



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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House Bill 5660 (Substitute H-2 as passed by the House)  
House Bill 5661 (Substitute H-2 as passed by the House)  
House Bill 5794 (Substitute H-1 as passed by the House)  
Sponsor: Representative Leslie Love (H.B. 5660)  
Representative Brandt Iden (H.B. 5661)  
Representative Diana Farrington (H.B. 5794)  
House Committee: Law and Justice  
Senate Committee: Judiciary

Date Completed: 5-31-18

**CONTENT**

**House Bill 5660 (H-2)** would amend Section 145c of the Michigan Penal Code to do the following:

- Prescribe an enhanced felony penalty for a person who persuaded, coerced, or knowingly allowed a child to engage in a child sexually abusive activity for the purpose of producing child sexually abusive material, or who produced, reproduced, or financed the activity or material, that involved a prepubescent child or sadomasochistic abuse or bestiality, or included a video or more than 100 images, if the person knew or had reason to know that the depicted child was a child.
- Prescribe an enhanced felony penalty for a person who distributed or promoted child sexually abusive material or activity that involved a prepubescent child or sadomasochistic abuse or bestiality, or included a video or more than 100 images, if the person knew or had reason to know that the depicted child was a child.
- Prescribe an enhanced felony penalty for a person who knowingly possessed or knowingly accessed child sexually abusive material that involved a prepubescent child or sadomasochistic abuse or bestiality, or included a video or more than 100 images, if the person knew or had reason to know that the depicted child was a child.

**House Bill 5794 (H-1)** would amend the Penal Code to prescribe a mandatory minimum sentence of five years' imprisonment if a person were convicted of a second or subsequent offense under Section 145c.

**House Bill 5661 (H-2)** would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by House Bill 5660 (H-2).

House Bill 5660 (H-2) is tie-barred to House Bill 5794, and House Bill 5661 (H-2) is tie-barred to House Bill 5660. Each bill would take effect 90 days after its enactment.

**House Bill 5660 (H-2)****Aggravated Production of Child Sexually Abusive Activity or Material**

Under Section 145c of the Penal Code, a person who persuades, induces, entices, coerces,

causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing child sexually abusive material, or who arranges for, produces, makes, copies, reproduces, or finances, or who attempts or prepares or conspires to arrange for, produce, make, copy, reproduce, or finance any child sexually abusive activity or material for personal, distributional, or other purposes, is guilty of a felony punishable by up to 20 years' imprisonment or a maximum fine of \$100,000, or both, if the person knows, has reason to know, or should reasonably be expected to know that the child is a child or 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.

Under the bill, if the child sexually abusive activity or child sexually abusive material involved a prepubescent child, or sadomasochistic abuse or bestiality, or included a video or more than 100 images of child sexually abusive material, the person would be guilty of a felony punishable by up to 25 years' imprisonment or a maximum fine of \$125,000, or both.

#### Aggravated Distribution or Promotion of Child Sexually Abusive Activity or Material

The Code prohibits a person from distributing or promoting, or financing the distribution or promotion of, or receiving for the purpose of distributing or promoting, or conspiring, attempting, or preparing to distribute, receive, finance, or promote child sexually abusive material or child sexually abusive activity. A person who violates this prohibition is guilty of a felony, punishable by up to seven years' imprisonment or a maximum fine of \$50,000, or both, 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 child sexually abusive material appears to include a child, or the person has not taken reasonable precautions to determine the age of the child.

Under the bill, if the child sexually abusive activity or child sexually abusive material involved a prepubescent child, or sadomasochistic abuse or bestiality, or included a video or more than 100 images of child sexually abusive material, the person would be guilty of a felony punishable by up to 15 years' imprisonment or a maximum fine of \$75,000, or both.

#### Aggravated Possession of Child Sexually Abusive Material

The Code specifies that a person who knowingly possesses or knowingly seeks and accesses any child sexually abusive material is guilty of a felony punishable by imprisonment for up to four years or a maximum fine of \$10,000, or both, if he or she knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive 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.

Under the bill, if the activity or material involved a prepubescent child, or sadomasochistic abuse or bestiality, or included a video or more than 100 images of child sexually abusive material, the person would be guilty of a felony punishable by up to 10 years' imprisonment or a maximum fine of \$50,000, or both.

### **House Bill 5794 (H-1)**

Under the bill, if a person were convicted of a second or subsequent offense under Section 145c of the Penal Code, the sentence imposed for that offense would be a mandatory minimum sentence of at least five years. For this purpose, an offense would be considered a second or subsequent offense if, before conviction of the second or subsequent offense, the

offender had been convicted under Section 145c or of another crime involving a sexual offense against a minor.

### **House Bill 5661 (H-2)**

Under the bill, aggravated production of child sexually abusive activity or material would be a Class B felony against a person with a statutory maximum sentence of 25 years' imprisonment. Aggravated distribution, promotion, or financing the distribution of child sexually abusive activity or material would be a Class C felony against a person with a statutory maximum sentence of 15 years' imprisonment. Aggravated possession of child sexually abusive material would be a Class B felony against a person with a statutory maximum sentence of 10 years' imprisonment.

MCL 750.145c (H.B. 5660)  
Proposed MCL 750.145g (H.B. 5794)  
MCL 777.16g (H.B. 5661)

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

#### **House Bill 5660 (H-2)**

The bill would have a negative fiscal impact on State and local government. Enhanced felony penalties could increase resource demands on community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any increase fine revenue increases funding for public libraries.

#### **House Bill 5794 (H-1)**

The bill would have a negative fiscal impact on the State and no fiscal impact on local government. For any increase in years sentenced, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year.

#### **House Bill 5661 (H-2)**

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bills would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan

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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.