



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



BILL ANALYSIS

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

Senate Bill 773 (as enrolled)
Sponsor: Senator Buzz Thomas
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 478 of 2004

Date Completed: 1-27-05

RATIONALE

Under the Michigan Penal Code, knowingly possessing child sexually abusive material is a felony punishable by up to four years' imprisonment, a maximum fine of \$10,000, or both. The prohibition and penalty do not apply to certain people, including a commercial film or photographic print processor who reports a violation. In addition, the identity of a film or photograph processor reporting a violation must remain confidential, and the processor is immune from civil liability for good faith actions taken in reporting the violation. Since many images now are available via computer, and the internet has become a forum for viewing pornography, it was suggested that computer technicians who report pornography involving children be afforded the same protections granted to film or photograph processors.

CONTENT

The bill amended the Michigan Penal Code to do all of the following:

- **Exclude a computer technician who reports a violation from the prohibition against and penalties for knowingly possessing child sexually abusive material.**
- **Require that the identity of a computer technician who reports a violation be kept confidential.**
- **Provide that a computer technician who acts in good faith will be immune from civil liability for actions taken in reporting a violation.**

The bill defines "computer technician" as a person who installs, maintains, troubleshoots, upgrades, or repairs

computer hardware, software, personal computer networks, or peripheral equipment.

Under the bill, if a computer technician does any of the following within the scope of his or her professional capacity or employment, the technician's identity must remain confidential, subject to disclosure only by judicial process or with his or her consent, and the technician will be immune from civil liability for taking that action:

- Reports to a law enforcement agency having jurisdiction his or her knowledge or observation of an electronic visual image, computer-generated image, or picture or sound recording depicting a person whom the technician has reason to know or believe is a child engaged in a "listed sexual act" as defined in the Code.
- Furnishes a copy of the image, picture, or sound recording to the law enforcement agency.
- Keeps the image, picture, or sound recording, according to the law enforcement agency's instructions.

In addition, the Act's provision regarding those actions, when taken by a commercial film or photographic print processor, had referred to a report made to the local prosecuting attorney. Under the bill, a film or photographic print processor's report must be made to a law enforcement agency having jurisdiction, rather than to the prosecuting attorney.

The bill took effect on December 28, 2004.

MCL 750.145c

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

These days, when visual images are widely available via computer, there is a good possibility that a computer technician might discover child pornography while working on a computer or computer network, just as a film processor might happen upon a violation while developing photographs. By offering computer technicians the same exception from prosecution and the same confidentiality and civil immunity protections already applied to film processors, the bill may encourage computer technicians to report child pornography that they discover in the course of repairing or maintaining a computer user's hardware, software, or internet service. This, in turn, may lead to the identification and prosecution of violators, and the protection of children.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have little, if any, fiscal impact on State and local government. To the extent that it decreases the number of offenders prosecuted and convicted for possessing child sexually abusive material by exempting computer technicians under certain circumstances, the bill may potentially decrease court and corrections costs.

Fiscal Analyst: Bethany Wicksall

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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.