

# Legislative Analysis

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## **DEFINITION OF COMPUTER IN PENAL CODE: EXPAND TO INCLUDE HANDHELD DEVICES**

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**House Bill 5284**

**Sponsor: Rep. John Walsh**

**Committee: Judiciary**

**Complete to 4-18-12**

## **A SUMMARY OF HOUSE BILL 5284 AS INTRODUCED 1-25-12**

The bill would expand the prohibition on using the Internet or a computer or computer system for illegal activities so that it would also apply to a cell phone, PDA, or other handheld device while being used to transmit or receive data over the Internet.

The Michigan Penal Code prohibits 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:

- Solicitation of a child for immoral purposes; involvement in child sexually abusive activity or material; recruitment or inducement of a minor to commit a felony; kidnaping; kidnaping of a child under the age of 14; first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC; or disseminating sexually explicit matter to a minor in which the victim or intended victim is a minor or believed to be a minor.
- 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 is false.

Penalties for a violation are based on the underlying crime and can range from a misdemeanor with a maximum term of imprisonment of one year and/or a fine of not more than \$5,000 to a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$20,000, in addition to any imprisonment or fine imposed for the underlying offense.

House Bill 5284 would amend the Penal Code (MCL 750.145d) to include in the definition of "computer" a cellular telephone, personal digital assistant (PDA), or other handheld device while being used to transmit or receive data over the Internet (presumably "handheld device" would include an iPad and certain iPods).

## **FISCAL IMPACT:**

The bill would have an indeterminate impact on the State and on local governments. If the bill's provisions result in additional misdemeanor and/or felony convictions, it could increase costs on state and local correctional systems. The average cost of prison incarceration for convicted felons in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The local costs of incarceration in a local jails and misdemeanor probation supervision vary by jurisdiction. State costs related to parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

As background, during calendar year 2010, Michigan Department of Corrections statistical reports indicate there were a total of 49 felony convictions for violations of the existing provisions within MCL 750.145d. Twenty-one of these resulted in state prison sentences, 25 resulted in felony probation sentences, and 3 resulted in local jail sentences. Information is not available on the number of misdemeanor convictions. Again, it is not clear how many new convictions might result due to the changes to current law contained in the bill.

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