

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA**



**BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 117 (as enrolled)  
Sponsor: Senator Bev Hammerstrom  
Senate Committee: Judiciary  
House Committee: Criminal Law and Corrections

**PUBLIC ACT 33 of 1999**

Date Completed: 8-4-99

**CONTENT**

**The bill amended Public Act 33 of 1978, which prohibits the dissemination, exhibition, or display of certain sexually explicit matter to minors, to include material made available via the Internet, a computer, or a computer program, system, or network. The bill also revised the offense of “distributing obscene matter to a minor” by referring, instead, to “disseminating sexually explicit matter to a minor” and making that offense a felony, and revised the offense of displaying “obscene” matter to a minor by referring, instead, to “sexually explicit” matter. The bill includes an effective date of August 1, 1999.**

The bill specifies that the Act’s definitions of “sexually explicit performance”, “sexually explicit verbal material”, and “sexually explicit visual material” include any performance, verbal material, or visual material communicated, transmitted, displayed, or otherwise made available by means of the Internet, a computer, or a computer program, system, or network.

Under the Act, distributing obscene matter to a minor was a misdemeanor, punishable by up to two years’ imprisonment and/or a maximum fine of \$10,000. The bill changed the offense to disseminating sexually explicit matter to a minor and made it a felony but did not revise the penalty. (The violation occurs if a person knowingly disseminates to a minor either sexually explicit visual or verbal material or a sexually explicit performance that is harmful to minors. A person knowingly disseminates sexually explicit matter to a minor when he or she knows both the nature of the matter and the status of the minor to whom it is disseminated.)

Previously, displaying obscene matter to a minor was a misdemeanor punishable by up to 90 days’ imprisonment and/or a maximum fine of \$5,000. The bill changed that offense to displaying sexually explicit matter, but did not revise the penalty. (A violation occurs if a person who possesses managerial responsibility for a business selling visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors

knowingly permits a minor not accompanied by a parent or guardian to examine that matter.)

Under the bill, the offenses do not apply if a person disseminates or displays sexually explicit matter to a minor by means of the Internet or a computer network unless either or both of the following apply:

- The matter is “obscene” as that term is defined in Public Act 343 of 1984 (i.e., the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; the reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value; and the material depicts or describes sexual conduct in a patently offensive way).
- The prosecuting attorney proves that the offender disseminated or displayed the matter to one or more specific minors and knew of their status as minors.

Under the bill, a dissemination violation involving the Internet, a computer, or a computer program, system, or network occurs if the violation originates and/or terminates in Michigan.

A dissemination offense does not apply to either of the following:

- An Internet or computer network service provider who, in good faith and without knowledge of the nature of the sexually explicit matter or the status of a minor, provides the medium for disseminating the sexually explicit matter to the minor.
- A person who disseminates sexually explicit matter that is a public document, publication, record, or other material issued by a state, local, or Federal official or governmental entity or an accurate republication of that material.

MCL 722.673 et al.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill will have an indeterminate fiscal impact on State and local government. In 1996, seven people were convicted of distributing obscene matter to a minor. There are no data to indicate how many more people might be convicted as a result of including Internet transmissions in the definitions. The bill does not change the maximum sentence for dissemination, which is two years; statutory sentencing guidelines classify this crime in Class E, which carries a recommended minimum sentence range of from 0-3 months to 24-38 months. According to statute, the minimum sentence cannot be more than 2/3 of the maximum sentence or, in this case, more than 16 months. Therefore, short of a judicial departure, most offenders will be sentenced to local sanctions, the cost of which varies from county to county.

Fiscal Analyst: K. Firestone

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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.