



Senate Fiscal Agency  
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**BILL ANALYSIS**

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Senate Bill 308 (as enrolled)  
Sponsor: Senator Dennis Olshove  
Committee: Judiciary

Date Completed: 10-18-05

**RATIONALE**

Public Act 33 of 1978 prohibits the dissemination, exhibiting, or displaying of sexually explicit matter to a minor (a person under 18). 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. A violation is a felony punishable by up to two years' imprisonment, a maximum fine of \$10,000, or both. The prohibition does not apply, however, to a parent or guardian who disseminates sexually explicit matter to his or her child or ward. The parental exception apparently was included in the Act to allow parents the freedom to educate their children on sexual and reproductive issues in a manner they choose. Some people believe that the parental exception is too broad, however, since it leaves prosecutors unable to charge a parent who displays pornography to a minor child for the parent's sexual gratification. It has been suggested that the parental exception to the prohibition should exclude dissemination of sexually explicit matter for that purpose.

**CONTENT**

The bill would amend Public Act 33 of 1978 to limit an exception to the prohibition against disseminating sexually explicit matter to a minor regarding dissemination by a parent or guardian to his or her child or ward. Under the bill, that exception would not apply if the dissemination were for the sexual gratification of the parent or guardian.

The bill would take effect on February 1, 2006.

MCL 722.676

**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**

While it is important for parents to have the freedom to guide their children with open and honest discussions about sex and reproductive biology, exempting parents entirely from the prohibition against disseminating sexually explicit matter has proven problematic. Because there is no limitation on that exception, a parent who subjects his or her child to pornography for the parent's own sexual gratification cannot be prosecuted for a dissemination violation.

According to testimony before the Senate Judiciary Committee by the chief of the sex crimes unit for the Macomb County Prosecutor's Office (which exclusively prosecutes offenses against children under 13) a majority of that unit's cases involve a parent or guardian as the sexual predator and, more often than not, a parental predator uses pornography to groom his or her child for sexual gratification. Currently, if a child tells law enforcement or child protection officials that his or her parent shows videos of people engaged in sexual acts, the law prevents prosecutors from charging that parent with disseminating sexually explicit matter to a minor.

By limiting the parental exception to the prohibition, the bill would allow parents to continue to educate their children on sexual matters without fear of prosecution for disseminating sexually explicit material to a minor, but also would enable prosecutors to charge deviant parents who subjected their children to such material for their own gratification.

### **Supporting Argument**

Exposing children to sexually explicit material and a parent's sexual gratification is harmful to children and should not be allowed. The Senate Judiciary Committee heard testimony from the mother of a child whose father displayed pornography to him for that reason. According to the mother, the child has learned improper social boundaries, has taken to viewing pornography on his own, and is in psychiatric counseling as a result of these experiences with his father. By expanding the prohibition against disseminating sexually explicit matter to a minor to include dissemination by a parent for his or her sexual gratification, the bill would protect children.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted as a result of limiting the exception for parents and guardians. Local governments would incur the cost of incarceration in local facilities, which varies by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000.

Fiscal Analyst: Mike Hansen

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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.