

HOUSE BILL No. 5730

April 2, 1998, Introduced by Reps. Schermesser, DeHart, Hale, Schauer, Kelly, Mans, Harder, Goschka, Scott, Parks and Raczkowski and referred to the Committee on Judiciary.

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~~ AN INDIVIDUAL who is less than
3 18 years of age and is not emancipated by operation of law as
4 provided in ~~section 4(2) of Act No. 293 of the Public Acts of~~
5 ~~1968, as amended, being section 722.4 of the Michigan Compiled~~
6 ~~Laws~~ 1968 PA 293, MCL 722.1 TO 722.6.

7 (b) "Commercial film ~~or photographic print~~ processor"
8 means a person or ~~his or her~~ THE PERSON'S employee who, for
9 compensation, develops exposed photographic film into movie

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

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

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

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

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

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

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

12 (i) "Child sexually abusive material" means a developed or
13 undeveloped photograph, film, slide, electronic visual image,
14 computer diskette, or sound recording of a child engaging in a
15 listed sexual act; a book, magazine, or other visual or print
16 medium containing such a photograph, film, slide, electronic
17 visual image, or sound recording; or ~~any~~ A reproduction, copy,
18 or print of such a photograph, film, slide, electronic visual
19 image, book, magazine, other visual or print medium, or sound
20 recording.

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

22 (i) Flagellation or torture, real or simulated, for the pur-
23 pose of real or simulated sexual stimulation or gratification, by
24 or upon ~~a person~~ AN INDIVIDUAL.

25 (ii) The condition, real or simulated, of being fettered,
26 bound, or otherwise physically restrained for sexual stimulation
27 or gratification of ~~a person~~ AN INDIVIDUAL.

1 (k) "Sexual excitement" means the condition, real or
2 simulated, of human male or female genitals in a state of real or
3 simulated overt sexual stimulation or arousal.

4 (1) "Sexual intercourse" means intercourse, real or simulat-
5 ed, whether genital-genital, oral-genital, anal-genital, or
6 oral-anal, whether between ~~persons~~ INDIVIDUALS of the same or
7 opposite sex, ~~or~~ between a human and an animal, or with an
8 artificial genital.

9 (2) A person who persuades, induces, entices, coerces,
10 causes, or knowingly allows a child to engage in a child sexually
11 abusive activity for the purpose of producing ~~any~~ child sexu-
12 ally abusive material ~~—~~ or a person who arranges for, produces,
13 makes, or finances, or a person who attempts, ~~or~~ prepares, or
14 conspires to arrange for, produce, make, or finance, ~~any~~ child
15 sexually abusive activity or child sexually abusive material is
16 guilty of a felony ~~—~~ punishable by imprisonment for not more
17 than 20 years ~~—~~ or a fine of not more than \$100,000.00, or
18 both, if that person knows, has reason to know, or should reason-
19 ably be expected to know that the child is a child, or that
20 person has not taken reasonable precautions to determine the age
21 of the child.

22 (3) A person who distributes or promotes; ~~—, or~~ finances
23 the distribution or promotion of; ~~—, or~~ receives for the purpose
24 of distributing or promoting; ~~—~~ or conspires, attempts, or pre-
25 pares to distribute, receive, finance, or promote ~~any~~ child
26 sexually abusive material or child sexually abusive activity is
27 guilty of a felony ~~—~~ punishable by imprisonment for not more

1 than 7 years ~~—~~ or a fine of not more than \$50,000.00, or both,
2 if that person knows, has reason to know, or should reasonably be
3 expected to know that the child is a child. This subsection does
4 not apply to the persons described in section 7 of ~~Act No. 343~~
5 ~~of the Public Acts of 1984, being section 752.367 of the Michigan~~
6 ~~Compiled Laws~~ 1984 PA 343, MCL 752.367.

7 (4) A person who knowingly possesses ~~any~~ child sexually
8 abusive material is guilty of a misdemeanor punishable by impris-
9 onment for not more than 1 year ~~—~~ or a fine of not more than
10 \$10,000.00, or both, if that person knows, has reason to know, or
11 should reasonably be expected to know the child is a child, or
12 that person has not taken reasonable precautions to determine the
13 age of the child. This subsection does not apply to any of the
14 following:

15 (a) A person described in section 7 of ~~Act No. 343 of the~~
16 ~~Public Acts of 1984~~ 1984 PA 343, MCL 752.367, or to a commercial
17 film ~~or photographic print~~ processor acting ~~pursuant to~~ IN
18 COMPLIANCE WITH subsection (6).

