispositions involved Section 145c, 349, 411h, 411i,

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520b-520e, or 520g of the Penal Code, dealing with child abusive commercial activity, kidnapping, stalking, or criminal sexual conduct. Of the 2,386 criminal dispositions, about half of the offenders were sentenced to prison and half received jail, probation, or other sanctions. It is unknown how many of the victims were minors or how many offenders used the Internet to facilitate the crime. Additionally, in 1996, three criminal dispositions involved Section 157c of the Penal Code dealing with soliciting a minor to commit a crime. It appears that no criminal dispositions involved Sections 350 or 145a of the Penal Code, dealing with child kidnapping and enticement.

Given that the average cost of incarcerating a prisoner is about \$18,000, and that under current law, an offender with a two-year maximum sentence would spend about 16 months in prison, the added penalty under the proposed legislation would increase the cost of a prison term about \$24,000. The prison term for a second or subsequent offense, under current sentencing practices, would increase a prison term by about 40 months, for an additional cost of \$60,000. Although there is no way of knowing how many of the 1996 criminal dispositions involved minors and Internet facilitation, if one assumed that 5% of the 1996 criminal dispositions with prison terms involved minors, the Internet, and nonconcurrent sentences, and that half were second or subsequent offenses, prison term costs could increase by \$2,310,000 in the long run.

Fiscal Analyst: K. Firestone