

1999 PUBLIC AND LOCAL ACTS

[No. 235]

(SB 562)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 145d (MCL 750.145d), as added by 1999 PA 32.

The People of the State of Michigan enact:

750.145d Use of internet or computer system; prohibited communication; violation; penalty; use of enhanced sentence; definitions. [M.S.A. 28.342b]

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

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145c, 349, 520b, 520c, 520d, 520e, or 520g in which the victim or intended victim is a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 157c, 350, 411h, or 411i.

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

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

(2) Except as provided in subsection (3), a person who violates subsection (1)(a), (b), or (d) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

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

(4) The court may order that a term of imprisonment imposed under this section be served consecutively to and preceding any term of imprisonment imposed for conviction of the underlying offense.

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

(6) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(7) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or both originates and terminates in this state.

1999 PUBLIC AND LOCAL ACTS

(8) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(9) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
 - (b) A transcript of a prior trial, plea-taking, or sentencing.
 - (c) Information contained in a presentence report.
 - (d) The defendant's statement.
- (10) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

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

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

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

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

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

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

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

Approved December 28, 1999.

Filed with Secretary of State December 28, 1999.
