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JURISDICTION FOR PROSECUTION: EXPAND

House Bill 5295 as introduced
First Analysis (12-12-01)

Sponsor: Rep. Gene DeRossett
Committee: Criminal Justice

THE APPARENT PROBLEM:

Despite recent legislative attempts to crack down on computer crimes, identify theft, child pornography, and sales of alcohol over the Internet, Internet crimes continue to increase in number. There are three areas of particular concern: 1) auction sites such as e-bay, where people send money in for merchandise that they never receive; 2) identity theft and credit card fraud; and 3) child pornography and regulated goods such as alcohol and prescription drugs. The problem with prosecuting companies or individuals for illegal activity or deceptive trade practices, or even acts of terrorism, is that with the Internet or terrorist activities, the activity can cross many jurisdictions. The company or individual engaging in the illicit activity may be residing in or operating out of one or more other states. Under common law, a prosecutor must meet a strict standard of showing that the person had the intent to commit the activity in Michigan and that the person's actions had a detrimental effect on persons in Michigan. In order to close this "loophole" through which illegal activity on the Internet seems to flourish, 28 states have recently enacted legislation to extend jurisdiction beyond their physical borders for crimes meeting certain criteria. Legislation has been proposed to do the same in Michigan.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to specify that a person could be prosecuted for a criminal offense that he or she committed while physically located in Michigan or outside of Michigan if any of the following circumstances existed:

- He or she committed a criminal offense wholly or partly within Michigan. (A criminal offense would be considered to have been partly committed within this state if 1) an act constituting an element of the criminal offense was committed within this state; 2) the result or consequences of an act constituting an element of the criminal offense occurred within this

state; or, 3) the criminal offense produced consequences that had a materially harmful impact upon the system of government or the community welfare of this state, or resulted in persons within this state being defrauded or otherwise harmed.)

- His or her conduct constituted an attempt to commit a criminal offense within Michigan.
- His or her conduct constituted a conspiracy to commit a criminal offense within Michigan and an act in furtherance of the conspiracy was committed within Michigan by the offender, or at the offender's instigation, or by another member of the conspiracy.
- A victim of the offense or an employee or agent of a governmental unit posing as a victim resided within or was located in Michigan at the time the criminal offense was committed.
- The criminal offense produced substantial and detrimental effects within Michigan.

MCL 762.2

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, because any fiscal impact would be limited to cases where prosecutors otherwise could not have gone forward, the bill likely would have no significant fiscal impact on the state and local governments. (12-12-01)

ARGUMENTS:

For:

Common law requires a strict standard of showing that a person had the intent to commit a crime in Michigan and that his or her actions had a detrimental effect on the state or a resident of the state. Crimes perpetrated over the Internet can be difficult to fit into this standard because web sites can be accessed from many states and countries; therefore, it can be

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difficult to prove that a person or company intended to harm someone in Michigan. The same is true for acts of terrorism. Conspiracy to commit an act of terrorism in Michigan could be conducted in other states or countries. So, unless a person was caught attempting to commit the act within the state, or unless it could be proven that the plans for the terrorist act were developed in Michigan, the person could not be prosecuted in this state. An example given in committee testimony by a member of the attorney general's high tech crime unit illustrated the weakness of current law: if a bioterrorist released a harmful substance into Lake Erie that harmed Michigan residents by contaminating their drinking water, it would have to be proven that the bioterrorist was targeting Michigan residents and not just residents of Ohio or Pennsylvania.

To eliminate this "loophole" that some use to circumvent the law, the bill would create criteria under which a person could be prosecuted for a criminal act committed by that person either while physically located within or while physically located outside the state but which produced harmful effects within Michigan. Further, the bill would cover crimes directed at individuals (such as Internet scams, identity theft, and credit card fraud) or toward governmental units or communities (such as in the case of terrorism or bioterrorism). As criminals find ways to circumvent existing laws as a means of escaping prosecution, laws need to be reexamined and tightened. The bill would make good public policy by strengthening consumer and penal laws, yet would retain due process rights afforded under the U.S. Constitution.

POSITIONS:

The Department of State Police supports the bill. (12-11-01)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill. (12-11-01)

Analyst: S. Stutzky

■ 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.