

# SENATE BILL No. 45

February 5, 1991, Introduced by Senators STABENOW, WELBORN, BERRYMAN, DINGELL, POLLACK, KOIVISTO and VAN REGENMORTER and referred to the Committee on Family Law, Criminal Law, and Corrections.

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)~~ 4(2) of Act No. 293 of the Public Acts of 1968, as  
9 amended, being 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~~  
5 duplicates 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~~ DOES not ~~be construed~~  
12 ~~to~~ include physical contact, even if affectionate, ~~which~~ THAT  
13 is not for the purpose of real or simulated overt sexual gratifi-  
14 cation or 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~~ THAT lacks primary literary, artis-  
18 tic, educational, political, or scientific value and ~~which~~ THAT  
19 the average person applying contemporary community standards  
20 would find appeals to prurient interests. As used in ~~the~~ THIS  
21 subdivision, "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~~ THAT exposes another person to or draws another  
8 person's attention to an act of sexual intercourse, erotic fond-  
9 ling, sadomasochistic abuse, masturbation, sexual excitement, or  
10 erotic nudity because of viewing any of these acts or because of  
11 the proximity of the act to that person, for the purpose of real  
12 or simulated overt sexual gratification or stimulation of 1 or  
13 more 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 (2) A person who persuades, induces, entices, coerces,  
18 causes, or knowingly allows a child to engage in a child sexually  
19 abusive activity for the purpose of producing any child sexually  
20 abusive material, or a person who arranges for, produces, makes,  
21 or finances, or a person who attempts or prepares or conspires to  
22 arrange for, produce, make, or finance any child sexually abusive  
23 activity or child sexually abusive material is guilty of a  
24 felony, punishable by imprisonment for not more than 20 years, or  
25 a fine of not more than ~~\$20,000~~ \$100,000.00, or both, if that  
26 person knows, has reason to know, or should reasonably be  
27 expected to know that the child is a child, or that person has

1 not taken reasonable precautions to determine the age of the  
2 child.

3       (3) A person who distributes or promotes, or finances the  
4 distribution or promotion of, or receives for the purpose of dis-  
5 tributing or promoting, or conspires, attempts, or prepares to  
6 distribute, receive, finance, or promote any child sexually abu-  
7 sive material or child sexually abusive activity is guilty of a  
8 felony, punishable by imprisonment for not more than 7 years, or  
9 a fine of not more than ~~-\$10,000-~~ \$50,000.00, or both, if that  
10 person knows, has reason to know, or should reasonably be  
11 expected to know that the child is a child. This subsection does  
12 not apply to the persons described in section 7 of Act No. 343 of  
13 the Public Acts of 1984, being section 752.367 of the Michigan  
14 Compiled Laws.

15       (4) A PERSON WHO KNOWINGLY POSSESSES ANY CHILD SEXUALLY ABU-  
16 SIVE MATERIAL IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISON-  
17 MENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN  
18 \$10,000.00, OR BOTH, IF THAT PERSON KNOWS, HAS REASON TO KNOW, OR  
19 SHOULD REASONABLY BE EXPECTED TO KNOW THAT THE CHILD IS A CHILD,  
20 OR THAT PERSON HAS NOT TAKEN REASONABLE PRECAUTIONS TO DETERMINE  
21 THE AGE OF THE CHILD. THIS SUBSECTION DOES NOT APPLY TO THE PER-  
22 SONS DESCRIBED IN SECTION 7 OF ACT NO. 343 OF THE PUBLIC ACTS OF  
23 1984 OR TO A COMMERCIAL FILM OR PHOTOGRAPHIC PRINT PROCESSOR  
24 ACTING PURSUANT TO SUBSECTION (6).

25       (5) ~~-(4)-~~ Expert testimony as to the age of the child used  
26 in a child sexually abusive material or a child sexually abusive  
27 activity ~~shall be~~ IS admissible as evidence in court and may be

1 a legitimate basis for ~~determination of~~ DETERMINING age, if age  
2 ~~has~~ IS not otherwise ~~been~~ proven.

3       (6) ~~-(5)-~~ If a commercial film or photographic print proces-  
4 sor reports to the local prosecuting attorney his or her knowl-  
5 edge or observation, within the scope of his or her professional  
6 capacity or employment, of a film, photograph, movie film, video-  
7 tape, negative, or slide depicting a person that the processor  
8 has reason to know or reason to believe is a child engaged in a  
9 listed sexual act; furnishes a copy of the film, photograph,  
10 movie film, videotape, negative, or slide to the prosecuting  
11 attorney; or keeps the film, photograph, movie film, videotape,  
12 negative, or slide according to the prosecuting attorney's  
13 instructions, both of the following shall apply:

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

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

21       (7) ~~-(6)-~~ This section ~~shall be applicable and uniform~~  
22 APPLIES UNIFORMLY throughout the state and all political subdivi-  
23 sions and municipalities in the state.

24       (8) ~~-(7)-~~ A local municipality or political subdivision  
25 shall not enact ordinances, nor enforce existing ordinances,  
26 rules, or regulations governing child sexually abusive activity  
27 or child sexually abusive material as defined by this section.

1       Section 2.   This amendatory act shall take effect April 1,  
2 1992.