

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 894

(As amended May 30, 2000)

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 145d (MCL 750.145d), as amended by 1999 PA
235.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 145d. (1) A person shall not use the internet or a
2 computer, computer program, computer network, or computer system
3 to communicate with any person for the purpose of doing any of
4 the following:

5 (a) Committing, attempting to commit, conspiring to commit,
6 or soliciting another person to commit conduct proscribed under
7 section [~~145c, 349, 520b, 520c, 520d, 520e, or 520g~~ 145A, 145C,
157C, 349, 350, 520B, 520C, 520D, 520E, OR 520G, OR SECTION 5 OF
1978 PA 33, MCL 722.675,] in which the
8 victim or intended victim is a minor OR IS BELIEVED BY THAT
9 PERSON TO BE A MINOR.

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1 (b) Committing, attempting to commit, conspiring to commit,
2 or soliciting another person to commit conduct proscribed under
3 section [~~145a, 157c, 350, 411h, 411H~~] or 411i.

4 (c) Committing, attempting to commit, conspiring to commit,
5 or soliciting another person to commit conduct proscribed under
6 chapter XXXIII or section 327, 327a, 328, or 411a(2).

7 ~~(d) Committing, attempting to commit, conspiring to commit,~~
8 ~~or soliciting another person to commit conduct proscribed under~~
9 ~~section 301, 302, 303, 304, 305, 305a, or 311 of this act or sec=~~
10 ~~tion 18 of the Michigan gaming control and revenue act, the~~
11 ~~Initiated Law of 1996, MCL 432.218.~~

12 ~~(2) Except as provided in subsection (3), a person who vio=~~
13 ~~lates subsection (1)(a), (b), or (d) is guilty of a felony pun=~~
14 ~~ishable by imprisonment for not more than 2 years or a fine of~~
15 ~~not more than \$2,000.00, or both.~~

16 ~~(3) A person who violates subsection (1)(c) or who violates~~
17 ~~subsection (1)(a), (b), or (d) and has 1 or more prior convic=~~
18 ~~tions is guilty of a felony punishable by imprisonment for not~~
19 ~~more than 5 years or a fine of not more than \$5,000.00, or both.~~

20 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CRIME
21 AS FOLLOWS:

22 (A) IF THE UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY
23 WITH A MAXIMUM TERM OF IMPRISONMENT OF LESS THAN 1 YEAR, THE
24 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
25 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$5,000.00, OR
26 BOTH.

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1 (B) IF THE UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY
2 WITH A MAXIMUM TERM OF IMPRISONMENT OF 1 YEAR OR MORE BUT LESS
3 THAN 2 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
4 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
5 \$5,000.00, OR BOTH.

6 (C) IF THE UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY
7 WITH A MAXIMUM TERM OF IMPRISONMENT OF 2 YEARS OR MORE BUT LESS
8 THAN 4 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
9 IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF NOT MORE THAN
10 \$5,000.00, OR BOTH.

11 (D) IF THE UNDERLYING CRIME IS A FELONY WITH A MAXIMUM TERM
12 OF IMPRISONMENT OF 4 YEARS OR MORE BUT LESS THAN 10 YEARS, THE
13 PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
14 MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR
15 BOTH.

16 (E) IF THE UNDERLYING CRIME IS A FELONY PUNISHABLE BY A MAX-
17 IMUM TERM OF IMPRISONMENT OF 10 YEARS OR MORE BUT LESS THAN 15
18 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISON-
19 MENT FOR NOT MORE THAN 15 YEARS OR A FINE OF NOT MORE THAN
20 \$10,000.00, OR BOTH.

21 (F) IF THE UNDERLYING CRIME IS A FELONY PUNISHABLE BY A MAX-
22 IMUM TERM OF IMPRISONMENT OF 15 YEARS OR MORE OR FOR LIFE, THE
23 PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
24 MORE THAN 20 YEARS OR A FINE OF NOT MORE THAN \$20,000.00, OR
25 BOTH.

26 (3) ~~(4)~~ The court may order that a term of imprisonment
27 imposed under this section be served consecutively to ~~and~~

1 ~~preceding~~ any term of imprisonment imposed for conviction of the
2 underlying offense.

