

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5184 (Substitute H-4 as passed by the House)
House Bill 5185 (Substitute H-1 as passed by the House)
House Bill 5186 (Substitute H-3 as passed by the House)
House Bill 5187 (Substitute H-2 as passed by the House)
Sponsor: 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)
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 2-25-00

CONTENT

House Bill 5184 (H-4) would amend the Code of Criminal Procedure and House Bills 5185 (H-1), 5186 (H-3), and 5187 (H-2) would amend Public Act 53 of 1979 (which prohibits access to computers for certain fraudulent purposes and the intentional and unauthorized access to, and alteration, damage, and destruction of computers) to include violations of Public Act 53 in the Code's sentencing guidelines and impose new penalties for certain violations of that Act.

The bills are all tie-barred to each other and would take effect on July 1, 2000.

House Bill 5184 (H-4)

The bill would include in the Code of Criminal Procedure's sentencing guidelines provisions criminal offenses contained in Public Act 53 of 1979, along with new penalties proposed by House Bill 5186 (H-3) for some of those offenses.

Under the bill, unlawful access to a computer, computer system, or computer program would be 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 would be a Class D property felony with a statutory maximum sentence of 10 years' imprisonment.

The bill would establish the class 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 1.

Table 1

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 would have a "variable" offense category, which would be the same as for the underlying offense.

House Bill 5185 (H-1)

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 would prohibit the use of a computer or a computer program, system, or network to attempt to commit a crime.

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

House Bill 5186 (H-3)

Current Penalties

Currently, a violation of Public Act 53 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. (The summary of House Bill 5187 (H-2), below, describes the definition of "aggregate amount".) 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.

If a violation of the Act 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 Defraud or Steal

Under the bill, the penalties described above would 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".

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 would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. If the offender had a prior conviction, the felony would be punishable by up to 10 years' imprisonment and/or a maximum fine of \$50,000.

("Prior conviction" would mean a violation or attempted violation of Public Act 53 or a substantially similar law of the United States, another state, or a political subdivision of another state.)

Computer Use to Commit Crime

The bill would establish penalties for a violation of Section 6 (described in the summary of House Bill 5185 (H-1), 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 2.

Table 2

Maximum Term of Crime Committed or Attempted (years)	Proposed Maximum Fine	Proposed Maximum Term (years)
<u>Misdemeanor</u>		
1 or less	\$5,000	1
At least 1 but less than 2	5,000	2
<u>Felony</u>		
At least 2 but less than 4	5,000	4
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 crime committed or attempted were a misdemeanor punishable by one year or less, the violation of Section 6 would be a misdemeanor. The remaining violations would be felonies.

A court could order that a term of imprisonment imposed for a violation of Section 6 be served consecutively to and preceding any term of imprisonment imposed for a conviction of the underlying offense.

House Bill 5187 (H-2)

The bill would revise the definition of “aggregate amount” in Public Act 53. Currently, 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 could be aggregated to determine the total value of the loss involved in a violation. The bill also would refer to a victim or a “group of victims”.

MCL 777.17 (H.B. 5184)
 752.796 (H.B. 5185)
 752.797 (H.B. 5186)
 752.792 (H.B. 5187)

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bills 5184 (H-4) through 5187 (H-2) would 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. These new felonies would be 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. These five new felonies would range from Class C to Class G based on the maximum penalty for the underlying crime. For example, an offender accused of a crime that has a maximum penalty of 20 years to life would be subject to the Class C offense. The minimum sentence ranges are shown in Table 3.

Table 3

Crime Class	Minimum Sentence Range (Months)	
	From	To
C	0-11	62-114
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 would be 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, would be \$348,300. Assuming that five offenders a year would be convicted of using a computer to commit a crime for which the maximum penalty is 20 years or life and that they would receive the highest minimum sentence, the cost of incarceration would be \$1,045,000, which could be in addition to other incarceration costs for the underlying crime. Assuming that five offenders a year would be 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 would receive the maximum penalty, the cost would be \$210,800, which could 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 would incur the cost of a local sanction and the costs vary among the counties.

Fiscal Analyst: K. Firestone