

Senate Fiscal Agency  
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**SFA**

BILL ANALYSIS

Telephone: (517) 373-5383  
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Senate Bills 893, 894, and 1162 (as enrolled)  
House Bills 5184 through 5187 (as enrolled)  
Sponsor: Senator Mike Rogers (Senate Bills 893 & 894)  
Senator William Van Regenmorter (Senate Bill 1162)  
Representative Gene DeRossett (House Bill 5184)  
Representative William O'Neil (House Bill 5185)  
Representative Jim Howell (House Bill 5186)  
Representative Ruth Jamnick (House Bill 5187)  
Senate Committee: Judiciary  
House Committee: Criminal Law and Corrections

**PUBLIC ACTS 184, 185, & 183 of 2000**  
**PUBLIC ACTS 178 through 181 of 2000**

Date Completed: 3-13-01

### **RATIONALE**

Michigan law contains various provisions that criminalize certain activities involving the use of computers. Under the Michigan Penal Code, as amended by Public Acts 32 and 235 of 1999, it is a felony to use the Internet, a computer, or a computer program, network, or system in order to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit certain crimes against minors, bombing offenses, and stalking. Some people believed that the penalty structure for these computer-use offenses should be based on the underlying crime committed or attempted, with graduated penalties for more serious offenses, rather than having the same penalties attached to nearly all of the computer-use crimes.

In addition, Public Act 53 of 1979 prohibits access to computers for certain fraudulent purposes and the intentional and unauthorized access to, and alteration, damage, and destruction of computers. That Act originally provided criminal penalties for various violations (e.g., embezzlement, fraudulent disposition of personal property, and larceny) that involved the use of a computer or computer system. Amendments enacted in 1996 expanded the prohibited activities to include unauthorized access to or use of computers or computer systems and infecting computers or computer systems with inserted instructions or programs (e.g., spreading a computer virus). Originally, all penalties under the Act were based on the amount of the loss incurred by a victim. Because violations of Public Act 53 do not always involve large amounts of money, it was suggested that the penalties could be too lenient in some cases.

Also, since the investigation of high-tech offenses

may involve great expense and require innovative methods of investigation, some people suggested that the computer-use crimes be included in statutory provisions allowing property forfeiture and reimbursement of law enforcement costs, in order to enable the State and local units to recover some of the costs involved in investigating and prosecuting these types of offenses. It also was suggested that the forfeiture provisions should apply to attempted crimes and solicitation of another person to commit a crime.

### **CONTENT**

**The bills amended various acts to restructure penalties for using the Internet or a computer to commit certain crimes, and to include those offenses in provisions of law allowing for forfeiture of property used in or derived from criminal activity and for reimbursement of law enforcement expenses.**

Senate Bill 893 amended the Revised Judicature Act (RJA); Senate Bill 894 amended the Michigan Penal Code; Senate Bill 1162 and House Bill 5184 amended the Code of Criminal Procedure; and House Bills 5185, 5186, and 5187 amended Public Act 53 of 1979.

All of the Senate bills were tie-barred to House Bills 5185-5187. Senate Bill 1162 also was tie-barred to Senate Bill 894. All of the House bills were tie-barred to Senate Bills 893 and 894. House Bill 5184 also was tie-barred to the other three House bills. House Bills 5185, 5186, and 5187 also were tie-barred to each other. All of the bills took effect on September 19, 2000.

### **Senate Bill 893**

The bill amended Chapter 47 of the RJA ("Forfeiture or Seizure of Certain Property") to include violations committed by use of the Internet, a computer, or a computer program, network, or system in the list of offenses for which seizure and forfeiture proceedings may apply to property used in or obtained through the commission of, or conspiracy to commit, a crime.

In addition, the bill allows forfeiture proceedings for attempting or soliciting another to commit any of the listed offenses.

### **Senate Bill 894**

The bill amended the Michigan Penal Code to revise offenses and penalties for certain crimes involving use of the Internet or a computer, and provide for reimbursement to the State or a local unit for investigation and prosecution of those crimes.

Previously, the Penal Code prohibited use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following:

- Involvement in child sexually abusive activity or material, kidnapping, first-, second-, third-, or fourth-degree criminal sexual conduct (CSC), or assault with intent to commit CSC, when the victim or intended victim was a minor.
- Solicitation of a child for immoral purposes, recruitment or inducement of a minor to commit a felony, kidnapping of a child under the age of 14, or stalking or aggravated stalking.
- An explosives offense listed in Chapter 33 of the Code, causing a death by explosives, selling explosives to a minor, or intentionally reporting a crime relating to a bombing, attempted bombing, or threat to bomb, knowing that the report was false.
- Various gambling or gaming offenses prohibited by the Penal Code or the Michigan Gaming Control and Revenue Act.

