

PROHIBIT CYBERBULLYING

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House Bill 5017 (H-2) as reported from committee
House Bill 5018 (H-1) as reported from committee
Sponsor: Rep. Peter J. Lucido

Analysis available at
<http://www.legislature.mi.gov>

Committee: Law and Justice
Complete to 3-21-18

BRIEF SUMMARY: House Bill 5017 would make it a crime to cyberbully another person, define “cyberbullying,” and provide criminal penalties. House Bill 5018 would place the felony penalties within the sentencing guidelines. Each bill would take effect 90 days after its enactment.

FISCAL IMPACT: House Bill 5017 would have an indeterminate fiscal impact on state and local units of government, as described in more detail in the *Fiscal Information* section, below.

THE APPARENT PROBLEM:

As technology advances, so must criminal laws, especially if the new technology creates a new avenue for bad conduct that harasses or causes injuries to another person. Though the internet has been a boon to business and information sharing that has enhanced the lives of many, it has increasingly become an avenue for bad behavior such as cyberbullying.

Currently, the only laws addressing bullying or hazing behaviors apply to students, with schools being required to address cyberbullying in their anti-bullying policies. Yet adults, as well as school-aged children, can find themselves the victims of online bullies, especially with the growth of social media sites. In particular, blogs, Facebook, Twitter, and Reddit, among others, are rife with trolls—people who use the anonymity of the internet to try, using provocative language, hate-filled statements, personal attacks, and so on, to stir up controversy, start online arguments, and elicit a reaction from readers. Mostly they are annoying. But sometimes the posts cross the line and begin to target individuals in such a way as to demean to the point of stripping away the inherent worth of another.

The posts may contain threatening comments, or be so repeated and unrelenting in the venom toward a person that the posts become threatening or begin to wear on the health and emotional well-being of their victim. For example, one Michigan woman active in community politics reports that the onslaught of comments by trolls on her social media accounts drives up her blood pressure and aggravates the pain of fibromyalgia. In other cases, the comments may be so harsh as to push a vulnerable person over the edge and result in self-harm or even suicide. Sometimes the comments feed the anger in others who are then motivated to carry out actual physical attacks on the targeted person or persons.

According to prosecutors, existing laws are often too vague or too outdated to hold trolls accountable for the consequences of their bad actions. If current law cannot fit the bad acts,

no charges can be brought and conduct that rises to the level of other crimes in its ability to harm others cannot be prosecuted. Legislation is therefore sought to prohibit using cyberspace to bully another person.

THE CONTENT OF THE BILLS:

House Bill 5017 would add a new Section 411x to the Michigan Penal Code to prohibit a person from cyberbullying another person. The penalty for violating the bill’s prohibition could include a term of imprisonment, a fine, or both, as follows:

Offense of Cyberbullying	Offense level	Maximum term of imprisonment	Maximum fine
First offense	Misdemeanor	93 days	\$500
Second or subsequent offense	Misdemeanor	1 year	\$1,000
Cyberbullying involving a continued pattern of harassing or intimidating behavior that by the violation causes serious injury to the victim	Felony	5 years	\$5,000
Cyberbullying involving a continuing pattern of harassing or intimidating behavior causing death	Felony	10 years	\$10,000

“Cyberbullying” would be defined by the bill to include posting a message or statement in a public media forum about any other person if **both** of the following apply:

- The message or statement is intended to place a person in fear of bodily harm or death and expresses an intent to commit violence against the person.
- The message or statement is posted with the intent to communicate a threat or with knowledge that it will be viewed as a threat.

“Pattern of harassing or intimidating behavior” would mean a series of 2 or more separate noncontinuous acts of harassing or intimidating behavior.

“Public media forum” would mean the internet or any other medium designed or intended to be used to convey information to other individuals, regardless of whether a membership or password is required to view the information.

Proposed MCL 750.411x

House Bill 5018 would place the maximum term of imprisonment for the felony violations of House Bill 5017 within the sentencing guidelines provisions of the Code of Criminal Procedure. Specifically, cyberbullying causing serious injury would be a Class E felony against a person with a maximum term of imprisonment of 5 years, and cyberbullying causing death would be a Class D felony against a person with a maximum term of imprisonment of 10 years.

House Bill 5018 is tie-barred to HB 5017, which means that HB 5018 cannot take effect unless HB 5017 is also enacted into law.

