

HOUSE BILL No. 5693

May 1, 1990, Introduced by Reps. Stabenow, Martin, Profit, Gagliardi, Bennett, Barns, Weeks, Camp, Allen, Nye, Emmons, Pitoniak, Kulchitsky, Gire, Niederstadt, Power, Hart, Webb, Kosteva, DeBeaussaert, Gubow, Brown, Wartner, and Crandall 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) of Act No. 293 of the Public Acts of 1968, as amended, being~~
9 ~~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 of the human male or~~
16 ~~female genital or pubic area, or developed or developing female~~
17 ~~breast, in a manner which lacks primary literary, artistic, edu-~~
18 ~~cational, political, or scientific value and which the average~~
19 ~~person applying contemporary community standards would find~~
20 ~~appeals to prurient interests. As used in the subdivision,~~
21 ~~"community" means the state of Michigan.~~

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

25 ~~(f) "Masturbation" means the real or simulated touching,~~
26 ~~rubbing, or otherwise stimulating of a person's own clothed or~~
27 ~~unclothed genitals, pubic area, buttocks, or, if the person is~~

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

~~6 (g) "Passive sexual involvement" means an act, real or simu-
7 lated, which exposes another person to or draws another person's
8 attention to an act of sexual intercourse, erotic fondling, sado-
9 masochistic abuse, masturbation, sexual excitement, or erotic
10 nudity because of viewing any of these acts or because of the
11 proximity of the act to that person, for the purpose of real or
12 simulated overt sexual gratification or stimulation of 1 or more
13 of the persons involved.~~

~~14 (h) "Child sexually abusive activity" means a child engaging
15 in a listed sexual act.~~

~~16 (i) "Child sexually abusive material" means a developed or
17 undeveloped photograph, film, slide, electronic visual image, or
18 sound recording of a child engaging in a listed sexual act; a
19 book, magazine, or other visual or print medium containing such a
20 photograph, film, slide, electronic visual image, or sound
21 recording; or any reproduction, copy, or print of such a photo-
22 graph, film, slide, electronic visual image, book, magazine,
23 other visual or print medium, or sound recording. Child sexually
24 abusive material does not include material that has primary lit-
25 erary, artistic, educational, political, or scientific value or
26 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 (A) "MINOR" MEANS A PERSON LESS THAN 18 YEARS OF AGE.

18 (B) "SEXUALLY EXPLICIT CONDUCT" MEANS 1 OR MORE OF THE
19 FOLLOWING:

20 (i) ACTUAL OR SIMULATED SEXUAL INTERCOURSE, INCLUDING
21 GENITAL-GENITAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL,
22 WHETHER BETWEEN INDIVIDUALS OF THE SAME OR OPPOSITE SEX.

23 (ii) ACTUAL OR SIMULATED BESTIALITY.

24 (iii) ACTUAL OR SIMULATED MASTURBATION.

25 (iv) ACTUAL OR SIMULATED SADISTIC OR MASOCHISTIC ABUSE.

26 (v) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF
27 ANY INDIVIDUAL.

1 (C) "VISUAL DEPICTION" INCLUDES, BUT IS NOT LIMITED TO, ANY
2 UNDEVELOPED FILM OR VIDEOTAPE

3 ~~(2) A person who persuades, induces, entices, coerces,~~
4 ~~causes, or knowingly allows a child to engage in a child sexually~~
5 ~~abusive activity for the purpose of producing any child sexually~~
6 ~~abusive material, or a person who arranges for, produces, makes,~~
7 ~~or finances, or a person who attempts or prepares or conspires to~~
8 ~~arrange for, produce, make, or finance any child sexually abusive~~
9 ~~activity or child sexually abusive material is guilty of a~~
10 ~~felony, punishable by imprisonment for not more than 20 years, or~~
11 ~~a fine of not more than \$20,000, or both, if that person knows,~~
12 ~~has reason to know, or should reasonably be expected to know that~~
13 ~~the child is a child, or that person has not taken reasonable~~
14 ~~precautions to determine the age of the child.~~

