

# HOUSE BILL No. 5296

October 18, 2001, Introduced by Rep. DeRossett and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 145c (MCL 750.145c), as amended by 1994 PA  
444.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 145c. (1) As used in this section:

2       (a) "Child" means a person who is less than 18 years of age,

3 ~~and is not~~ SUBJECT TO THE AFFIRMATIVE DEFENSE CREATED IN SUB-

4 SECTION (6) REGARDING PERSONS emancipated by operation of law.

5 ~~as provided in section 4(2) of Act No. 293 of the Public Acts of~~

6 ~~1968, as amended, being section 722.4 of the Michigan Compiled~~

7 ~~Laws.~~

8       (b) "Commercial film or photographic print processor" means

9 a person or his or her employee who, for compensation, develops

10 exposed photographic film into movie films, negatives, slides, or

1 prints; makes prints from negatives or slides; or duplicates  
2 movie films or videotapes.

3       (c) "Erotic fondling" means touching a person's clothed or  
4 unclothed genitals, pubic area, buttocks, or, if the person is  
5 female, breasts, or if the person is a child, the developing or  
6 undeveloped breast area, for the purpose of real or simulated  
7 overt sexual gratification or stimulation of 1 or more of the  
8 persons involved. Erotic fondling does not include physical con-  
9 tact, even if affectionate, that is not for the purpose of real  
10 or simulated overt sexual gratification or stimulation of 1 or  
11 more of the persons involved.

12       (d) "Erotic nudity" means the lascivious exhibition of the  
13 genital, pubic, or rectal area of any person. As used in this  
14 subdivision, "lascivious" means wanton, lewd, and lustful and  
15 tending to produce voluptuous or lewd emotions.

16       (e) "Listed sexual act" means sexual intercourse, erotic  
17 fondling, sadomasochistic abuse, masturbation, passive sexual  
18 involvement, sexual excitement, or erotic nudity.

19       (f) "Masturbation" means the real or simulated touching,  
20 rubbing, or otherwise stimulating of a person's own clothed or  
21 unclothed genitals, pubic area, buttocks, or, if the person is  
22 female, breasts, or if the person is a child, the developing or  
23 undeveloped breast area, either by manual manipulation or  
24 self-induced or with an artificial instrument, for the purpose of  
25 real or simulated overt sexual gratification or arousal of the  
26 person.

1 (g) "Passive sexual involvement" means an act, real or  
2 simulated, that exposes another person to or draws another  
3 person's attention to an act of sexual intercourse, erotic fond-  
4 ling, sadomasochistic abuse, masturbation, sexual excitement, or  
5 erotic nudity because of viewing any of these acts or because of  
6 the proximity of the act to that person, for the purpose of real  
7 or simulated overt sexual gratification or stimulation of 1 or  
8 more of the persons involved.

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

11 (i) "Child sexually abusive material" means ANY DEPICTION,  
12 WHETHER MADE OR REPRODUCED BY ELECTRONIC, MECHANICAL, OR OTHER  
13 MEANS, INCLUDING a developed or undeveloped photograph, PICTURE,  
14 film, slide, VIDEO, electronic visual image, computer diskette,  
15 COMPUTER OR COMPUTER-GENERATED IMAGE, OR PICTURE, or sound  
16 recording WHICH IS of a child OR APPEARS TO INCLUDE A CHILD, OR  
17 CONVEYS THE IMPRESSION THAT THE DEPICTION INCLUDES A CHILD,  
18 engaging in a listed sexual act; a book, magazine, COMPUTER, COM-  
19 PUTER STORAGE DEVICE, or other visual or print OR PRINTABLE  
20 medium containing such a photograph, PICTURE, film, slide, VIDEO,  
21 electronic visual image, COMPUTER, OR COMPUTER-GENERATED IMAGE,  
22 OR PICTURE, or sound recording; or any reproduction, copy, or  
23 print of such a photograph, PICTURE, film, slide, VIDEO, elec-  
24 tronic visual image, book, magazine, COMPUTER, OR  
25 COMPUTER-GENERATED IMAGE, OR PICTURE, other visual or print OR  
26 PRINTABLE medium, or sound recording.

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

2 (i) Flagellation or torture, real or simulated, for the  
3 purpose of real or simulated sexual stimulation or gratification,  
4 by or upon a person.

5 (ii) The condition, real or simulated, of being fettered,  
6 bound, or otherwise physically restrained for sexual stimulation  
7 or gratification of a person.

