



**House
Legislative
Analysis
Section**

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STRENGTHEN CHILD PORN LAW

House Bill 4575 (Substitute H-4)
First Analysis (12-3-87)

RECEIVED

Sponsor: Rep. Agnes Dobronski
Committee: Judiciary

FEB 04 1988

Michigan State Law Library

THE APPARENT PROBLEM:

The Michigan Penal Code makes child pornography a felony punishable by up to 20 years in prison, a fine of up to \$20,000, or both. To be considered child pornography under the code, material must be for a commercial purpose. Those concerned with combating child pornography have identified at least two ways in which the law can be strengthened and prosecutions facilitated. First, there is no need to limit the law to pornography for commercial purposes; apparently, that limitation is an artifact from its original enactment in 1977, when it was modeled on then-existing federal law. Now that limitation unnecessarily hampers prosecutions by requiring prosecutors to prove in each case that the pornography was for a commercial purpose. Second, the act contains no explicit encouragement for film processors to report discoveries of child pornography on the film they develop. Processors may be reluctant to act out of fear for themselves or their businesses, and the law could do something to protect the identities and limit the civil liability of film processors who report child pornography.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to, among other things, eliminate the law's requirement that child pornography be for a commercial purpose in order for the pornographer to be subject to prosecution under the law.

Both of the following would apply to a commercial film or photographic print processor who discovered apparent child pornography and reported it to the prosecutor, furnished a copy to the prosecutor, or kept the material as instructed by the prosecutor:

- (1) the identity of the processor would be confidential, subject to disclosure only with his or her consent or by judicial process; and
- (2) if the processor acted in good faith, he or she would be immune from civil liability that might otherwise be incurred by his or her actions under the bill.

In addition, the bill would exempt from the definition of "child sexually abusive material" (that is, child pornography) material which had primary literary, artistic, educational, political, or scientific value or that the average person applying contemporary community standards (in which the "community" was the state of Michigan) would find did not appeal to prurient interests. Teachers and libraries would be exempted from the child pornography law in the same way that they are exempted from the state's obscenity law.

MCL 750.145c

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The harm caused to children used in the production of child pornography is well-known, and the law should do everything possible to prevent its occurrence and punish its practitioners. A major impediment to successful prosecutions is the law's requirement that prosecutors show that the pornography was for a commercial purpose. That requirement is not necessary, and the bill would eliminate it. Another thing that would aid prosecutors would be if more film processors were willing to report discoveries of child pornography on the film they develop. The bill would encourage processors to do so by offering them confidentiality and civil liability protection. In this regard, the bill improves on its original provisions, which in addition would have required processors to report any child pornography they found. That requirement would have improperly put processors in the position of evaluating material for pornographic content, and unfairly made them liable for failing to report not only something that required a judgement, but also something of which they may have had no awareness, given today's high-speed processing operations.

Against:

The bill's provisions regarding film processors likely will have little effect. As introduced, the bill would have required processors to report the child pornography they found. That requirement at least would have had some force, and it would not have made processors liable for pornography of which they had no knowledge, nor would it have demanded that processors be sophisticated in identifying child pornography. There is nothing subtle about hard-core pornography. Further, the protections offered to processors are weak; it seems unlikely that a processor's involvement in reporting the pornography could remain unknown, and those few processors who discover child pornography probably will not be any more likely to come forward than they are now.

POSITIONS:

The Department of State Police supports the bill. (12-1-87)

The Office of Criminal Justice supports the bill. (12-1-87)

The Prosecuting Attorneys Association of Michigan supports the bill. (12-1-87)

H.B. 4575 (12-3-87)