

# Legislative Analysis

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

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**House Bill 5284 (reported without amendment)**

**Sponsor: Rep. John Walsh**

**Committee: Judiciary**

### **First Analysis (4-30-12)**

**BRIEF SUMMARY:** The bill would expand the prohibition on using the Internet or a computer or computer system for specific 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.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on state and local governments as discussed in more detail later in the analysis.

### **THE APPARENT PROBLEM:**

Current law prohibits the use of computers or use of the Internet to commit certain crimes; for instance, sexual assault, kidnapping, bombings or threat to bomb, stalking, and certain sex-related crimes involving minors. Apparently, the laws have not kept up with changes in technology. Several handheld devices are now capable of connecting to the Internet and can perform many functions that just a few years ago only laptop or desktop computers could do. Reportedly, the Michigan State Police Taskforce on Internet Crimes has recorded a 25-50 percent increase in the collection of cell phones being used to commit various crimes.

According to the Wayne County Prosecutor's Office, because cell phones, iPads, and other handheld devices are not specifically mentioned in the statutory definition of "computer," prosecutors must bring in experts to testify at trial that these devices really are computers and therefore a violation is subject to the stated penalties. Providing such expert testimony is not without increased costs to taxpayers. In addition, because there is no clear statutory connection, a defendant may be acquitted if an expert misses the trial because of a scheduling conflict.

Legislation has been offered to expand the statutory definition of "computer" for the specified crimes to include newer handheld devices having Internet connectivity.

### **THE CONTENT OF THE BILL:**

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 INFORMATION:***

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.

***ARGUMENTS:***

***For:***

This is not the first time that a law has needed to be updated due to advances in technology. After cell phones with cameras became popular, it was discovered that people were using the camera phones to engage in "peeping" conduct such as pointing the camera phone under skirts for a photo or taking pictures of people in various stages of undress in locker rooms. Accordingly, laws protecting privacy had to be updated to include activities committed with the aid of camera phones and other video equipment. With the proliferation of smart phones, iPads, and certain iPods that have the ability to connect with the Internet and that perform many functions previously limited to laptop or desktop computers, the law regarding use of computers to commit crimes such as stalking and various sex-related crimes needs to be updated. According to committee testimony, it is expected that the statutory change will eliminate the need for prosecutors to arrange for technology experts to testify that such devices really are mini computers. This will not only save taxpayers money in regards to the cost of prosecution, but will mitigate the impact on a trial's result when an expert is not able to testify due to a scheduling conflict.

***POSITIONS:***

A representative of the Wayne County Prosecutor's Office testified in support of the bill. (4-19-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.