

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 117**

(As Passed the Senate February 17, 1999)

A bill to amend 1978 PA 33, entitled

"An act to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter to minors; to provide penalties; to provide for declaratory judgments and injunctive relief in certain instances; to impose certain duties upon prosecuting attorneys and the circuit court; to preempt local units of government from proscribing certain conduct; and to repeal certain acts and parts of acts,"

by amending sections 3, 5, 6, and 7 (MCL 722.673, 722.675, 722.676, and 722.677) and by adding section 1a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1A. AS USED IN THIS ACT:

2 (A) "COMPUTER" MEANS ANY CONNECTED, DIRECTLY INTEROPERABLE
3 OR INTERACTIVE DEVICE, EQUIPMENT, OR FACILITY THAT USES A COM-
4 PUTER PROGRAM OR OTHER INSTRUCTIONS TO PERFORM SPECIFIC
5 OPERATIONS INCLUDING LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS
6 WITH OR ON COMPUTER DATA OR A COMPUTER PROGRAM AND THAT CAN

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1 STORE, RETRIEVE, ALTER, OR COMMUNICATE THE RESULTS OF THE
2 OPERATIONS TO A PERSON, COMPUTER PROGRAM, COMPUTER, COMPUTER
3 SYSTEM, OR COMPUTER NETWORK.

4 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWIRE
5 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
6 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
7 COMPUTERS.

8 (C) "COMPUTER PROGRAM" MEANS A SERIES OF INTERNAL OR EXTER-
9 NAL INSTRUCTIONS COMMUNICATED IN A FORM ACCEPTABLE TO A COMPUTER
10 THAT DIRECTS THE FUNCTIONING OF A COMPUTER, COMPUTER SYSTEM, OR
11 COMPUTER NETWORK IN A MANNER DESIGNED TO PROVIDE OR PRODUCE PRO-
12 DUCTS OR RESULTS FROM THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER
13 NETWORK.

14 (D) "COMPUTER SYSTEM" MEANS A SET OF RELATED, CONNECTED OR
15 UNCONNECTED, COMPUTER EQUIPMENT, DEVICES, SOFTWARE, OR HARDWARE.

16 (E) "DEVICE" INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC,
17 MAGNETIC, ELECTROCHEMICAL, BIOCHEMICAL, HYDRAULIC, OPTICAL, OR
18 ORGANIC OBJECT THAT PERFORMS INPUT, OUTPUT, OR STORAGE FUNCTIONS
19 BY THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

20 (F) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
21 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652, 110
22 STAT. 137, 47 U.S.C. 230.

23 Sec. 3. As used in this act:

24 (a) "Sexually explicit matter" means sexually explicit
25 visual material, sexually explicit verbal material, or sexually
26 explicit performance.

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1 (b) "Sexually explicit performance" means a motion picture,
2 exhibition, show, representation, or other presentation ~~, which~~
3 THAT, in whole or in part, depicts nudity, sexual excitement,
4 erotic fondling, sexual intercourse, or sadomasochistic abuse.
5 SEXUALLY EXPLICIT PERFORMANCE INCLUDES, BUT IS NOT LIMITED TO,
6 ANY PERFORMANCE DESCRIBED IN THIS SUBDIVISION COMMUNICATED,
7 TRANSMITTED, DISPLAYED, OR OTHERWISE MADE AVAILABLE BY MEANS OF
8 THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR
9 COMPUTER NETWORK.

10 (c) "Sexually explicit verbal material" means a book, pam-
11 phlet, magazine, printed matter reproduced in any manner, or
12 sound recording ~~which~~ THAT contains an explicit and detailed
13 verbal description or narrative account of sexual excitement,
14 erotic fondling, sexual intercourse, or sadomasochistic abuse.
15 SEXUALLY EXPLICIT VERBAL MATERIAL INCLUDES, BUT IS NOT LIMITED
16 TO, ANY VERBAL MATERIAL DESCRIBED IN THIS SUBDIVISION COMMUNI-
17 CATED, TRANSMITTED, DISPLAYED, OR OTHERWISE MADE AVAILABLE BY
18 MEANS OF THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER
19 SYSTEM, OR COMPUTER NETWORK.