MCL 777.16t

FISCAL INFORMATION:

House Bill 5017 would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of new convictions resulting from provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation/parole supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5018 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Rudeness is not a crime. Neither is insensitivity. But when messages are so degrading, so dismissive, so cruel, so shaming as to crush someone’s spirit, as to attack the very essence of a person, the bad actor needs to be held accountable. Knowing that others can, and are likely to, view the messages adds to the devastating effects. Though schools have anti-cyberbullying provisions within their anti-bullying policies, there is little school officials can do about conduct occurring off-campus or when school is not in session. For adults, there is virtually no recourse. Prosecutors say there is little they can do when a complaint is filed, as there is no law with which to prosecute. What laws do exist are so vague or

outdated as to make it difficult to fit them to the cyberbullying incidents being reported and for juries to understand how the law was violated.

House Bill 5017 is an important first step to provide accountability for bad actors and to provide relief to persons targeted by trolls and others using the anonymity of cyberspace to shame and bully another person. The bills should deter the types of messages that cross the line of decency, that fall outside of protected speech, that can and often do have the effect of causing stress, depression, physical ailments, and, in some cases, suicidal thoughts or acts on the part of the target. The bills may also prevent the type of vitriol that precipitates an attack by a reader on the target of the message.

House Bill 5017 would not prohibit someone from posting an opinion or position on any topic. It would not prohibit insulting language. It would prohibit content that would communicate a threat and that intends to make the target of the message fear for his or her safety. The bill would apply to cyberbullies of any age and to victims of any age and to incidents occurring only in Michigan (federal legislation would be needed to address cyberbullying across state lines). Reportedly, at least 34 states have some kind of law addressing cyberbullying in schools. It is time to be proactive and enact prohibitions on the type of cyber communications that are destructive and harmful to others, whether between classmates or adults who are strangers. Supporters of the initiative believe the bills will save lives. At the least, the bills will hold trolls and other bad actors accountable for how they use their words.

Against:

Though the committee substitutes are more narrowly focused than the bills as introduced, concerns regarding House Bill 5017 still remain. First, not all understand a need for the bill. Both state and federal law criminalizes a wide range of activities using computers, slander and defamation are prohibited, and Michigan even has a harassment by proxy law which prohibits posting a message via any medium of communication that in turn leads to the person or the person's family being harassed or threatened either by the individual posting the messages or by any other person (e.g., a reader or recipient of the posted message). It would seem that existing laws should be sufficient to find one that "fits" the elements of a particular incident and that jurors could be provided with the information necessary to understand "how" those laws would encompass the conduct for which a person is being tried.

Additionally, it is not clear how the felony provisions would be applied. If a posting causes someone to self-harm or take his or her own life, or is viewed as encouraging a third person to harm the subject of the posted message, HB 5017 would be criminalizing conduct that is outside a potential defendant's control. Though heinous, the desire to make another feel threatened and scared does not necessarily mean that there was a desire that the person actually be injured or killed, whether by a third person or by the victim's own hand.

Response:

According to county prosecutors who testified before the committee on HB 5017, the so-called harassment-by-proxy law is unwieldy and difficult not just for juries to understand, but also law enforcement officers. Further, that law requires the victim to actually "feel"

terrorized, threatened, or harassed. By contrast, HB 5017 focuses on the *intended result* of the messages or posts—that is to say, *to place* the targeted individual in fear of being harmed or killed and *to communicate* a threat or *post* a message or statement knowing it would be understood to be a threat. The message or posting *must also express an intent* to commit violence against the target. The person targeted by the messages would not actually have to experience fear, as required under existing law, though some may. Further, the proxy law was enacted to specifically encompass, although is not limited in application to, situations in which one person would encourage others to harass the target by such things as placing an ad to sell a car but specifying to only call after midnight or, as in one case that made national headlines, impersonating the target in online chat rooms or online ads saying that the targeted individual wished to be raped and providing that person’s address. Therefore, the bill is needed to fill gaps in the current law that make it difficult to hold persons accountable for unscrupulous conduct that can lead to placing others in emotional distress or subjecting them to physical harm or death.

POSITIONS:

Representatives of the Macomb County Prosecutor’s Office testified in support of the bills. (12-5-17)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bills. (2-27-18)

The ACLU of Michigan indicated a neutral position on the bills. (2-27-18)

Citizens Alliance on Public and Prison Spending opposes the bills. (3-9-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.