

Legislative Analysis



INTERFERENCE WITH ELECTRONIC COMMUNICATION

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House Bills 5043 and 5044 as enrolled
Public Acts 61 and 62 of 2006
Sponsor: Rep. Tonya Schuitmaker

Senate Bill 1024 as enrolled
Public Act 60 of 2006
Sponsor: Sen. Bill Hardiman
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (2-7-07)

BRIEF SUMMARY: The bills would make it a felony to willfully and maliciously tamper with, interrupt, copy a message from, or use without authorization a telegraph line, wire, cable, telephone, or electronic medium of communication.

FISCAL IMPACT: The bills could increase state and local correctional costs, depending on how they affected numbers of felony convictions and the sanctions imposed for them. A more detailed analysis is found under Fiscal Information.

THE APPARENT PROBLEM:

It is not uncommon, in domestic violence situations, for the perpetrator of the abuse to grab a telephone away from his or his victim or even to pull telephone wires out of the wall when the victim attempts to call for help. In addition, batterers often intimidate their victims by isolating them and controlling their lines of communication with others via telephone or email. In such situations, there is little that the police or a prosecutor can do to prosecute the batterer, especially if there are no physical signs of injury. Legislation has been proposed to expand an existing law pertaining to interfering with communications using telegraph or telephone lines to also apply to electronic mediums of communication, such as cable television, cell phones, computers, and Blackberries (wireless devices used for text messaging).

THE CONTENT OF THE BILLS:

Currently, it is against the law to willfully and maliciously cut or tap telegraph or telephone lines or wire or cable in order to read or copy messages or sporting, commercial, or other news reports; use the same without authorization; prevent, obstruct, or delay the sending, conveyance, or delivery of authorized communications; or aid, employ, or conspire with another to do any of the prohibited acts. A violation is a misdemeanor punishable by up to two years imprisonment or a fine of not more than \$1,000.

Together, the bills would update language to include electronic mediums of communication, increase the penalty for a violation from a misdemeanor to a felony, and create a four-year felony if the violation resulted in an injury or death. The bills carry an effective date of June 1, 2006 and would do the following:

Senate Bill 1024, which is tie-barred to House Bills 5043 and 5044, would amend the Michigan Penal Code (MCL 750.540) to eliminate the current prohibition detailed above and replace it with updated language to include forms of communication using the Internet, computers, and computer networks. The new language would prohibit a person from willfully and maliciously doing any of the following:

- Cut, break, disconnect, interrupt, tap, or make unauthorized connections with any electronic medium of communication. This would include the Internet or a computer; computer program, system, or network; or a telephone.
- Read or copy any message from any telegraph, telephone line, wire, or cable; computer network, program, or system; or telephone or other electronic medium of communication that the person accessed without authorization.
- Make unauthorized use of any electronic medium of communication.
- Prevent, obstruct, or delay by any means the sending, conveyance, or delivery of an authorized communication by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication.

House Bill 5043 would also amend Section 540 of the penal code (MCL 750.540). Under the bill, the penalty for a violation would increase from a misdemeanor to a felony. A violation would be punishable by imprisonment for not more than two years and/or a fine of not more than \$1,000. However, if the incident resulted in injury to or the death of any person, the violation would be punishable by imprisonment for up to four years and/or a fine of up to \$5,000.

In addition, the bill would specify that a person could still be charged with, convicted of, or punished for any other violation of law committed while violating or attempting to violate these prohibitions. Further, the bill would define the terms "computer," "computer network," "computer program," "computer system," and "Internet."

House Bill 5044 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16z) to specify that damaging, destroying, using, or obstructing use of an electric medium of communication without authorization would be a Class H felony against the public order with a two-year maximum term of imprisonment; and that such a violation when it resulted in injury or death would be a Class F felony against a person with a four-year maximum term of imprisonment.

FISCAL INFORMATION:

The bills could increase state and local correctional costs, depending on how they affected numbers of felony convictions and the sanctions imposed for them. The state would bear any increased costs of felony probation or incarceration in a state facility;

field supervision of parolees and probationers averages about \$2,000 annually, while the average annual cost of prison incarceration is about \$30,000. Any increased costs due to jail sentences would fall to the county. Any increases in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of those revenues.

In 2003, the most recent year for which data are available, there were 105 sentences imposed for a violation of the current law. Of those sentences, 17 were for prison, 61 were for probation, 24 were for jail, and 3 were "other" (which could be, for example, a commitment to the Department of Corrections (MDOC) under the Holmes Youthful Trainee Act). According to the MDOC, there were 9 commitments to the department in 2003 for violation of the current law. Of those, 3 carried minimum sentences of one year, 5 had sentences of 1.5 years, and 1 person was sentenced to two years.

ARGUMENTS:

For:

Senate Bill 1024 and House Bill 5043 would still apply as the underlying act originally intended: to prohibit someone from tapping into another's phone lines to listen in on conversations or news and sports reports being sent "over the wire" and incidents in which a criminal cuts the phone lines to a house before breaking and entering the premises. As times change, however, it is often necessary to update statutes to incorporate new technological advances. The bill's updated language could now apply to tapping into a neighbor's cable television service or electronically scrambling electronic transmissions. It also could be used to prosecute those who steal wires and cables used to provide cable television service and Internet access.

Another important expansion of the provision is to include conduct that is common in domestic violence cases. Perpetrators of abuse, whether the abuse is against a spouse, child, or girlfriend or boyfriend, often use access to communication devices as a means of control. Phone calls are listened in on, emails are intercepted or read, and messages on answering machines listened to and deleted before reaching the intended person. Many victims of domestic violence and child abuse report their abusers prying phones out of their hands or tearing phones or phone wires from the wall when attempts are made to call the police. Unless a batterer's conduct inflicts physical injury on his or her victim, however, there currently is little that law enforcement personnel can do to help protect the targets of the abuse.

The bills would address this problem by expanding the law to make it a felony offense to engage in conduct that would interfere with another person's right to access telephones, computers, and other wireless communication devices such as Blackberries and cell phones and to prohibit unauthorized use of such devices. The bills would not apply to accidents, thoughtless roommates using another's equipment without permission, or someone breaking his or her own phone in frustration after being put on hold endlessly, as the penalty would not be triggered unless the action was done "willfully and

maliciously" against another. In addition, House Bill 5043 would create a new felony penalty that would be imposed if a person was injured or killed as a result of a violation.

Against:

House Bill 5043 and Senate Bill 1024 would increase the penalty for a violation from being a two-year misdemeanor to a felony level offense and create a four-year felony for cases involving an injury or death. This may be overly harsh, especially considering that it is yet to be seen what types of actions will be charged and successfully prosecuted under this provision. Depending on interpretation by prosecutors and judges, it could be quite broad in application and all the implications are not yet known. It could apply to instances well beyond the intent of the bill's supporters. Perhaps for now it would be better to leave a violation without an injury or death a misdemeanor.

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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.