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BILL ANALYSIS

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Senate Bill 426 (Substitute S-1 as reported without amendment)**Sponsor:** Senator John F. Kelly**Committee:** Judiciary**Date Completed:** 12-17-87**RATIONALE**

Prompted by reports of dramatic increases in the use of children in pornographic movies and photographs, the Legislature enacted Public Act 301 of 1977. The Act amended the Michigan Penal Code to make it a felony to produce "child abusive commercial material" (a photograph or film depicting a child engaging in a sexual act specified in Public Act 301) for commercial purposes, to distribute such material or "child abusive commercial activity" commercially, or to cause or allow a child to engage in that type of activity. The Act was similar to the 1977 version of the Federal Child Protection Act, which was amended in 1984 to delete the requirement that the prohibited distribution of child pornography be for the purpose of sale, and to increase penalties substantially. Many are now recommending that the Michigan Act also be amended to remove the commercial aspect of the activities prohibited under Public Act 301. According to the State Police, it is very rare that a suspect receives financial gain for his or her involvement in child pornography and, as a result, successful prosecution under the Act frequently may not be possible.

In addition, many suggest that child pornography could be more effectively combated if all commercial film processors were encouraged to report to law enforcement authorities sexually explicit film or photographs of children. Reportedly, although most of the State's larger photo finishing companies already have policies that require such reporting, police are concerned about the growth of one-hour developing outlets and the potential for child pornography to be processed at these facilities. Evidently, the only way the police have learned of child pornographers in some cases has been through the voluntary cooperation of photo finishers, and many believe that encouraging all processors to cooperate would create a significant deterrent to child pornography.

CONTENT

The bill would amend the Michigan Penal Code to extend to noncommercial activity the current prohibitions against commercial activity involving children engaged in sexual acts, and to allow immunity and confidentiality to be given to a film or photographic print processor who reported to the local prosecutor evidence of such activity.

The bill would remove "commercial" from references to child abusive materials and would refer instead to "child sexually abusive material". It would add a "book, magazine or other visual or print medium" to the definition of "child sexually abusive material", as well as the reproduction of an electronic visual image book, magazine or other print medium. In addition, child sexually abusive material would not include material that had primary literary, artistic, educational, political, or scientific value

or that the average person would find did not appeal to prurient interests.

The bill also specifies that the Act's prohibition against distributing child sexually abusive material would not apply to a person who, in the course of his or her work, disseminated such material as an employee of a college, university, vocational school, or library, or did not have discretion with regard to that dissemination or was not involved in the management of the employer.

MCL 750.145c

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. Enforcement costs are not determinable.

ARGUMENTS**Supporting Argument**

Rather than decreasing, child pornography actually appears to be on the rise, and stronger measures must be available to fight this exploitation of children. By eliminating the requirement that the production or distribution of child pornography be for a commercial purpose, the bill would conform Michigan law to the Federal Child Protection Act of 1984. More significantly, it would authorize the prosecution of child pornographers who cannot be punished under the current law. According to the State Police, in one such case 1,100 pictures of 145 girls were seized, but the suspect could not be prosecuted because he had received no financial remuneration.

By making these changes, as well as by encouraging all commercial film and photographic processors to report sexually explicit pictures of children, the bill would facilitate the successful prosecution of child pornographers, deter their illicit activities, and protect the physical and psychological well-being of the children. These children are harmed not only by their direct involvement in producing the materials, but also by the distribution of the photographs and films depicting their sexual activity: the materials produced are a permanent record of a child's participation and the harm to the child is exacerbated by their circulation. Consequently, the trauma and psychological destruction to children may well lead them to join the deviant population of drug addicts, prostitutes, teen-aged parents, and criminals. These children are the true and sometimes overlooked victims of this exploitation, and their right to be protected is paramount.

Opposing Argument

In removing the need for commercial involvement for a prosecution under the Act, the bill could render the current

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penalty provisions inappropriately severe, since those provisions were enacted in anticipation of a violator's receiving financial gain for his or her illicit activities. Under the Act, causing a child to engage in a child abusive commercial activity, or producing or financing such an activity or child abusive commercial material, is punishable by up to 20 years' imprisonment and/or a fine of up to \$20,000. Commercially distributing child pornography is punishable by up to seven years' imprisonment and/or a maximum fine of \$10,000.

Response: Michigan's penalties would remain in line with the Federal Act, which also was amended to delete the commercial aspect. An individual convicted of violating the Child Protection Act of 1984 is subject to a fine of up to \$100,000 and/or imprisonment for up to 10 years for a first offense, and a maximum fine of \$200,000 and/or imprisonment for two to 15 years for a subsequent conviction, and an organization may be fined up to \$250,000.

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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.