The bill, instead, prohibits a person from using the Internet, a computer, computer program, computer network, or computer system to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following offenses in which the victim or intended victim is a minor or is believed by that person to be a minor:

- Solicitation of a child immoral purposes.
- Involvement in child sexually abusive activity or material.
- Recruitment or inducement of a minor to commit

a felony.

- Kidnapping.
- Kidnapping of a child under the age of 14.
- First-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC.
- Distribution of obscene matter to a minor.

As previously provided, the bill also prohibits the use of the Internet, a computer, etc., to communicate with another person for the purpose of committing, attempting or conspiring to commit, or soliciting another to commit stalking or aggravated stalking, or an explosives offense described above. The bill deleted reference to the gambling and gaming offenses.

Previously, except for an offense involving explosives, a violation was a felony punishable by up to two years' imprisonment and/or a maximum fine of \$5,000. If the offender had one or more prior convictions, or if the offense involved explosives, the violation was punishable by imprisonment for up to five years and/or a fine of up to \$5,000. The bill replaced these penalties with a range of punishments based on the penalty for the underlying crime, as shown in Table 1.

Table 1

Underlying Crime	Offense Level	Maximum Imprisonment	Maximum Fine
Less than 1 year	misdemeanor	1 year	\$5,000
1-2 years	felony	2 years	\$5,000
2-4 years	felony	4 years	\$5,000
4-10 years	felony	10 years	\$5,000
10-15 years	felony	15 years	\$10,000
15 years - life	felony	20 years	\$20,000

**House Bill 5184**

In addition, under the bill, a person convicted of an Internet or computer offense described above may be ordered to reimburse the State or a local unit of government for expenses incurred in relation to the investigation and prosecution of the violation.

The bill includes in the Code of Criminal Procedure's sentencing guidelines provisions criminal offenses contained in Public Act 53 of 1979, along with new penalties created by House Bill 5186 for some of those offenses.

**Senate Bill 1162**

The bill amended the Code of Criminal Procedure to include in the sentencing guidelines the revised penalties established by Senate Bill 894 for use of the Internet or a computer to commit certain crimes, and to delete the previous sentencing guidelines provisions for those crimes.

Under House Bill 5184, unlawful access to a computer, computer system, or computer program is a Class E property felony with a statutory maximum of five years' imprisonment. Unlawful access to a computer, computer system, or computer program with a prior conviction is a Class D property felony with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 1162 established the classification and statutory maximum for using a computer to commit those crimes, according to the maximum term of imprisonment applicable to the crime committed, as shown in Table 2.

The bill established the classification and statutory maximum for using a computer to commit a crime, according to the maximum term of imprisonment applicable to the crime committed, as shown in Table 3.

Table 2

Maximum Term of Crime (Years)	Felony Class	Statutory Maximum
At least 1 but less than 2	G	2
At least 2 but less than 4	F	4
At least 4 but less than 10	D	7
At least 10 but less than 20	C	10
At least 20 or life	C	20

These offenses have a "variable" offense category. A sentencing court must determine the offense category, offense variable level, and prior record variable based on the underlying offense.

Table 3

Maximum Term of Crime (Years)	Felony Class	Statutory Maximum
At least 1 but less than 2	G	2
At least 2 but less than 4	F	4
At least 4 but less than 10	D	7
At least 10 but less than 20	D	10
At least 20 or life	B	20

These offenses have a "variable" offense category. The bill requires the sentencing court to determine the offense category, offense variable level, and prior record level based on the underlying offense.

**House Bill 5185**

In addition, the bill includes in the sentencing guidelines "buying or selling an individual", as prohibited by House Bill 5568 (Public Act 205

Section 6 of Public Act 53 of 1979 prohibits the use of a computer or a computer program, system, or network to commit a crime. The bill also prohibits the use of a computer or a computer program, system, or network to attempt, conspire, or solicit another person to commit a crime.

of 2000). This crime is categorized as a Class B offense against a person with a statutory maximum of 20 years.

The bill specifies that Section 6 does not prohibit a person from being charged with, convicted of, or punished for any other violation committed by that person while violating or attempting, conspiring, or soliciting another person to violate this section, including the underlying offense. The bill also specifies that Section 6 applies regardless of whether the person is convicted of committing or attempting, conspiring, or soliciting another person to commit the underlying offense.

