

Legislative Analysis



CYBER REVENGE

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Senate Bill 924 (Substitute S-1)
Sponsor: Sen. Steven Bieda

Senate Bill 925 (with committee amendments)
Sponsor: Sen. Rick Jones

House Committee: Criminal Justice
Senate Committee: Judiciary

Complete to 9-17-14

A REVISED SUMMARY OF SENATE BILLS 924 AND 925 AS PASSED BY THE SENATE 6-4-14

Senate Bill 924 would criminalize the practice known as "cyber revenge" to prohibit posting sexually explicit images on the Internet with the intent to frighten, intimidate, or harass a person, and refusing or failing to remove the image upon written request of the person; provide exemptions; provide an affirmative defense; and define the term "sexually explicit."

Senate Bill 925 would establish misdemeanor penalties for a violation and for repeat violations of Senate Bill 924.

The bills would take effect 90 days after enactment and are tie-barred to each other (meaning that neither can take effect unless both are enacted). A detailed description of the bills follows.

Senate Bill 924 adds Section 145e (MCL 750.145e, proposed) to the Michigan Penal Code to prohibit a person from doing either of the following:

- ❖ Post on the Internet any sexually explicit photograph, drawing, or other visual image of another person with the intent to frighten, intimidate, or harass any person.
- ❖ Having posted any of the above (regardless of whether the intent was to frighten, intimidate, or harass any person), refuse or otherwise fail to remove that explicit photograph, drawing, or other visual image (hereinafter "image") from the Internet upon the written request of that other person. This provision applies regardless of whether the other person consented to the posting of that image—unless that other person knew or had reason to know the image was sexually explicit and signed a release knowingly allowing that image to be posted on the Internet by that person.

"Sexually explicit" is defined to mean displaying a person's genitalia or anus or, if the person is a female, her nipples or areola.

Exemption. The bill does not apply to an interactive computer service, or to an information service or telecommunications service, as those terms are defined under federal law (47 USC 230 and 47 USC 153, respectively), for content that is provided by another person.

Affirmative defense. It would be an affirmative defense in a prosecution for cyber revenge that the person took all reasonable steps to have the photograph, drawing, or other visual image removed from the Internet immediately upon the written request of that other person.

Senate Bill 925 adds Section 145f to the Michigan Penal Code (MCL 750.145f, proposed) to make a violation of Senate Bill 924 a misdemeanor punishable by not more than 93 days imprisonment and/or a fine of not more than \$500.

A second or subsequent violation would also be a misdemeanor, but the maximum term of imprisonment would increase to not more than one year and the maximum fine would increase to \$1,000.

FISCAL IMPACT:

The bills add a new misdemeanor. Misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Fines would go to public libraries.

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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.