

Legislative Analysis



CHILD PORNOGRAPHY: AGGRAVATED OFFENSE

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House Bill 5660 (reported from committee as substitute H-2)
Sponsor: Rep. Leslie Love

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

House Bill 5661 (reported from committee as substitute H-2)
Sponsor: Rep. Rep. Diana Farrington

House Bill 5794 (reported from committee as substitute H-1)
Sponsor: Rep. Brandt Iden

Committee: Law and Justice
Complete to 5-24-18

(Enacted as Public Acts 373, 374, and 375 of 2018)

BRIEF SUMMARY:

House Bill 5660 would amend the Michigan Penal Code to create the offense of aggravated possession, distribution, or production of child sexually abusive activity or material and prescribe an enhanced felony penalty for a violation.

House Bill 5661 would place the maximum term of imprisonment for aggravated possession, distribution, or production of child sexually abusive material within the sentencing guidelines chapter of the Code of Criminal Procedure.

House Bill 5794 would require a mandatory minimum sentence of 5 years for certain second or subsequent offenses involving a sexual offense against a child.

House Bill 5660 is tie-barred to HB 5794, and House Bill 5661 is tie-barred to HB 5660. A bill that is tie-barred to another cannot take effect unless that other bill is also enacted.

Each bill would take effect 90 days after enactment.

DETAILED SUMMARY:

Current law prohibits conduct involving child sexually abusive activities or materials (child pornography) and provides increasingly severe penalties for possession, distribution, and production of the materials.

House Bill 5660 would amend Section 145c of the Michigan Penal Code to create enhanced penalties for aggravated possession, distribution, or production of child sexually abusive materials or child sexually abusive activity. To constitute the aggravated offense, the materials or activity would have to involve any of the following:

- A prepubescent child.
- Sadomasochistic abuse or bestiality.
- Include a video or more than 100 images.

The enhanced felony penalties for the aggravated offenses would be as follows:

Aggravated Possession: Imprisonment for not more than 10 years or a fine of not more than \$50,000, or both. A conviction would also constitute a Tier I offense under the Sex Offender Registration Act and require registration as a sex offender for 15 years. (Possession would remain punishable by not more than 4 years of imprisonment and/or a fine of not more than \$10,000.)

Aggravated Distribution or promotion, or financing the distribution or promotion: Imprisonment for not more than 15 years or a fine of not more than \$75,000, or both. A conviction would require registration as a Tier II offender for 25 years. (Distribution would remain punishable by not more than 7 years of imprisonment and/or a fine of not more than \$50,000.)

Further, the bill would specify that the provisions pertaining to distribution and aggravated distribution of child sexually abusive materials and activities would not apply to the persons described in Section 7 of Public Act 343 of 1984, which pertains to obscene material. That list includes employees and board members of libraries, nonprofit art museums, and institutions of higher education, among others.

Aggravated Production: Imprisonment for not more than 25 years or a fine of not more than \$125,000, or both. A conviction would require registration as a Tier III offender for life. (Production would remain punishable by not more than 20 years of imprisonment and/or a fine of not more than \$100,000.)

Definitions

The following terms are defined in Section 145c of the Penal Code:

Child means a person less than 18 years of age.

Child sexually abusive activity means 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 means 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 means 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.

MCL 750.145c

House Bill 5661 would amend the sentencing guidelines chapter of the Code of Criminal Procedure to specify that aggravated offenses involving child sexually abusive activity or material would be as follows:

- *Aggravated Possession*—Class D felony against a person with a maximum term of imprisonment of 10 years.
- *Aggravated Distributing, promoting, or financing the distribution of*—Class C felony against a person with a maximum term of imprisonment of 15 years.
- *Aggravated Producing*—Class B felony against a person with a maximum term of imprisonment of 25 years.

MCL 777.16g

House Bill 5794 would add a new section to the Michigan Penal Code to require the sentence imposed for a second or subsequent offense under Section 145c (possession, distribution, or production of child sexually abusive activity or materials) to be a mandatory minimum sentence of not less than 5 years.

An offense would constitute a second or subsequent offense if, prior to conviction of the second or subsequent offense, the person had been convicted under Section 145c or of another crime involving a sexual offense against a minor.

Proposed MCL 750.145g

FISCAL IMPACT:

House Bills 5660 and 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 bills. 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.

House Bill 5661 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the Department of Attorney General testified in support of the bills. (4-18-18)

The following organizations indicated support for the bills:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (4-18-18)
- Michigan Department of State Police (4-18-18)
- American Association of University Women (4-18-18)
- Michigan Catholic Conference (4-18-18)
- Michigan Coalition to End Domestic and Sexual Violence (4-18-18)

The Wayne County SAFE Program indicated support for HB 5794, with additional changes. (4-25-18)

The American Civil Liberties Union of Michigan indicated opposition to HBs 5660 and 5661. (5-22-18)

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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.