

Senate Bill 785 (Substitute S-3 as passed by the Senate)
Senate Bill 1091 (Substitute S-3 as passed by the Senate)
Sponsor: Senator George Z. Hart (S.B. 785)
Senator Mike Rogers (S.B. 1091)
Committee: Judiciary

Date Completed: 1-27-99

RATIONALE

The Internet includes e-mail, chat rooms, news groups, and Web servers that provide vast information and interactive communication to millions of people. 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, kidnaping, and other crimes. The Internet's anonymous nature and lack of monitoring enables molesters and pedophiles to lure children in chat rooms and e-mail 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 who was allegedly 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

The bills would amend the Michigan Penal Code to establish felony penalties for using the Internet to communicate with someone for the purpose of committing certain crimes. The bills are tie-barred to each other and would take effect on September 1, 1998.

Senate Bill 785 (S-3)

The bill specifies that a violation of Senate Bill 1091 would be a felony. A first offense would be punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. A second or subsequent offense would be punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both. A term of imprisonment for a violation of Senate Bill 1091 could be served consecutively to and preceding any term of imprisonment imposed for the underlying offense.

The bill specifies that neither it nor Senate Bill 1091 would prohibit a person from being charged with, convicted of, or punished for any other violation of law committed while violating Senate Bill 1091, including the underlying offense. The bills would apply regardless of whether the person was convicted of committing, attempting, conspiring to commit, or soliciting another to commit an underlying offense.

Senate Bill 1091 (S-3)

The bill would prohibit the use of the Internet 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: enticement in child sexual abuse or material (MCL 750.145c); kidnaping (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 kidnaping of a child under the age of 14 (MCL 750.350).
- Committing or attempting to commit solicitation of a child for immoral purposes (MCL 750.145a) or recruitment or inducement of a minor to commit a felony (MCL 750.157c).

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

Under the bill, "Internet" would mean a worldwide interconnection of individual computers and computer networks and the equipment and facilities used to gain access to those interconnected networks. "Minor" would mean a person who was under 18 years of age.

Proposed MCL 750.145e (S.B. 785)
Proposed MCL 750.145d (S.B. 1091)

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 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, protection is needed against sexual predators who use it as a tool for indecent communication and exchange of unsuitable material with minors.

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.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bills 785 (S-3) and 1091 (S-3) would result in indeterminate, yet potential additional costs for State and local government.

In 1996, 2,386 criminal dispositions involved sections of the Penal Code involving child abusive commercial activity, kidnaping, stalking, or criminal sexual conduct. About half of these 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 the Penal Code section dealing with soliciting a minor to commit a crime. It appears that no criminal dispositions involved sections dealing with child kidnaping and enticement.

Given that the average annual 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 by about \$24,000. The penalty for a second or subsequent offense 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

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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.