20 (d) "Sexually explicit visual material" means a picture,
21 photograph, drawing, sculpture, motion picture film, or similar
22 visual representation ~~which~~ THAT depicts nudity, sexual excite-
23 ment, erotic fondling, sexual intercourse, or sadomasochistic
24 abuse, or a book, magazine, or pamphlet ~~which~~ THAT contains
25 such a visual representation. An undeveloped photograph, mold,
26 or similar visual material may be sexually explicit material
27 notwithstanding that processing or other acts may be required to

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1 make its sexually explicit content apparent. SEXUALLY EXPLICIT
2 VISUAL MATERIAL INCLUDES, BUT IS NOT LIMITED TO, ANY VISUAL MATE-
3 RIAL DESCRIBED IN THIS SUBDIVISION COMMUNICATED, TRANSMITTED,
4 DISPLAYED, OR OTHERWISE MADE AVAILABLE BY MEANS OF THE INTERNET
5 OR A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER
6 NETWORK.

7 Sec. 5. (1) A person is guilty of ~~distributing obscene~~
8 DISSEMINATING SEXUALLY EXPLICIT matter to a minor if that person
9 does either of the following:

10 (a) Knowingly disseminates to a minor sexually explicit
11 visual or verbal material that is harmful to minors.

12 (b) Knowingly exhibits to a minor a sexually explicit per-
13 formance that is harmful to minors.

14 (2) A person knowingly disseminates sexually explicit matter
15 to a minor ~~when~~ IF the person knows both the nature of the
16 matter and the status of the minor to whom the matter is
17 disseminated.

18 (3) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (6), A person knows
19 the nature of matter if the person either is aware of ~~the~~ ITS
20 character and content ~~of the matter~~ or recklessly disregards
21 circumstances suggesting ~~the~~ ITS character and content. ~~of the~~
22 matter.

23 (4) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (6), A person knows
24 the status of a minor if the person either is aware that the
25 person to whom the dissemination is made is under 18 years of age
26 or recklessly disregards a substantial risk that the person to
27 whom the dissemination is made is under 18 years of age.

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1 (5) ~~Distributing obscene~~ DISSEMINATING SEXUALLY EXPLICIT
2 matter to a minor is a ~~misdemeanor,~~ FELONY punishable by
3 imprisonment for not more than 2 years or a fine of not more than
4 \$10,000.00, or both. In imposing the fine, ~~authorized for this~~
5 ~~offense,~~ the court shall consider the scope of the defendant's
6 commercial activity in ~~distributing obscene~~ DISSEMINATING SEXU-
7 ALLY EXPLICIT matter to minors.

8 (6) SUBSECTIONS (3) AND (4) DO NOT APPLY TO AN INTERNET OR
9 COMPUTER NETWORK SERVICE PROVIDER WHO IN GOOD FAITH, AND WITHOUT
10 KNOWLEDGE OF THE NATURE OF A SEXUALLY EXPLICIT MATTER OR THE
11 STATUS OF A MINOR, PROVIDES THE MEDIUM FOR DISSEMINATING A SEXU-
12 ALLY EXPLICIT MATTER TO THE MINOR.

13 (7) THIS SECTION DOES NOT APPLY IF A PERSON DISSEMINATES
14 SEXUALLY EXPLICIT MATTER TO A MINOR BY MEANS OF THE INTERNET OR A
15 COMPUTER NETWORK UNLESS 1 OR BOTH OF THE FOLLOWING APPLY:

16 (A) THE MATTER IS OBSCENE AS THAT TERM IS DEFINED IN
17 SECTION 2 OF 1984 PA 343, MCL 752.362.

18 (B) THE PROSECUTING ATTORNEY PROVES THAT THE PERSON DISSEMI-
19 NATED THE MATTER TO 1 OR MORE SPECIFIC MINORS AND KNEW HIS OR HER
20 STATUS AS A MINOR.

21 (8) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION
22 INVOLVING THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER
23 SYSTEM, OR COMPUTER NETWORK OCCURS IF THE VIOLATION ORIGINATES,
24 TERMINATES, OR BOTH ORIGINATES AND TERMINATES IN THIS STATE.

25 (9) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION
26 INVOLVING THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER

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1 SYSTEM, OR COMPUTER NETWORK MAY BE PROSECUTED IN ANY JURISDICTION
2 IN WHICH THE VIOLATION ORIGINATED OR TERMINATED.

