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BILL



ANALYSIS

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Senate Bill 1313 (as enacted)
Sponsor: Senator Goeff Hansen
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 583 of 2012

Date Completed: 3-28-13

CONTENT

The bill amended Section 145c of the Michigan Penal Code to do the following:

- **Include copying or reproducing child sexually abusive activity or material in the prohibition against, and the penalty for, involvement in child sexually abusive activity or material.**
- **Indicate that such a violation is committed when actions are taken for personal, distributional, or other purposes.**
- **Extend penalties for possession of child sexually abusive material to seeking or accessing that material.**

The bill also requires a court to deny any request by a defendant in a child sexually abusive activity or material case to copy or otherwise reproduce photographic or other pictorial evidence of a child engaging in a sexual act, if the prosecuting attorney makes that evidence reasonably available to the defendant.

The bill took effect on March 1, 2013.

Copying or Reproducing Material

Section 145c(2) of the Penal Code prohibits a person from persuading, inducing, enticing, coercing, causing, or knowingly allowing a child to engage in a child sexually abusive activity for the purpose of producing any child sexually

abusive material, or arranging for, producing, making, or financing, or attempting, preparing, or conspiring to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material. The bill added to that offense copying or reproducing, or attempting, preparing, or conspiring to copy or reproduce any child sexually abusive activity or child sexually abusive material.

Under the bill, the prohibition applies to any of the actions described above done for personal, distributional, or other purposes.

(A violation is a felony punishable by up to 20 years' imprisonment and/or a maximum fine of \$100,000, if the person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the material appears to include a child, or the person has not taken reasonable precautions to determine the age of the child.)

Seeking & Accessing Material

Section 145c(4) prohibits a person from knowingly possessing any child sexually abusive material, if the person knows, has reason to know, or should reasonably be expected to know that the child is a child, that the child sexually abusive material includes a child, or that the depiction

constituting the material appears to include a child, or if the person has not taken reasonable precautions to determine the age of the child. Under the bill, the prohibition also applies to a person who knowingly seeks or accesses such material. The bill defines "access" as to intentionally cause to be viewed by or transmitted to a person.

(A violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$10,000.)

Copying or Reproducing Evidence

The bill requires the court to deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any photographic or other pictorial evidence of a child engaging in a "listed sexual act" (as defined in Section 145c) if the prosecuting attorney makes that evidence reasonably available to the defendant. Evidence is considered to be reasonably available to the defendant if the prosecuting attorney provides ample opportunity to the defendant and his or her attorney, and any person the defendant might seek to qualify as an expert witness at trial, to inspect, view, and examine the evidence at a facility approved by the prosecuting attorney.

MCL 750.145c

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. By adding copying and reproducing to the list of prohibited child sexually abusive activities, and also clarifying that Section 145c(2) applies in cases of "personal, distributional, or other purposes", the bill may result in additional violations. As noted above, violations of subsection 2, often referred to as child sexually abusive activity, are punishable by up to 20 years' imprisonment and/or \$100,000 in fines. Any additional convictions will increase costs of incarceration and community supervision for State and local government. Any

additional fine revenue will benefit public libraries.

Under the statute, it is likely that someone who copied or reproduced child sexually abusive material could be charged with a lesser offense under the same section. For example, subsection 4 describes the crime of possession of child sexually abusive material, which is punishable by up to four years' imprisonment and \$10,000 in fines. Therefore, the costs attributable to this bill are the potential net increase in the lengths of sentences.

In 2010, there were 72 total felony dispositions for child sexually abusive activity, of which 61 resulted in prison sentences. Also in 2010, there were 114 total felony dispositions for possession of child sexually abusive material, of which 48 resulted in prison sentences.

The new subsection 10, which requires the court to deny any request by the defendant to copy or reproduce photographic evidence of a child engaged in a sexual act if the evidence is made reasonably available, will have no fiscal impact.

Fiscal Analyst: Dan O'Connor

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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.