**House Bill 5186**

Access in Order to Defraud or Steal

Previously, all violations of Public Act 53 of 1979 were subject to the same penalties, based upon the "aggregate amount" of loss experienced by the victim and the offender's prior convictions.

Under the bill, these penalties apply only to a violation of Section 4 of the Act, which prohibits a person from intentionally gaining access or causing access to be made to a computer or a computer program, system, or network "to devise or execute a scheme or artifice with the intent to defraud or to obtain money, property, or a service by a false or fraudulent pretense, representation, or promise".

Under the bill, a violation of Section 4 is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the aggregate amount, whichever is greater, if the violation involves an aggregate amount of less than \$200. If a violation involves an aggregate amount of \$200 or more but less than \$1,000, or the offender has a prior conviction, the offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the aggregate amount, whichever is greater.

Table 4

Maximum Term of Underlying Crime (years)	Maximum Fine	Maximum Term (years)
<u>Misdemeanor or Felony</u> 1 or less	\$5,000	1
At least 1 but less than 2	5,000	2

If a violation involves an aggregate amount of \$1,000 or more but less than \$20,000, or the offender has two prior convictions, the offense is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the aggregate amount, whichever is greater. If a violation involves an aggregate amount of \$20,000 or more, or the offender has three or more prior convictions, the offense is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the aggregate amount.

Access in Order to Alter, Damage, or Delete

Section 5 of the Act prohibits a person from doing either of the following intentionally and without authorization, or by exceeding valid authorization:

- Gaining access or causing access to be made to a computer or computer program, system, or network to acquire, alter, damage, delete, or destroy property or otherwise use the service of the computer or computer program, system, or network.
- Inserting or attaching or knowingly creating the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer or computer program, system, or network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer or computer program, system, or network.

Under the bill, a violation of Section 5 is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. If the offender has a prior conviction, the felony is punishable by up to 10 years' imprisonment and/or a maximum fine of \$50,000.

Computer Use to Commit Crime

The bill established penalties for a violation of Section 6 (described in House Bill 5185, above) based upon the maximum term of imprisonment for the crime that was committed or attempted by use of a computer or computer program, system, or network, as shown in Table 4.

At least 2 but less than 4	5,000	4
<u>Felony</u> At least 4 but less than 10	5,000	7
At least 10 but less than 20	10,000	10
At least 20 or life	20,000	20

If the underlying crime is a misdemeanor punishable by one year or less, the violation of Section 6 is a misdemeanor. The remaining violations are felonies.

The bill allows a court to order that a term of imprisonment imposed for a violation of Section 6 be served consecutively to any term of imprisonment imposed for a conviction of the underlying offense.

#### Prior Conviction

The bill defines "prior conviction" as a violation or attempted violation of the Michigan Penal Code's prohibition against using the Internet or a computer for the crimes described in Senate Bill 894; or a violation of Public Act 53 or a substantially similar law of the United States, another state, or a political subdivision of another state.

#### Law Enforcement Reimbursement

The bill authorizes the sentencing court to order a person convicted of a violation of Public Act 53 to reimburse the State or a local unit for expenses incurred in relation to the investigation and prosecution of the violation.

#### House Bill 5187

The bill revised the definition of "aggregate amount" in Public Act 53. That term means any direct or indirect loss incurred by a victim, including the value of any money, property or service lost, stolen, or rendered unrecoverable by the offense, or any actual expenditure incurred by the victim to verify that a computer or a computer program, system, or network was not altered, acquired, damaged, deleted, disrupted, or destroyed by the access. The bill specifies that direct or indirect losses incurred in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the loss involved in a violation. The bill also refers to a victim or a "group of victims".

MCL 600.4701 (S.B. 893)  
750.145d (S.B. 894)  
777.16g (S.B. 1162)  
777.17 (H.B. 5184)  
752.796 (H.B. 5185)  
752.797 (H.B. 5186)  
752.792 (H.B. 5187)

#### 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

Michigan has been a pioneer in enacting penalties for crimes involving the use of a computer. In 1979, when Public Act 53 was enacted, computer use

among the public was on the verge of becoming widespread. Amendments enacted in 1996 added sanctions for acts of computer piracy, such as spreading viruses. In 1999, Public Acts 32 and 235 enacted enhanced penalties in the Penal Code for computer use in certain exploitative crimes.

