

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 (Substitute S-2 as reported by the Committee of the Whole)

Sponsor: Senator Bev Hammerstrom

Committee: Judiciary

CONTENT

The bill would amend Public Act 33 of 1978, which prohibits the dissemination, exhibition, or display of certain sexually explicit matter to minors, to include material communicated, transmitted, displayed, or otherwise made available by means of the Internet, a computer, or a computer program, system, or network, in the Act's definitions of "sexually explicit performance", "sexually explicit verbal material", and "sexually explicit visual material".

The bill also would revise the offense of "distributing obscene matter to a minor" by referring, instead, to "disseminating sexually explicit matter to a minor", and would revise the offense of displaying "obscene" matter to a minor by referring, instead, to "sexually explicit" matter. Those offenses would not apply if a person disseminated or displayed sexually explicit matter to a minor by means of the Internet or a computer network unless 1) the matter was "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; and the reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value) and/or 2) the prosecuting attorney proved that the offender disseminated or displayed the matter to one or more specific minors and knew of their status as minors. A dissemination violation involving the Internet, a computer, or a computer program, system, or network would occur if the violation originated and/or terminated in Michigan.

A dissemination offense would not apply either to 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, provided the medium for disseminating the sexually explicit matter, or to a person who disseminated sexually explicit matter that was 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 would 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 could be convicted if Internet transmissions were included in the definitions. The bill would not change the two-year maximum sentence for dissemination; 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 18 months. Therefore, short of a judicial departure, most offenders would be sentenced to local sanctions, the cost of which varies from county to county.

Date Completed: 2-16-99

Fiscal Analyst: K. Firestone

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Analysis available @ <http://www.michiganlegislature.org>

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