

COERCING VULNERABLE ADULT INTO PROVIDING SEXUALLY EXPLICIT VISUAL MATERIAL

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House Bills 4320 (H-1) and 4387 as reported from committee
Sponsor: Rep. Sharon MacDonell
Committee: Families, Children and Seniors
Complete to 6-27-23

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

SUMMARY:

House Bill 4320 would add section 145h to the Michigan Penal Code to prohibit coercing a vulnerable adult into providing sexually explicit visual material. House Bill 4387 would make complementary changes to the sentencing guidelines.

House Bill 4320 would prohibit a person from intentionally or knowingly harassing, abusing, threatening, forcing, coercing, compelling, or exploiting the vulnerability of a *vulnerable adult* in a way that causes them to provide *sexually explicit visual material* to that person or any other person.

Vulnerable adults would mean any of the following:

- Persons 18 years of age or older who, because of age, developmental disability, mental illness, or physical disability, require supervision or personal care or lack the personal and social skills required to live independently.
- Persons 18 years of age or older who is unable to protect themselves from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age and who are suspected of being abused, neglected, or exploited.¹
- Children placed in an adult foster care family home or an adult foster care small group home under section 5(6) or (8) of the child care licensing act (1973 PA 116).²

Sexually explicit visual material would mean a photograph or video that depicts nudity (the display of a person's genitalia or anus or a female person's nipples or areola), erotic fondling, sexual intercourse, or sadomasochistic abuse.

A person found in violation would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$500, or both. However, a person who violates the bill and has one or more prior convictions³ for violating the bill would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$1,000, or both.

Proposed MCL 750.145h

¹ For the definitions of "abuse," "neglect," and "exploitation" that pertain to this provision, see MCL 400.11: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-400-11.pdf>

² See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-722-115.pdf>

³ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction would have to include on the complaint and information a statement listing the prior conviction(s). The existence of the prior convictions would be determined by the court, without a jury, at sentencing or a separate presentencing hearing. A prior conviction could be established by any relevant evidence, such as a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information in a presentence report; or the defendant's statement.

House Bill 4387 would amend the Code of Criminal Procedure to add the felony proposed by House Bill 4320 to the sentencing guidelines. Specifically, a second or subsequent offense of causing a vulnerable adult to provide sexually explicit visual material would be a class G crime against a person with a statutory maximum term of imprisonment of two years.

The bill cannot take effect unless House Bill 4320 is also enacted.

MCL 777.16g

Each bill would take effect 90 days after its enactment.

BACKGROUND:

House Bill 4320 is similar to House Bills 4159 and 4160 of the 2021-22 legislative session. However, those bills did not include enhanced penalties for offenders with prior convictions. In addition, House Bills 4320 and 4387 would apply to all sexually visual material, while the earlier bills related only to sexually visual material depicting the vulnerable adult.

FISCAL IMPACT:

House Bills 4320 and 4387 would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals convicted of misdemeanors and/or felonies under provisions of the bill. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on the state and local court systems would depend on how provisions of the bill affected administrative costs for implementing provisions required under the bill and court caseloads and caseload related administrative costs.

POSITIONS:

A representative of The ARC of Oakland County testified in support of the bills. (6-20-23)

The following entities indicated support for the bills:

- Department of the Attorney General (6-20-23)
- The ARC Michigan (6-20-23)
- Disability Rights Michigan (6-20-23)
- Michigan Catholic Conference (6-20-23)
- Michigan Development Disabilities Council (6-20-23)
- Michigan Elder Justice Initiative (6-20-23)

- Michigan State Employee Retirees Association (6-27-23)
- Troy School District (6-20-23)

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Fiscal Analyst: Robin Risko

■ 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.