



HOUSE BILL No. 5142

October 19, 1993, Introduced by Reps. Dalman, McManus, Lowe, Gernaat, Byrum, Allen, London, Whyman, Horton, Freeman, Gire, LeTarte, Baade and Galloway and referred to the Committee on Human Services and Children.

A bill to amend section 145c of Act No. 328 of the Public Acts of 1931, entitled as amended

"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 ~~—~~ DOES 1 OR MORE OF ^{THE}
 3 FOLLOWING for compensation: ~~—, develops—~~

4 (i) DEVELOPS exposed photographic film into movie film^s,
 5 negatives, slides, or prints. ~~—, who makes—~~

6 (ii) MAKES prints from negatives or slides. ~~—, or who~~
 7 ~~duplicates—~~

8 (iii) DUPLICATES movie films or videotapes.

9 (c) "Erotic fondling" means touching a person's clothed^d or
 10 unclothed genitals, pubic area, buttocks, or, if the person is
 11 female, breasts, or if the person is a child, the developing or
 12 undeveloped breast area, for the purpose of real or simulated^d
 13 overt sexual gratification or stimulation of 1 or more of the
 14 persons involved. Erotic fondling shall not be construed to
 15 include physical contact, even if affectionate, ~~—which—~~ THAT is
 16 not for the purpose of real or simulated overt sexual gratifica-
 17 tion or stimulation of 1 or more of the persons involved.

18 (d) "Erotic nudity" means the ~~—display—~~ LEWD EXHIBITION of
 19 the human male or female genital, RECTAL, or pubic area, or
 20 developed or developing female breast. ~~—, in a manner which~~
 21 ~~lacks primary literary, artistic, educational, political, or sci-~~
 22 ~~entific value and which the average person applying contemporary~~
 23 ~~community standards would find appeals to prurient interests. As~~
 24 ~~used in the subdivision, "community" means the state of~~
 25 ~~Michigan.—~~

1 (e) "Listed sexual act" means sexual intercourse, erotic
2 fondling, sadomasochistic abuse, masturbation, passive sexual
3 involvement, sexual excitement, or erotic nudity.

4 (f) "Masturbation" means the real or simulated touching,
5 rubbing, or otherwise stimulating of a person's own clothed or
6 unclothed genitals, pubic area, buttocks, or, if the person is
7 female, breasts, or if the person is a child, the developing or
8 undeveloped breast area, either by manual manipulation or
9 self-induced or with an artificial instrument, for the purpose of
10 real or simulated overt sexual gratification or arousal of the
11 person.

12 (g) "Passive sexual involvement" means an act, real or simu-
13 lated, ~~which~~ THAT exposes another person to or draws another
14 person's attention to an act of sexual intercourse, erotic fond-
15 ling, sadomasochistic abuse, masturbation, sexual excitement, or
16 erotic nudity because of viewing ~~any~~ 1 OR MORE of these acts or
17 because of the proximity of the act to that person, for the pur-
18 pose of real or simulated overt sexual gratification or stimula-
19 tion of 1 or more of the persons involved.

20 (h) "Child sexually abusive activity" means a child engaging
21 in a listed sexual act.

22 (i) "Child sexually abusive material" means a developed or
23 undeveloped photograph, film, slide, electronic visual image, or
24 sound recording of a child engaging in a listed sexual act; a
25 book, magazine, or other visual or print medium containing such a
26 photograph, film, slide, electronic visual image, or sound
27 recording; or ~~any~~ A reproduction, copy, or print of such a

1 photograph, film, slide, electronic visual image, book, magazine,
 2 other visual or print medium, or sound recording. Child sexually
 3 abusive material does not include material that has primary lit-
 4 erary, artistic, educational, political, or scientific value or
 5 that the average person applying contemporary community standards
 6 would find does not appeal to prurient interests. As used in
 7 this subdivision, "community" means the state of Michigan.

8 (j) "Sadomasochistic abuse" means either of the following:

9 (i) Flagellation or torture, real or simulated, for the pur-
 10 pose of real or simulated sexual stimulation or gratification, by
 11 or upon a person.

12 (ii) The condition, real or simulated, of being fettered,
 13 bound, or otherwise physically restrained for sexual stimulation
 14 or gratification of a person.

15 (k) "Sexual excitement" means the condition, real or simu-
 16 lated, of human male or female genitals when in a state of real
 17 or simulated overt sexual stimulation or arousal.

18 (l) "Sexual intercourse" means intercourse, real or simulat-
 19 ed, whether genital-genital, oral-genital, anal-genital, or
 20 oral-anal, whether between persons of the same or opposite sex or
 21 between a human and an animal, or with an artificial genital.