This package of Senate and House bills will help to make the proscriptions against criminal computer use in Public Act 53 and the Penal Code more effective. Investigating these types of high-tech crimes can involve expensive equipment and the need for innovative policing techniques. Including the computer-use offenses in provisions that allow for forfeiture of the tools and proceeds of crime, as well as authorizing law enforcement expense reimbursement orders, will help police and prosecutors to enforce these laws more efficiently and thoroughly.

In addition, the former penalties for the computer-use crimes in both Public Act 53 and the Penal Code might have been inappropriate. Since the penalties set by those statutes did not depend on the underlying crime involved in the violation, the punishment might have been either too harsh or too lenient in some cases. Also, Public Act 53 bases some fines on the aggregate amount of loss to a victim. While some crimes that can be committed with the use of a computer may be serious, they might not involve large-scale financial losses. Gearing the penalties to the seriousness of the underlying crime, as the bills do, will ensure that appropriate criminal sanctions are available in each case.

Legislative Analyst: P. Affholter  
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#### FISCAL IMPACT

##### Senate Bill 893

The bill will have an indeterminate fiscal impact on State and local government. The bill provides for seizure and forfeiture proceedings associated with computer-related crimes. It is not possible at this time to estimate the likely revenue that will be received by State and local government under this provision.

##### Senate Bills 894 & 1162

Senate Bills 894 and 1162 will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people may be convicted of unlawfully using a computer to commit, attempt to commit, or solicit another to commit stalking, an explosives offense, or a crime such as kidnapping or criminal sexual conduct in which the victim is a minor. The felonies are incorporated into the sentencing guidelines and

range from Class B to Class G offenses based on the maximum penalty for the underlying crime. For example, an offender accused of a crime that has a maximum penalty of 15 years to life will be subject to the Class B offense. The minimum sentence ranges are shown in Table 5.

Table 5

Crime Class	Minimum Sentence Range (Months)	
	<u>From</u>	<u>To</u>
B	0-18	117-160
C	0-11	62-14
D	0-6	43-76
E	0-3	24-38
F	0-3	17-30
G	0-3	7-23

Assuming that five offenders a year are convicted of using a computer to commit one of the specified crimes for which the maximum penalty is 15 years or life and that they receive the highest minimum sentence, the cost of incarceration will be \$1,045,000 and this may be in addition to other incarceration costs for the underlying crimes. Assuming that five offenders a year are convicted of using a computer to commit a specified crime for which the maximum penalty is at least one year but not greater than two years, and that these offenders receive the maximum penalty, the cost will be \$210,800, which may be in addition to other incarceration costs for the underlying crime. A local sanction is appropriate for offenders who score sentencing guideline recommendations where the minimum sentence is less than 12 months. Local units of government incur the cost of a local sanction and the costs vary among the counties.

Senate Bill 894 also provides that a court may order reimbursement of law enforcement expenses to be made to a State or local unit of government, but the frequency and amount of such reimbursement cannot be determined at this time.

**House Bills 5184-5187**

The bills will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people may be convicted of unlawful access to a computer. The new penalties are incorporated into the sentencing guidelines as a Class E crime for first offenses and a Class D crime for second or subsequent offenses. Also, there are no data available to indicate how many people may be convicted of using a computer to commit a crime. The new penalties range from Class B to Class G based on the maximum penalty for the underlying crime. The minimum sentence ranges are shown in Table 6.

Table 6

Crime Class	Minimum Sentence Range (Months)	
	<u>From</u>	<u>To</u>
B	0-18	117-160
D	0-6	43-76
E	0-3	24-38
F	0-3	17-30
G	0-3	7-23

Assuming that five offenders a year are convicted of unlawful access to a computer for the first time and given the highest minimum sentence, the cost of incarceration, assuming an average cost of \$22,000 per year, will be \$348,300. Assuming that five offenders a year are convicted of using a computer to commit a crime for which the maximum penalty is 20 years or life and that they receive the highest

minimum sentence, the cost of incarceration will be \$1,045,000, which may be in addition to other incarceration costs for the underlying crime. Assuming that five offenders a year are convicted of using a computer to commit a crime for which the maximum penalty is at least one year but not greater than two years, and that these offenders receive the maximum penalty, the cost will be \$210,800, which may be in addition to other incarceration costs for the underlying crime. A local sanction is appropriate for offenders who score sentencing guideline recommendations where the lowest minimum sentence is less than 12 months. Local units of government incur the cost of a local sanction and the costs vary among the counties.

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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.