

Legislative Analysis



PROHIBIT SEX OFFENDERS FROM ACCESSING ONLINE COMMUNITIES

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House Bill 6430 as passed by the House
Sponsor: Rep. David Law

House Bill 6431 as passed by the House
Sponsor: Rep. David Farhat
Committee: Judiciary

First Analysis (11-9-06)

BRIEF SUMMARY: The bills would prohibit persons convicted of certain sex-related crimes from accessing online commercial social networking communities (such as MySpace and Facebook); require the Department of State Police to develop (along with the Department of Education) materials on Internet safety and make them available to schools and libraries; and place the maximum sentence of imprisonment within the sentencing guidelines.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local governments. (A more detailed discussion follows later in the analysis.)

THE APPARENT PROBLEM:

The use of Internet social networking sites, for example, MySpace.com and Facebook.com, by minors has led to concerns that pedophiles could use such networks to find new victims. It has been suggested that any convicted pedophile who had used a computer in the commission of his or her crime be prohibited from contacting minors (persons under 18 years of age) via any commercial social networking website.

THE CONTENT OF THE BILLS:

The bills would prohibit persons convicted of sex-related crimes involving a person under 18 years of age from accessing a commercial social networking website (such as MySpace.com); require the Department of State Police and the Department of Education to develop materials on Internet safety; require the DSP to make those materials available to specified entities; ensure parents and educators have access to those materials; and place the maximum sentence within the sentencing guidelines. Both bills would take effect 90 days after enactment. Specifically, each bill would do the following:

House Bill 6430 would add a new section to the Michigan Penal Code (MCL 750.411u) to prohibit certain sex offenders from accessing a commercial social networking website. The prohibitions described below would apply to a conviction for a listed offense (an offense for which registration as a sex offender is required), or any other state or federal law substantially similar, in which the victim was less than 18 years of age:

- If a person has been convicted of a listed offense and had used a computer to commit that offense, the person could not access a commercial social networking website.

- If a person has been convicted of a listed offense, but the offense did not include the use of a computer, the person could not directly contact an individual whom he or she knew or had reason to believe was under the age of 18 by means of a commercial social networking website.

A first offense would be a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000, or both. A second or subsequent violation would be a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$5,000.

"Commercial social networking website" would mean a commercially operated Internet website offered by a commercial entity that permitted registered users to create an on-line profile that included detailed personal information, create an on-line journal that could be shared with other users, permitted registered users to share highly personalized information, and enabled communication among users.

In addition, the bill would require the Department of State Police (DSP), in cooperation with the Department of Education, to develop or select materials on Internet safety. At a minimum the materials would have to include information that would help children, parents, and teachers identify, avoid, and deal with potential threats to a child's safety. The DSP would have to make those materials available to school districts, public school academies, nonpublic schools, libraries, and any other entity that provided public access to the Internet. The DSP would also have to ensure that parents, teachers, and other members of the public had access to those materials.

House Bill 6431 would amend the Code of Criminal Procedure (MCL 777.16t) to specify that use of a commercial social networking website by a sex offender – second or subsequent offense – would be a Class E felony against the Public Order with a maximum term of imprisonment of five years. The bill is tie-barred to House Bill 6430.

BACKGROUND INFORMATION:

"Listed offense" means any of the following:

- Accosting, enticing, or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- Engaging in indecent exposure with a lewd act if that individual had been previously convicted of indecent exposure or indecent exposure with a lewd act.
- First, second, third, or fourth degree Criminal Sexual Conduct (CSC).
- Assault with intent to commit CSC.
- If the victim is less than 18 years of age, the crime of gross indecency (except for a juvenile disposition or adjudication), kidnapping, sodomy, or soliciting another for prostitution.
- Leading, enticing, or carrying away a child under 14 years of age.
- Pandering.

- Any other violation of a state law or local ordinance constituting a sexual offense against an individual less than 18 years of age.
- An offense committed by a sexually delinquent person.
- An attempt or conspiracy to commit one of the offenses listed above.
- Any offense under the laws of the United States, any other state, or any other country or tribal or military law, that is substantially similar to a listed offense.