22 (2) A person who persuades, induces, entices, coerces,
 23 causes, or knowingly allows a child to engage in a child sexually
 24 abusive activity for the purpose of producing ~~any~~ child sexu-
 25 ally abusive material, or a person who arranges for, produces,
 26 makes, or finances, or a person who attempts or prepares or
 27 conspires to arrange for, produce, make, or finance ~~any~~ child

1 sexually abusive activity or child sexually abusive material is
2 guilty of a felony, punishable by imprisonment for not more than
3 20 years, or a fine of not more than ~~-\$20,000-~~ \$20,000.00, or
4 both, if that person knows, has reason to know, or should reason-
5 ably be expected to know that the child is a child, or that
6 person has not taken reasonable precautions to determine the age
7 of the child.

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

20 (4) Expert testimony as to the age of the child used in a
21 child sexually abusive material or a child sexually abusive
22 activity ~~shall be~~ IS admissible as evidence in court and may be
23 a legitimate basis for determination of age, if age has not oth-
24 erwise been proven.

25 (5) A COMMERCIAL FILM OR PHOTOGRAPHIC PRINT PROCESSOR WHO
26 HAS KNOWLEDGE OF OR OBSERVES, WITHIN THE SCOPE OF HIS OR HER
27 PROFESSIONAL CAPACITY OR EMPLOYMENT, A FILM, PHOTOGRAPH, MOVIE

1 FILM, VIDEOTAPE, NEGATIVE, OR SLIDE DEPICTING A PERSON THAT THE
 2 PROCESSOR HAS REASON TO KNOW OR REASON TO BELIEVE IS A CHILD
 3 ENGAGED IN A LISTED SEXUAL ACT SHALL IMMEDIATELY MAKE AN ORAL
 4 REPORT OF THAT KNOWLEDGE OR OBSERVATION TO THE LOCAL PROSECUTING
 5 ATTORNEY. THE COMMERCIAL FILM OR PHOTOGRAPHIC PRINT PROCESSOR
 6 SHALL ALSO SUBMIT A WRITTEN REPORT TO THE PROSECUTING ATTORNEY
 7 WITH A COPY OF THE FILM, PHOTOGRAPH, MOVIE FILM, VIDEOTAPE, NEGA-
 8 TIVE, OR SLIDE ATTACHED TO THE REPORT WITHIN 72 HOURS AFTER GAIN-
 9 ING KNOWLEDGE OF OR OBSERVING THE FILM, PHOTOGRAPH, MOVIE FILM,
 10 VIDEO TAPE, NEGATIVE, OR SLIDE. THE COMMERCIAL FILM OR PHOTO-
 11 GRAPHIC PRINT PROCESSOR SHALL DEAL WITH THE ORIGINAL FILM, PHOTO-
 12 GRAPH, MOVIE FILM, VIDEOTAPE, NEGATIVE, OR SLIDE AS INSTRUCTED BY
 13 THE PROSECUTING ATTORNEY, AND HE OR SHE IS IMMUNE FROM CRIMINAL
 14 LIABILITY THAT MIGHT OTHERWISE BE INCURRED BY COMPLYING WITH
 15 THOSE INSTRUCTIONS. A PERSON WHO FAILS TO REPORT AS REQUIRED BY
 16 THIS SUBSECTION IS GUILTY OF A MISDEMEANOR.

17 (6) ~~(5)~~ If a commercial film or photographic print proces-
 18 sor ~~reports to the local prosecuting attorney his or her knowl-~~
 19 ~~edge or observation, within the scope of his or her professional~~
 20 ~~capacity or employment, of a film, photograph, movie film, video-~~
 21 ~~tape, negative, or slide depicting a person that the processor~~
 22 ~~has reason to know or reason to believe is a child engaged in a~~
 23 ~~listed sexual act, furnishes a copy of the film, photograph,~~
 24 ~~movie film, videotape, negative, or slide to the prosecuting~~
 25 ~~attorney, or keeps the film, photograph, movie film, videotape,~~
 26 ~~negative, or slide according to the prosecuting attorney's~~

1 ~~instructions, both~~ COMPLIES WITH SUBSECTION (5), ALL of the
2 following ~~shall~~ apply:

3 (a) The identity of the processor ~~shall be~~ IS confiden-
4 tial, subject to disclosure only with his or her consent or by
5 judicial process.

6 (b) If the processor acted in good faith, he or she ~~shall~~
7 ~~be~~ IS immune from civil liability that might otherwise be
8 incurred by his or her actions. This immunity extends only to
9 acts described in ~~this~~ subsection (5).

10 (C) THE PROCESSOR IS PRESUMED TO HAVE ACTED IN GOOD FAITH.

11 (7) ~~(6)~~ This section ~~shall be~~ IS applicable and uniform
12 throughout the state and all political subdivisions and munici-
13 palities in the state.

14 (8) ~~(7)~~ A local municipality or political subdivision
15 shall not enact ordinances ~~, nor~~ OR enforce existing ordi-
16 nances, rules, or regulations governing child sexually abusive
17 activity or child sexually abusive material as defined by this
18 section.