

# Legislative Analysis



## SEXUALLY EXPLICIT MATTER

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 308 as passed by the Senate**

**Sponsor: Sen. Dennis Olshove**

**House Committee: Judiciary**

**Senate Committee: Judiciary**

### First Analysis (11-7-05)

**BRIEF SUMMARY:** The bill would prohibit a parent or guardian from disseminating sexually explicit matter to a person under 18 years of age.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the state and local units of government, depending on how it affected numbers of convictions and sanctions imposed. Costs of prison incarceration and felony probation supervision would be borne by the state. Prison incarceration currently costs about \$29,000 per prisoner per year, while felony parole and probation supervision costs about \$1,900 per supervised offender per year. Costs of jail sentences would be borne by the affected counties; costs vary from county to county. Any increases in collection of penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of that revenue.

### THE APPARENT PROBLEM:

Michigan law prohibits the dissemination of sexually explicit matter to minors (children under 18 years of age). A person is guilty of disseminating sexually explicit matter to a minor if he or she either knowingly disseminates to a minor sexually explicit visual or verbal material that is harmful to minors or knowingly exhibits to a minor a sexually explicit performance that is harmful to minors. Disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than two years and/or a fine of not more than \$10,000.

The prohibition currently does not apply to parents or guardians who disseminate sexually explicit matter to their own child or ward. Presumably, the exemption was added to allow parents or guardians to use materials to educate their children on sexual and reproductive issues as they choose. An unintended result is that prosecutors have been blocked from charging adults with this crime when pornographic materials have been given or shown to minors when the minors are the children, step-children, or foster children of that adult.

For example, one mother testified before the House committee that her husband showed dozens of pornographic pictures stored in his computer to her eleven-year old son. Because there was no actual physical molestation involved, the prosecutor could not charge the man with a crime, even though the man's actions were said to have had a profound psychological effect on the boy. In addition, many pedophiles use pornographic materials to "groom" their victims for later physical intimacies. Many feel,

therefore, that the exemption provided to parents needs to be eliminated for actions intended to be for the sexual gratification of the parent or guardian.

### ***THE CONTENT OF THE BILL:***

The bill would amend Public Act 33 of 1978, which pertains to disseminating, exhibiting, or displaying sexually explicit matter to minors. Currently, the prohibition on disseminating sexually explicit matter to minors does not apply to a parent or guardian who disseminates such material to his or her child or ward. Senate Bill 308 would amend the act to apply the prohibition to a parent or guardian if the dissemination was for the sexual gratification of that parent or guardian.

"Sexually explicit matter" is defined under the act to mean sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance. Disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than two years and/or a fine of not more than \$10,000.

MCL 722.676

### ***BACKGROUND INFORMATION:***

The act's definition of "sexually explicit visual material" is as follows: a picture, photograph, drawing, sculpture, motion picture film, or similar visual representation that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a visual representation. An undeveloped photograph, mold, or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

The act defines "sexually explicit performance" as a motion picture, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse. Also, the act defines the term "harmful to minors" using a three-part test: (1) that the matter, considered as a whole, appeals to the prurient interest of minors as determined by contemporary local community standards; (2) that the matter is patently offensive to contemporary local community standards of adults as to what is suitable for minors; and (3) that the matter, considered as a whole, lacks serious literary, artistic, political, educational, and scientific value for minors.

Public Acts 104 and 107 of 2005, which were part of the legislative package prohibiting knowingly disseminating to a minor an ultra-violent explicit video game, amended the above definitions to include video games as of December 1, 2005. However, Public Act 108 of 2005, which makes it a civil infraction to knowingly disseminate to a minor an ultra-violent explicit video game that is harmful to minors, specifically exempts a parent or guardian who disseminates such a video game to his or her child or ward.

## ***ARGUMENTS:***

### ***For:***

According to child advocacy experts, up to 90 percent of sexual abuse experienced by children is perpetrated by someone they know and trust – a family member. Pornographic materials are used by these individuals and pedophiles in general to introduce their targets to sex, to break down barriers, and to get them to perform the acts depicted in the material. Often, the exposure to porn is the precursor to acts constituting criminal sexual conduct. If law enforcement agencies could prosecute individuals at this level, many children could be spared sexual assaults. Unfortunately, a law that prohibits the dissemination of sexually explicit matter to children exempts parents and guardians when they show such material to their own children or wards. The bill would close the loophole and yet still protect parents from prosecution if using materials to teach their children about sex and reproductive issues.

### ***POSITIONS:***

The Michigan Federation for Children and Families supports the bill. (11-1-05)

A representative of the Macomb County Prosecutor's Office testified in support of the bill. (11-1-05)

A representative of Child Advocacy Centers testified in support of the bill. (11-1-05)

A representative of the Michigan State Police indicated support for the bills. (11-1-05)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marilyn Peterson

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.