3 (4) ~~—(5)—~~ This section does not prohibit a person from being
4 charged with, convicted of, or punished for any other violation
5 of law committed by that person while violating or attempting to
6 violate this section, including the underlying offense.

7 (5) ~~—(6)—~~ This section applies regardless of whether the
8 person is convicted of committing, attempting to commit, conspir-
9 ing to commit, or soliciting another person to commit the under-
10 lying offense.

11 (6) ~~—(7)—~~ A violation or attempted violation of this section
12 occurs if the communication originates in this state, is intended
13 to terminate in this state, or ~~both originates and terminates~~
14 IS INTENDED TO TERMINATE WITH A PERSON WHO IS in this state.

15 (7) ~~—(8)—~~ A violation or attempted violation of this section
16 may be prosecuted in any jurisdiction in which the communication
17 originated or terminated.

18 ~~—(9)— If the prosecuting attorney intends to seek an enhanced~~
19 ~~sentence based upon the defendant having 1 or more prior convic=~~
20 ~~tions, the prosecuting attorney shall include on the complaint~~
21 ~~and information a statement listing the prior conviction or~~
22 ~~convictions. The existence of the defendant's prior conviction~~
23 ~~or convictions shall be determined by the court, without a jury,~~
24 ~~at sentencing or at a separate hearing for that purpose before~~
25 ~~sentencing. The existence of a prior conviction may be estab=~~
26 ~~lished by any evidence relevant for that purpose, including, but~~
27 ~~not limited to, 1 or more of the following:~~

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1 ~~(a) A copy of the judgment of conviction.~~

2 ~~(b) A transcript of a prior trial, plea-taking, or~~
3 ~~sentencing.~~

4 ~~(c) Information contained in a presentence report.~~

5 ~~(d) The defendant's statement.~~

6 (8) THE COURT MAY ORDER A PERSON CONVICTED OF VIOLATING THIS
7 SECTION TO REIMBURSE THIS STATE OR A LOCAL UNIT OF GOVERNMENT OF
8 THIS STATE FOR EXPENSES INCURRED IN RELATION TO THE VIOLATION IN
9 THE SAME MANNER THAT EXPENSES MAY BE ORDERED TO BE REIMBURSED
10 UNDER SECTION 1F OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE,
11 1927 PA 175, MCL 769.1F.

12 (9) ~~(10)~~ As used in this section:

13 (a) "Computer" means any connected, directly interoperable
14 or interactive device, equipment, or facility that uses a com-
15 puter program or other instructions to perform specific opera-
16 tions including logical, arithmetic, or memory functions with or
17 on computer data or a computer program and that can store,
18 retrieve, alter, or communicate the results of the operations to
19 a person, computer program, computer, computer system, or com-
20 puter network.

21 (b) "Computer network" means the interconnection of hardwire
22 or wireless communication lines with a computer through remote
23 terminals, or a complex consisting of 2 or more interconnected
24 computers.

25 (c) "Computer program" means a series of internal or exter-
26 nal instructions communicated in a form acceptable to a computer
27 that directs the functioning of a computer, computer system, or

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1 computer network in a manner designed to provide or produce
2 products or results from the computer, computer system, or com-
3 puter network.

4 (d) "Computer system" means a set of related, connected or
5 unconnected, computer equipment, devices, software, or hardware.

6 (e) "Device" includes, but is not limited to, an electronic,
7 magnetic, electrochemical, biochemical, hydraulic, optical, or
8 organic object that performs input, output, or storage functions
9 by the manipulation of electronic, magnetic, or other impulses.

10 (f) "Internet" means that term as defined in section 230 of
11 title II of the communications act of 1934, chapter 652, 110
12 Stat. 137, 47 U.S.C. 230.

13 (g) "Minor" means an individual who is less than 18 years of
14 age.

15 ~~(h) "Prior conviction" means a conviction for a violation~~
16 ~~or attempted violation of subsection (1) or a law of the United~~
17 ~~States or another state substantially corresponding to subsection~~
18 ~~(1).~~

19 Enacting section 1. This amendatory act takes effect 90
20 days after the date it is enacted.

21 Enacting section 2. This amendatory act does not take
22 effect unless all of the following bills of the 90th Legislature
23 are enacted into law:

24 (a) House Bill No. 5185.

25 (b) House Bill No. 5186.

26 (c) House Bill No. 5187.