FISCAL INFORMATION:

The bills' fiscal impact on state and local correctional systems would depend on how they affected prosecutorial charging decisions, the numbers of felony and misdemeanor convictions, and sentences imposed. The cost of any increase in prison intake or the lengths of sentences imposed would be borne by the state, at an average annual cost of about \$30,000 per prisoner. Costs of felony probation supervision fall to the state, while misdemeanor probation supervision is a local responsibility. Parole and felony probation supervision costs the state an average of about \$2,000 per supervised offender per year; local costs of misdemeanor probation supervision vary with jurisdiction. County jail costs, which vary by county, could increase to the extent that more offenders received jail time for felony or misdemeanor offenses. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

The requirement to develop and make available Internet safety materials could increase costs for the Department of State Police and Department of Education related to developing and disseminating the required Internet safety materials, with the fiscal impact to the DOE related to the administrative costs of helping to develop the materials. These increases would be indeterminate, especially to the DSP, since it is unclear if the materials would have to be in written form or could be in an electronic format.

ARGUMENTS:

For:

Commercial Internet social networking sites, such as MySpace.com and Facebook.com first became popular with college students as a way to share general and personal information with other students at the same college or university. In time, both expanded to allow anyone to become members, including high school students. Though membership is open only to people 14 years of age and older, sometimes younger students misrepresent their ages in order to register as members. (In general, social networking sites remove any member found to be younger than the required minimum age). The fact that minor children ages 14 to 17 (and possibly younger) are able to create online personas, complete with pictures, online journals or dairies, and other personal information has raised a concern that pedophiles may use such sites to troll for new victims. Direct contact with a member of a social networking site is only allowed by other registered users, and registered members can restrict access to their online profile to specific individuals named as "friends"; however, a minor could inadvertently add as a "friend" a pedophile posing as a younger person.

The bill would address this concern by creating a new crime category that would give prosecutors and law enforcement personnel an additional tool to keep children safe. Under the bills, any person who had previously been convicted of a sex crime involving a child

under 18 years of age, and who had used a computer in the commission of that crime, would be prohibited from using a commercial social networking website to contact or communicate with a person under the age of 18. Thus, it would be a crime even if no sexual molestation took place.

For:

The House-passed version of House Bill 6430 is not as broad as the bill was when first introduced. In its current form, the bill would not apply to all registered sex offenders. It would only apply to a person who had been tried and convicted as an adult; therefore, it would not apply to an individual adjudicated as a juvenile or to a person who had been assigned youthful trainee status under the Holmes Youthful Trainee Act on or after October 1, 2004 and who had successfully completed that assignment. In addition, the bill would only apply to those whose victim had been under the age of 18 and who had used a computer in the commission of that crime.

Furthermore, the bill would not prohibit all usage of the Internet or access to social networking sites – it would only prohibit those sex offenders from using the site to contact a person who an offender knew or had reason to know was under the age of 18. Offenders subject to the bill could still use MySpace.com, Facebook.com, and similar sites to contact other adults.

Moreover, the bill would not prevent people from accessing church websites, family websites, and so on. The bill would restrict the prohibited conduct to only commercial social networking sites that met the criteria specified in the bill – if a website did not meet all four criteria listed in the bill, then the website would not be off-limits. The bill would also not interfere with a parent's ability to monitor his or her own child's Internet usage, as the parent/offender could review the child's online profile or Internet activities without contacting other children.

Therefore, in its current form, the bill would provide an additional tool to law enforcement agencies to prosecute those who would use the Internet to prey on children, yet not be so overly broad as to restrict conduct on the part of individuals who do not pose a threat to the safety of children.