15 ~~(3) A person who distributes or promotes, or finances the~~
16 ~~distribution or promotion of, or receives for the purpose of dis-~~
17 ~~tributing or promoting, or conspires, attempts, or prepares to~~
18 ~~distribute, receive, finance, or promote any child sexually abu-~~
19 ~~sive material or child sexually abusive activity is guilty of a~~
20 ~~felony, punishable by imprisonment for not more than 7 years, or~~
21 ~~a fine of not more than \$10,000, or both, if that person knows,~~
22 ~~has reason to know, or should reasonably be expected to know that~~
23 ~~the child is a child. This subsection does not apply to the per-~~
24 ~~sons described in section 7 of Act No. 343 of the Public Acts of~~
25 ~~1984, being section 752.367 of the Michigan Compiled Laws.~~

26 (2) A PERSON COMMITS SEXUAL EXPLOITATION OF A MINOR IF HE OR
27 SHE KNOWINGLY DOES 1 OR MORE OF THE FOLLOWING:

1 (A) PRODUCES, DIRECTS, MANUFACTURES, ISSUES, PUBLISHES,
2 ADVERTISES, RECORDS, PHOTOGRAPHS, DEVELOPS, OR DUPLICATES ANY
3 VISUAL DEPICTION OR PRINT MEDIUM IN WHICH A MINOR IS ENGAGED IN
4 SEXUALLY EXPLICIT CONDUCT.

5 (B) DISTRIBUTES, TRANSPORTS, EXHIBITS, RECEIVES, SELLS, PUR-
6 CHASES, POSSESSES, OR EXCHANGES ANY VISUAL DEPICTION OR PRINT
7 MEDIUM IN WHICH A MINOR IS ENGAGED IN SEXUALLY EXPLICIT CONDUCT.

8 (3) A PERSON WHO VIOLATES SUBSECTION (2)(A) IS GUILTY OF A
9 FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS, OR
10 A FINE OF NOT MORE THAN \$20,000.00, OR BOTH.

11 (4) A PERSON WHO VIOLATES SUBSECTION (2)(B) IS GUILTY OF A
12 FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS, OR
13 A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.

14 (5) ~~-(4)-~~ Expert testimony as to the age of the child used
15 in a ~~child sexually abusive material or a child sexually abusive~~
16 ~~activity~~ VISUAL DEPICTION OR PRINT MEDIUM IN WHICH A MINOR IS
17 ENGAGED IN SEXUALLY EXPLICIT CONDUCT shall be admissible as evi-
18 dence in court and may be a legitimate basis for determination of
19 age, if age has not otherwise been proven.

20 (6) ~~-(5)-~~ If a commercial film or photographic print proces-
21 sor reports to the local prosecuting attorney his or her knowl-
22 edge or observation, within the scope of his or her professional
23 capacity or employment, of a film, photograph, movie film, video-
24 tape, negative, or slide depicting a person that the processor
25 has reason to know or reason to believe is a child engaged in ~~a~~
26 ~~listed sexual act~~ SEXUALLY EXPLICIT CONDUCT; furnishes a copy of
27 the film, photograph, movie film, videotape, negative, or slide

1 to the prosecuting attorney; or keeps the film, photograph, movie
2 film, videotape, negative, or slide according to the prosecuting
3 attorney's instructions, both of the following shall apply:

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

7 (b) If the processor acted in good faith, he or she shall be
8 immune from civil liability that might otherwise be incurred by
9 his or her actions. This immunity extends only to acts described
10 in this subsection.

11 (7) ~~-(6)-~~ This section shall be applicable and uniform
12 throughout the state and all political subdivisions and munici-
13 palities in the state.

14 (8) ~~-(7)-~~ A local municipality or political subdivision
15 shall not enact ordinances, nor enforce existing ordinances,
16 rules, or regulations governing ~~child sexually abusive activity~~
17 ~~or child sexually abusive material as defined by~~ CONDUCT THAT IS
18 PROSCRIBED UNDER this section.