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BILL ANALYSIS

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Senate Bill 131 (Substitute S-1)  
Sponsor: Senator Alan Sanborn  
Committee: Judiciary

Date Completed: 5-2-05

### **CONTENT**

**The bill would create a new act to prescribe criminal penalties for publicly displaying or playing sexually explicit material, which would include recklessly displaying or playing the material in a vehicle so that it could be seen or heard by members of the general public outside the vehicle.**

A first or second violation would be a civil infraction. The maximum fine would be \$5,000 for a first violation and \$25,000 for a second violation. A third or subsequent violation would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.

A person would be guilty of publicly displaying or playing sexually explicit material if the person, knowing the nature of the material, recklessly displayed sexually explicit visual material or played sexually explicit audible material in a vehicle on a street, highway, or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking, when the displaying or playing of that material was visible or audible to members of the general public outside the vehicle, either as pedestrians or as individuals in other vehicles within the line of sight or range of hearing of an average individual, but not more than 500 feet from the vehicle. The offense would occur only if all of the following conditions applied:

- A member of the general public was, or would be, made to observe or listen to the material unwillingly.
- A member of the general public was, or would be, incapable of taking reasonable action to avoid exposure to the material, so that the exposure would constitute more than a remote and fleeting glimpse of the material.
- The person displaying or playing the material did nothing to stop displaying or playing it upon having reason to know that a member of the general public was, or would be, exposed to the material.

The bill specifies that a person would know the nature of the material if he or she either were aware of its character and content or recklessly disregarded circumstances suggesting its character and content.

A person would be guilty of publicly displaying or playing sexually explicit material regardless of whether any individual member of the general public in particular actually viewed or heard the material being displayed, if the displaying or playing occurred under circumstances in which an individual might reasonably have been expected to observe or hear the material.

The bill specifies that if the section containing the prohibition, or part of it, were determined by the court to be unconstitutional, a person would be responsible or liable for a violation of

the proposed act if he or she publicly displayed or played material in a vehicle, as prohibited by the bill, and one or both of the following applied to the material:

- The material was "obscene" as that term is defined in Public Act 343 of 1984 (MCL 752.362).
- The material was "harmful to minors" as defined in Public Act 33 of 1978 (MCL 722.674), and the person knew a minor was observing the material or that there was a substantial and imminent likelihood that a minor could reasonably be expected to be unwillingly exposed to the material and the person did nothing to stop the displaying or playing of the material.

A person would know the status of a minor if he or she either were aware that the person who viewed or heard the material was under 18 or recklessly disregarded a substantial risk that a person who was able to hear or view it was under 18.

(Under Public Act 343 of 1984, "obscene" means any material that the average individual, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; that the reasonable person would find, taken as a whole, lacks serious literary, artistic, political, or scientific value; and that depicts or describes sexual conduct in a patently offensive way.)

Under Public Act 33 of 1978, "harmful to minors" means sexually explicit matter that, considered as a whole, appeals to the prurient interest of minors as determined by contemporary local community standards; that is patently offensive to contemporary local community standards of adults as to what is suitable for minors; and that, considered as a whole, lacks serious literary, artistic, political, educational, and scientific value for minors.)

The bill would define "sexually explicit material" as sexually explicit visual material or sexually explicit audible material. "Sexually explicit visual material" would mean a picture, photograph, drawing, sculpture, motion picture film, videotape, compact disc, digital video, or versatile disc or similar form of visual representation through any technical means that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a photograph, drawing, or other form of visual representation.

"Sexually explicit audible material" would mean a sound recording that contains an explicit and detailed verbal description or aural representation of sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

"Display" would mean to exhibit, hold up, present, project, show, put or set out to view, or make visible.

The bill also would define "erotic fondling", "nudity", "sadomasochistic abuse", "sexual excitement", and "sexual intercourse".

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be found responsible for or convicted of violating the proposed prohibition. Local units would incur the costs of misdemeanor probation or incarceration in a local facility, which vary by county. Public libraries would benefit from any additional penal and civil infraction fine revenue.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.