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

21 (c) An employee or contract agent of the department of
22 social services acting within the scope of his or her duties as
23 an employee or contract agent.

24 (d) A judicial officer or judicial employee acting within
25 the scope of his or her duties as a judicial officer or judicial
26 employee.

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

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

9 (g) A social worker registered in this state under article
10 16 of the occupational code, ~~Act No. 299 of the Public Acts of~~
11 ~~1980, being sections 339.1601 to 339.1610 of the Michigan~~
12 ~~Compiled Laws~~ 1980 PA 299, MCL 339.1601 TO 339.1610, acting
13 within the scope of practice for which he or she is registered.

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

18 (6) ~~If a~~ A commercial film ~~or photographic print proces-~~
19 ~~sor reports to the local prosecuting attorney his or her knowl-~~
20 ~~edge or observation~~ PROCESSOR WHO HAS KNOWLEDGE OR OBSERVES,
21 within the scope of ~~his or her~~ THE PROCESSOR'S professional
22 capacity or employment, ~~of~~ a film, photograph, movie film, vid-
23 eotape, negative, or slide depicting ~~a person~~ AN INDIVIDUAL
24 that the processor has reason to know or reason to believe is a
25 child engaged in a listed sexual act ~~;~~ ~~furnishes a copy of the~~
26 ~~film, photograph, movie film, videotape, negative, or slide to~~
27 ~~the prosecuting attorney; or keeps the~~ SHALL IMMEDIATELY MAKE AN

1 ORAL REPORT OF THAT KNOWLEDGE OR OBSERVATION TO THE PROSECUTING
2 ATTORNEY. THE COMMERCIAL FILM PROCESSOR SHALL ALSO SUBMIT A
3 WRITTEN REPORT TO THE PROSECUTING ATTORNEY WITH A COPY OF THE
4 FILM, PHOTOGRAPH, MOVIE FILM, VIDEOTAPE, NEGATIVE, OR SLIDE
5 ATTACHED TO THE REPORT WITHIN 72 HOURS AFTER GAINING KNOWLEDGE OF
6 OR OBSERVING THE FILM, PHOTOGRAPH, MOVIE FILM, VIDEOTAPE, NEGA-
7 TIVE, OR SLIDE. THE COMMERCIAL FILM PROCESSOR SHALL DEAL WITH
8 THE ORIGINAL film, photograph, movie film, videotape, negative,
9 or slide according to the prosecuting attorney's instructions,
10 AND THE PROCESSOR IS IMMUNE FROM CRIMINAL LIABILITY THAT MIGHT
11 OTHERWISE BE INCURRED BY COMPLYING WITH THOSE INSTRUCTIONS. A
12 PERSON WHO FAILS TO REPORT AS REQUIRED BY THIS SUBSECTION IS
13 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
14 THAN 90 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR BOTH. IF A
15 COMMERCIAL FILM PROCESSOR COMPLIES WITH THIS SUBSECTION, both of
16 the following ~~shall~~ apply:

17 (a) The identity of the processor ~~shall be~~ IS confiden-
18 tial, subject to disclosure only with ~~his or her~~ THE
19 PROCESSOR'S consent or by judicial process.

20 (b) If the processor acted in good faith, ~~he or she shall~~
21 ~~be~~ THE PROCESSOR IS immune from civil liability that might oth-
22 erwise be incurred by ~~his or her~~ THE PROCESSOR'S actions. This
23 immunity extends only to acts described in this subsection. THE
24 PROCESSOR IS PRESUMED TO HAVE ACTED IN GOOD FAITH.

25 (7) This section applies uniformly throughout the state and
26 all political subdivisions and municipalities in the state.

1 (8) A local municipality or political subdivision shall not
2 enact ordinances, nor enforce existing ordinances, rules, or
3 regulations governing child sexually abusive activity or child
4 sexually abusive material as defined by this section.