

AGGRAVATED PRODUCTION OR DISTRIBUTION OF CHILD SEXUALLY ABUSIVE MATERIAL

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House Bill 5794 as introduced
Sponsor: Rep. Brandt Iden
Committee: Law and Justice
Complete to 4-18-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5794 would add a new section to the Michigan Penal Code to create a new crime with a two-tier penalty structure related to the *production* or the *distribution, promotion, or financing* of more than 100 images of child sexually abusive material. To be in violation of the bill under either category, a person would have to engage in a prohibited conduct and satisfy certain listed conditions.

Prohibited Actions and Conditions

Production: A person who does any of the following for personal, distributional, or other purposes would be in violation of the bill:

- Persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing more than 100 images of child sexually abusive material.
- Arranges for, produces, makes, copies, reproduces, or finances child sexually abusive activity for the purpose of producing more than 100 images of child sexually abusive material.
- Conspires, attempts, or prepares to arrange for, produce, make, copy, reproduce, or finance child sexually abusive activity for the purpose of producing more than 100 images of child sexually abusive material.

If all of the following conditions apply:

- The child sexually abusive material depicts a prepubescent child or a child who is less than 12 years of age.
- The child sexually abusive material depicts sadomasochistic abuse or bestiality.
- The person knows, has reason to know, or should reasonably be expected to know that the child is a child, that the material includes a child, or that the depiction constituting the child sexually abusive material appears to include a child, or the person has not taken reasonable precautions to determine the age of the child.

Distribution, Promotion, or Finance: A person who does any of the following would also be in violation of the bill:

- Distributes or promotes, or finances the distribution or promotion of, more than 100 images of child sexually abusive material.
- Receives for the purpose of distributing or promoting more than 100 images of child sexually abusive material.

- Conspires, attempts, or prepares to distribute, receive, finance, or promote more than 100 images of child sexually abusive material.

If all of the following conditions apply:

- The child sexually abusive material depicts a prepubescent child or a child who is less than 12 years of age.
- The child sexually abusive material depicts sadomasochistic abuse or bestiality.
- The person knows, has reason to know, or should reasonably be expected to know that the child is a child, that the material includes a child, or that the depiction constituting the child sexually abusive material appears to include a child, or the person has not taken reasonable precautions to determine the age of the child.

Penalties

Production: A person who engaged in a prohibited action and met the listed conditions would be guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$125,000, or both.

Distribution, promotion, or finance: A person who engaged in a prohibited action and met the listed conditions would be guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$75,000, or both.

Definitions

The following terms would be defined for purposes of the bill using the definitions contained in Section 145c of the Penal Code:

Child would mean a person less than 18 years of age.

Child sexually abusive activity would mean a child engaging in a ***listed sexual act***, defined in Section 145c as sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

Child sexually abusive material would mean any depiction, whether made or produced by electronic, mechanical, or other means (which includes, among other things, a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, or computer generated image) of a child or an individual who appears to be a child engaging in a listed sexual act or a book, magazine, computer, or other visual or print or printable medium containing such a depiction.

Sadomasochistic abuse would mean flagellation or torture (real or simulated) for the purpose of real or simulated sexual stimulation or gratification, by or upon a person, or the condition (real or simulated) of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

The bill would take effect 90 days after being enacted.

Proposed MCL 750.145g

FISCAL IMPACT:

House Bill 5794 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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