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

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

15 (2) A person who persuades, induces, entices, coerces,  
16 causes, or knowingly allows a child to engage in a child sexually  
17 abusive activity for the purpose of producing any child sexually  
18 abusive material, or a person who arranges for, produces, makes,  
19 or finances, or a person who attempts or prepares or conspires to  
20 arrange for, produce, make, or finance any child sexually abusive  
21 activity or child sexually abusive material is guilty of a  
22 felony, punishable by imprisonment for not more than 20 years, or  
23 a fine of not more than \$100,000.00, or both, if that person  
24 knows, has reason to know, or should reasonably be expected to  
25 know that the child is a child, or that person has not taken rea-  
26 sonable precautions to determine the age of the child OR THAT THE  
27 CHILD SEXUALLY ABUSIVE MATERIAL INCLUDES OR IS INTENDED TO APPEAR

1 TO INCLUDE A CHILD OR CONVEY THE IMPRESSION THAT THE MATERIAL  
2 INCLUDES A 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 \$50,000.00, or both, if that person  
10 knows, has reason to know, or should reasonably be expected to  
11 know that the child is a child OR THAT THE CHILD SEXUALLY ABUSIVE  
12 MATERIAL INCLUDES OR IS INTENDED TO APPEAR TO INCLUDE A CHILD OR  
13 CONVEY THE IMPRESSION THAT THE MATERIAL INCLUDES A CHILD. This  
14 subsection does not apply to the persons described in section 7  
15 of ~~Act No. 343 of the Public Acts of 1984, being section 752.367~~  
16 ~~of the Michigan Compiled Laws 1984 PA 343, MCL 752.367.~~

17 (4) A person who knowingly possesses any child sexually abu-  
18 sive material is guilty of a ~~misdemeanor~~ FELONY punishable by  
19 imprisonment for not more than ~~1 year,~~ 4 YEARS or a fine of not  
20 more than \$10,000.00, or both, if that person knows, has reason  
21 to know, or should reasonably be expected to know the child is a  
22 child, or that person has not taken reasonable precautions to  
23 determine the age of the child OR THAT THE CHILD SEXUALLY ABUSIVE  
24 MATERIAL INCLUDES OR IS INTENDED TO APPEAR TO INCLUDE A CHILD OR  
25 CONVEY THE IMPRESSION THAT THE MATERIAL INCLUDES A CHILD. This  
26 subsection does not apply to any of the following:

1 (a) A person described in section 7 of ~~Act No. 343 of the~~  
2 ~~Public Acts of 1984~~ 1984 PA 343, MCL 752.367, or to a commercial  
3 film or photographic print processor acting pursuant to subsec-  
4 tion (6).

5 (b) A police officer acting within the scope of his or her  
6 duties as a police officer.

7 (c) An employee or contract agent of the department of  
8 social services acting within the scope of his or her duties as  
9 an employee or contract agent.

10 (d) A judicial officer or judicial employee acting within  
11 the scope of his or her duties as a judicial officer or judicial  
12 employee.

13 (e) A party or witness in a criminal or civil proceeding  
14 acting within the scope of that criminal or civil proceeding.

15 (f) A physician, psychologist, limited license psychologist,  
16 professional counselor, or registered nurse licensed under the  
17 public health code, ~~Act No. 368 of the Public Acts of 1978,~~  
18 ~~being sections 333.1101 to 333.25211 of the Michigan Compiled~~  
19 ~~Laws~~ 1978 PA 368, MCL 333.1101 TO 333.25211, acting within the  
20 scope of practice for which he or she is licensed.

21 (g) A social worker registered in this state under article  
22 ~~16 of the occupational code, Act No. 299 of the Public Acts of~~  
23 ~~1980, being sections 339.1601 to 339.1610 of the Michigan~~  
24 ~~Compiled Laws~~ 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
25 333.16101 TO 333.18838, acting within the scope of practice for  
26 which he or she is registered.

1       (5) Expert testimony as to the age of the child used in a  
2 child sexually abusive material or a child sexually abusive  
3 activity is admissible as evidence in court and may be a legiti-  
4 mate basis for determining age, if age is not otherwise proven.

5       (6) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS  
6 SECTION THAT THE ALLEGED CHILD IS A PERSON WHO IS EMANCIPATED BY  
7 OPERATION OF LAW UNDER SECTION 4(2) OF 1968 PA 293, MCL 722.4, AS  
8 PROVEN BY A PREPONDERANCE OF THE EVIDENCE.

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

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

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

1       (8) ~~-(7)-~~ This section applies uniformly throughout the  
2 state and all political subdivisions and municipalities in the  
3 state.

4       (9) ~~-(8)-~~ A local municipality or political subdivision  
5 shall not enact ordinances, nor enforce existing ordinances,  
6 rules, or regulations governing child sexually abusive activity  
7 or child sexually abusive material as defined by this section.