

HOUSE BILL No. 4734

May 1, 1989, Introduced by Reps. Camp, Martin, Alley, Stabenow, Banks, Stacey, Bandstra, Crandall, Middaugh, Fitzgerald, Honigman, Hillegonds, Allen, Miller, Emmons, Weeks, Wallace, London, Dolan, Willis Bullard and Munsell and referred to the Committee on Judiciary.

A bill to amend section 145c of Act No. 328 of the Public Acts of 1931, entitled
"The Michigan penal code,"
as amended by Act No. 110 of the Public Acts of 1988, being section 750.145c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 145c of Act No. 328 of the Public Acts
2 of 1931, as amended by Act No. 110 of the Public Acts of 1988,
3 being section 750.145c of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 145c. (1) As used in this section:

6 (a) "Child" means a person who is less than 18 years of age
7 and is not emancipated by operation of law as provided in section
8 ~~4(1)~~ 4 (2) of Act No. 293 of the Public Acts of 1968, as
9 amended, being section 722.4 of the Michigan Compiled Laws.

1 (b) "Commercial film or photographic print processor" means
2 a person or his or her employee who, for compensation, develops
3 exposed photographic film into movie films, negatives, slides, or
4 prints; who makes prints from negatives or slides; or who dupli-
5 cates movie films or videotapes.

6 (c) "Erotic fondling" means touching a person's clothed or
7 unclothed genitals, pubic area, buttocks, or, if the person is
8 female, breasts, or if the person is a child, the developing or
9 undeveloped breast area, for the purpose of real or simulated
10 overt sexual gratification or stimulation of 1 or more of the
11 persons involved. Erotic fondling shall not be construed to
12 include physical contact, even if affectionate, which is not for
13 the purpose of real or simulated overt sexual gratification or
14 stimulation of 1 or more of the persons involved.

15 (d) "Erotic nudity" means the ~~display~~ LEWD EXHIBITION of
16 the human male or female genital, RECTAL, or pubic area, or
17 developed or developing female breast. ~~, in a manner which~~
18 ~~lacks primary literary, artistic, educational, political, or sci-~~
19 ~~entific value and which the average person applying contemporary~~
20 ~~community standards would find appeals to prurient interests. As~~
21 ~~used in the subdivision, "community" means the state of~~
22 ~~Michigan.~~

23 (e) "Listed sexual act" means sexual intercourse, erotic
24 fondling, sadomasochistic abuse, masturbation, passive sexual
25 involvement, sexual excitement, or erotic nudity.

26 (f) "Masturbation" means the real or simulated touching,
27 rubbing, or otherwise stimulating of a person's own clothed or

1 unclothed genitals, pubic area, buttocks, or, if the person is
2 female, breasts, or if the person is a child, the developing or
3 undeveloped breast area, either by manual manipulation or
4 self-induced or with an artificial instrument, for the purpose of
5 real or simulated overt sexual gratification or arousal of the
6 person.

7 (g) "Passive sexual involvement" means an act, real or simu-
8 lated, which exposes another person to or draws another person's
9 attention to an act of sexual intercourse, erotic fondling, sado-
10 masochistic abuse, masturbation, sexual excitement, or erotic
11 nudity because of viewing any of these acts or because of the
12 proximity of the act to that person, for the purpose of real or
13 simulated overt sexual gratification or stimulation of 1 or more
14 of the persons involved.

15 (h) "Child sexually abusive activity" means a child engaging
16 in a listed sexual act.

17 (i) "Child sexually abusive material" means a developed or
18 undeveloped photograph, film, slide, electronic visual image, or
19 sound recording of a child engaging in a listed sexual act; a
20 book, magazine, or other visual or print medium containing such a
21 photograph, film, slide, electronic visual image, or sound
22 recording; or any reproduction, copy, or print of such a photo-
23 graph, film, slide, electronic visual image, book, magazine,
24 other visual or print medium, or sound recording. Child sexually
25 abusive material does not include material that has primary lit-
26 erary, artistic, educational, political, or scientific value or
27 that the average person applying contemporary community standards

1 would find does not appeal to prurient interests. As used in
2 this subdivision, "community" means the state of Michigan.

3 (j) "Sadomasochistic abuse" means either of the following:

4 (i) Flagellation or torture, real or simulated, for the pur-
5 pose of real or simulated sexual stimulation or gratification, by
6 or upon a person.

7 (ii) The condition, real or simulated, of being fettered,
8 bound, or otherwise physically restrained for sexual stimulation
9 or gratification of a person.

10 (k) "Sexual excitement" means the condition, real or simu-
11 lated, of human male or female genitals when in a state of real
12 or simulated overt sexual stimulation or arousal.

13 (l) "Sexual intercourse" means intercourse, real or simulat-
14 ed, whether genital-genital, oral-genital, anal-genital, or
15 oral-anal, whether between persons of the same or opposite sex or
16 between a human and an animal, or with an artificial genital.