Against:

The bill remains problematic for the following reasons:

- It is unclear how the bill would be, or could be, enforced. With over 40 million registered members of MySpace.com and over 10 million registered members of Facebook.com, not to mention countless other smaller commercial networking sites, how would law enforcement agencies be able to monitor and ascertain that a sex offender prohibited under the bills from contacting minors via a commercial social networking website had done so, and had done so when using a computer located within the state of Michigan?
- The bills could give parents a false sense of security that pedophiles were not able to use commercial social networking websites leading them to be less vigilant in monitoring their children's Internet activities.

- Though laws prohibiting using a computer in the commission of a CSC and other crimes would still apply, the prohibition and penalty established by the bills would only apply to a convicted pedophile who had used a computer to commit his or her previous crime against a child, thus not prohibiting other convicted pedophiles from directly contacting minors via these websites.
- The age of consent in Michigan is sixteen, thus the bills would be prohibiting online contact between persons who otherwise are legally allowed to have a consensual relationship.
- A violation of House Bill 6430 is likely to be discovered only during an investigation of a different or subsequent crime; therefore, it would have little use as a proactive deterrent.
- Without first amending the Sex Offenders Registration Act to remove people from the Sex Offenders Registry who are not predators, the bill would put some who pose no threat of predatory behavior at risk of breaking the law.

A better approach would be to concentrate efforts in educating parents, teachers, the general public, and children to the dangers of online predators and to how children can effectively protect themselves from online advances.

Response:

A House floor amendment added an education component. The Department of State Police will be required under House Bill 6430 to develop, with the help of the Department of Education, materials on Internet safety that would, at a minimum, include information that would equip children, parents, and teachers to identify, avoid, and deal with potential threats. These materials would have to be available wherever public access to the Internet was provided.

In addition, though it could be that a violation of the bills' prohibitions is most likely to be exposed during the investigation of a different crime, passage of the bills still has merit. Currently, Section 145d of the Michigan Penal Code prohibits using the Internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose, among other things, of committing, attempting to commit, conspiring to commit, or soliciting another person to commit various sex crimes involving minors. To convict a person under this statute, however, a prosecutor must prove intent. House Bill 6430 would make it a crime, period, for certain sex offenders to contact minors via commercial social networking websites – intent to commit a sex crime would not have to be proven. In fact, the communication would not even have to be of a sexual nature; even a discussion about the Detroit Red Wings would constitute a violation. Thus, parents and minors could report, and law enforcement could investigate and prosecute, any occurrence involving communications between minors and certain sex offenders via these websites.

Furthermore, Section 145d applies to using computers, etc. in which the intended victim is a minor; "minor" is defined in the statute to mean an individual less than 18 years of age. Therefore, it is appropriate for the bill to prohibit contact between certain sex offenders and individuals under 18 via these websites, even though some would be of legal age to consent to sexual relationships.

Rebuttal:

The informational materials required to be developed under House Bill 6430 must be made available to any entity that provides public access to the Internet, but the bill is not specific as

to how this requirement could be satisfied. Would the information have to be in written form, or could it be made available in an electronic format? Would an "entity that provides public access to the Internet" be only a business or other entity that provided computers for public use, such as Internet cafes, or ones that provided Internet hook-ups for a fee or free Wi-Fi service (i.e., many coffee shops, restaurants, the lobby of the House Office Building, airport terminals, and city hotspots) but did not supply computers for public use? Would these entities then be required to have these materials available to their customers or to post signs about how to find the information online? If the DSP had to supply all such entities with printed materials, there could be substantial cost to the state. (The DSP already has information on Internet safety available on its website at

http://www.michigan.gov/msp/0,1607,7-123-1589_1711_4579---,00.html.)

POSITIONS:

The Deputy Sheriffs Association of Michigan supports the bills. (11-7-06)

The Safer Online Dating Alliance supports the bills. (11-7-06)

The Department of Corrections supports the bills. (11-8-06)

The Department of State Police supports House Bill 6430. (11-7-06)

The American Civil Liberties Union/Michigan opposes the bills. (9-20-06)

Citizens for Second Chances opposes the bills as unenforceable. (11-7-06)

The Coalition for a Useful Registry also opposes the bills as being unenforceable. (11-9-06)

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■ 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.