3 Sec. 6. Section 5 does not apply to the dissemination of
4 sexually explicit matter to a minor by any of the following:

5 ~~persons:~~

6 (a) A parent or guardian who disseminates sexually explicit
7 matter to his or her child or ward.

8 (b) A teacher or administrator at a public or private ele-
9 mentary or secondary school ~~which~~ THAT complies with the
10 ~~provisions of Act No. 451 of the Public Acts of 1976, being sec-~~
11 ~~tions 380.1 to 380.1853 of the Michigan Compiled Laws~~ REVISED
12 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, AND who dissemi-
13 nates sexually explicit matter to a student as part of a school
14 program permitted by law.

15 (c) A licensed physician or ~~certified~~ LICENSED psycholo-
16 gist who disseminates sexually explicit matter in the treatment
17 of a patient.

18 (d) A librarian employed by a library of a public or private
19 elementary or secondary school ~~which~~ THAT complies with the
20 ~~provisions of Act No. 451 of the Public Acts of 1976~~ REVISED
21 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, or []
22 employed by a public library [,] who disseminates sexually
23 explicit matter in the course of that person's employment.

24 (e) Any public or private college or university or any other
25 person who disseminates sexually explicit matter for a legitimate
26 medical, scientific, governmental, or judicial purpose.

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1 (F) A PERSON WHO DISSEMINATES SEXUALLY EXPLICIT MATTER THAT
2 IS A PUBLIC DOCUMENT, PUBLICATION, RECORD, OR OTHER MATERIAL
3 ISSUED BY A STATE, LOCAL, OR FEDERAL OFFICIAL, DEPARTMENT, BOARD,
4 COMMISSION, AGENCY, OR OTHER GOVERNMENTAL ENTITY, OR AN ACCURATE
5 REPUBLICATION OF SUCH A PUBLIC DOCUMENT, PUBLICATION, RECORD, OR
6 OTHER MATERIAL.

7 Sec. 7. (1) A person is guilty of displaying ~~obscene~~
8 SEXUALLY EXPLICIT matter to a minor if that person possesses man-
9 agerial responsibility for a business enterprise selling visual
10 matter ~~which~~ THAT depicts sexual intercourse or sadomasochistic
11 abuse and ~~which~~ is harmful to minors, and that person knowingly
12 permits a minor who is not accompanied by a parent or guardian to
13 examine that matter.

14 (2) A person knowingly permits a minor to examine visual
15 matter ~~which~~ THAT depicts sexual intercourse or sadomasochistic
16 abuse and ~~which~~ is harmful to minors ~~,~~ if the person knows
17 both the nature of the matter and the status of the minor permit-
18 ted to examine the matter.

19 (3) A person knows the nature of the matter if the person
20 either is aware of ~~the~~ ITS character and content ~~of the~~
21 ~~matter~~ or recklessly disregards circumstances suggesting ~~the~~
22 ITS character and content. ~~of the matter.~~

23 (4) A person knows the status of a minor if the person
24 either is aware that the person who is permitted to examine the
25 matter is under 18 years of age or recklessly disregards a sub-
26 stantial risk that the person who is permitted to examine the
27 matter is under 18 years of age.

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1 (5) Displaying ~~obscene~~ SEXUALLY EXPLICIT matter to a minor
2 is a misdemeanor —, punishable by imprisonment for not more than
3 90 days —, or a fine of not more than \$5,000.00, or both.

(6) THIS SECTION DOES NOT APPLY IF A PERSON DISPLAYS SEXU-
ALLY EXPLICIT MATTER TO A MINOR BY MEANS OF THE INTERNET OR A
COMPUTER NETWORK UNLESS 1 OR BOTH OF THE FOLLOWING APPLY:

(A) THE MATTER IS OBSCENE AS THAT TERM IS DEFINED IN SECTION
2 OF 1984 PA 343, MCL 752.362.

(B) THE PROSECUTING ATTORNEY PROVES THAT THE PERSON DIS-
PLAYED THE MATTER TO 1 OR MORE SPECIFIC MINORS AND KNEW HIS OR
HER STATUS AS A MINOR.

4 [Enacting section 1. This amendatory act takes effect August
5 1, 1999.]