17 (2) A person who persuades, induces, entices, coerces,
18 causes, or knowingly allows a child to engage in a child sexually
19 abusive activity for the purpose of producing any child sexually
20 abusive material, or a person who arranges for, produces, makes,
21 or finances, or a person who attempts or prepares or conspires to
22 arrange for, produce, make, or finance any child sexually abusive
23 activity or child sexually abusive material is guilty of a
24 felony, punishable by imprisonment for not more than 20 years, or
25 a fine of not more than \$20,000, or both, if that person knows,
26 has reason to know, or should reasonably be expected to know that

1 the child is a child, or that person has not taken reasonable
2 precautions to determine the age of the child.

3 (3) A person who distributes or promotes, or finances the
4 distribution or promotion of, or receives for the purpose of dis-
5 tributing or promoting, or conspires, attempts, or prepares to
6 distribute, receive, finance, or promote any child sexually abu-
7 sive material or child sexually abusive activity is guilty of a
8 felony, punishable by imprisonment for not more than 7 years, or
9 a fine of not more than \$10,000, or both, if that person knows,
10 has reason to know, or should reasonably be expected to know that
11 the child is a child. This subsection does not apply to the per-
12 sons described in section 7 of Act No. 343 of the Public Acts of
13 1984, being section 752.367 of the Michigan Compiled Laws.

14 (4) Expert testimony as to the age of the child used in a
15 child sexually abusive material or a child sexually abusive
16 activity shall be admissible as evidence in court and may be a
17 legitimate basis for determination of age, if age has not other-
18 wise been proven.

19 (5) A COMMERCIAL FILM OR PHOTOGRAPHIC PRINT PROCESSOR WHO
20 HAS KNOWLEDGE OF OR OBSERVES, WITHIN THE SCOPE OF HIS OR HER PRO-
21 FESSIONAL CAPACITY OR EMPLOYMENT, ANY FILM, PHOTOGRAPH, MOVIE
22 FILM, VIDEOTAPE, NEGATIVE, OR SLIDE DEPICTING A PERSON THAT THE
23 PROCESSOR HAS REASON TO KNOW OR REASON TO BELIEVE IS A CHILD
24 ENGAGED IN A LISTED SEXUAL ACT, SHALL IMMEDIATELY MAKE AN ORAL
25 REPORT OF THAT KNOWLEDGE OR OBSERVATION TO THE LOCAL PROSECUTING
26 ATTORNEY. THE COMMERCIAL FILM OR PHOTOGRAPHIC PRINT PROCESSOR
27 SHALL ALSO SUBMIT A WRITTEN REPORT TO THE PROSECUTING ATTORNEY

1 WITH A COPY OF THE FILM, PHOTOGRAPH, MOVIE FILM, VIDEOTAPE,
2 NEGATIVE, OR SLIDE ATTACHED TO THE REPORT WITHIN 72 HOURS AFTER
3 GAINING KNOWLEDGE OF OR OBSERVING THE FILM, PHOTOGRAPH, MOVIE
4 FILM, VIDEO TAPE, NEGATIVE, OR SLIDE. THE COMMERCIAL FILM OR
5 PHOTOGRAPHIC PRINT PROCESSOR SHALL DEAL WITH THE ORIGINAL FILM,
6 PHOTOGRAPH, MOVIE FILM, VIDEOTAPE, NEGATIVE, OR SLIDE AS
7 INSTRUCTED BY THE PROSECUTING ATTORNEY, AND HE OR SHE SHALL BE
8 IMMUNE FROM CRIMINAL LIABILITY WHICH MIGHT OTHERWISE BE INCURRED
9 BY COMPLYING WITH THOSE INSTRUCTIONS. A PERSON WHO FAILS TO
10 REPORT AS REQUIRED BY THIS SUBSECTION IS GUILTY OF A
11 MISDEMEANOR.

12 (6) ~~(5) If a commercial film or photographic print proces-~~
13 ~~sor reports to the local prosecuting attorney his or her knowl-~~
14 ~~edge or observation, within the scope of his or her professional~~
15 ~~capacity or employment, of a film, photograph, movie film, video~~
16 ~~tape, negative, or slide depicting a person that the processor~~
17 ~~has reason to know or reason to believe is a child engaged in a~~
18 ~~listed sexual act; furnishes a copy of the film, photograph,~~
19 ~~movie film, videotape, negative, or slide to the prosecuting~~
20 ~~attorney; or keeps the film, photograph, movie film, videotape,~~
21 ~~negative, or slide according to the prosecuting attorney's~~
22 ~~instructions, both~~ COMPLIES WITH SUBSECTION (5), ALL of the fol-
23 lowing shall apply:

24 (a) The identity of the processor shall be confidential,
25 subject to disclosure only with his or her consent or by judicial
26 process.

1 (b) If the processor acted in good faith, he or she shall be
2 immune from civil liability that might otherwise be incurred by
3 his or her actions. This immunity extends only to acts described
4 in ~~this~~ subsection (5).

5 (C) THE PROCESSOR SHALL BE PRESUMED TO HAVE ACTED IN GOOD
6 FAITH.

7 (7) ~~(6)~~ This section shall be applicable and uniform
8 throughout the state and all political subdivisions and munici-
9 palities in the state.

10 (8) ~~(7)~~ A local municipality or political subdivision
11 shall not enact ordinances ~~, nor~~ OR enforce existing ordi-
12 nances, rules, or regulations governing child sexually abusive
13 activity or child sexually abusive material as defined by this
14 section.