



# SENATE BILL No. 1314

September 25, 2012, Introduced by Senator HILDENBRAND 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 2004 PA 478.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 145c. (1) As used in this section:

2       (a) "Appears to include a child" means that the depiction  
3 appears to include, or conveys the impression that it includes, a  
4 person who is less than 18 years of age, and the depiction meets  
5 either of the following conditions:

6       (i) It was created using a depiction of any part of an actual  
7 person under the age of 18.

8       (ii) It was not created using a depiction of any part of an  
9 actual person under the age of 18, but all of the following apply  
10 to that depiction:

1 (A) The average individual, applying contemporary community  
2 standards, would find the depiction, taken as a whole, appeals to  
3 the prurient interest.

4 (B) The reasonable person would find the depiction, taken as a  
5 whole, lacks serious literary, artistic, political, or scientific  
6 value.

7 (C) The depiction depicts or describes a listed sexual act in  
8 a patently offensive way.

9 (b) "Child" means a person who is less than 18 years of age,  
10 subject to the affirmative defense created in subsection (6)  
11 regarding persons emancipated by operation of law.

12 (c) "Commercial film or photographic print processor" means a  
13 person or his or her employee who, for compensation, develops  
14 exposed photographic film into movie films, negatives, slides, or  
15 prints; makes prints from negatives or slides; or duplicates movie  
16 films or videotapes.

17 (d) "Computer technician" means a person who installs,  
18 maintains, troubleshoots, upgrades, or repairs computer hardware,  
19 software, personal computer networks, or peripheral equipment.

20 (e) "Contemporary community standards" means the customary  
21 limits of candor and decency in this state at or near the time of  
22 the alleged violation of this section.

23 (f) "Erotic fondling" means touching a person's clothed or  
24 unclothed genitals, pubic area, buttocks, or, if the person is  
25 female, breasts, or if the person is a child, the developing or  
26 undeveloped breast area, for the purpose of real or simulated overt  
27 sexual gratification or stimulation of 1 or more of the persons

1 involved. Erotic fondling does not include physical contact, even  
2 if affectionate, that is not for the purpose of real or simulated  
3 overt sexual gratification or stimulation of 1 or more of the  
4 persons involved.

5 (g) "Erotic nudity" means the lascivious exhibition of the  
6 genital, pubic, or rectal area of any person. As used in this  
7 subdivision, "lascivious" means wanton, lewd, and lustful and  
8 tending to produce voluptuous or lewd emotions.

9 (h) "Listed sexual act" means sexual intercourse, erotic  
10 fondling, sadomasochistic abuse, masturbation, passive sexual  
11 involvement, sexual excitement, or erotic nudity.

12 (i) "Masturbation" means the real or simulated touching,  
13 rubbing, or otherwise stimulating of a person's own clothed or  
14 unclothed genitals, pubic area, buttocks, or, if the person is  
15 female, breasts, or if the person is a child, the developing or  
16 undeveloped breast area, either by manual manipulation or self-  
17 induced or with an artificial instrument, for the purpose of real  
18 or simulated overt sexual gratification or arousal of the person.

19 (j) "Passive sexual involvement" means an act, real or  
20 simulated, that exposes another person to or draws another person's  
21 attention to an act of sexual intercourse, erotic fondling,  
22 sadomasochistic abuse, masturbation, sexual excitement, or erotic  
23 nudity because of viewing any of these acts or because of the  
24 proximity of the act to that person, for the purpose of real or  
25 simulated overt sexual gratification or stimulation of 1 or more of  
26 the persons involved.

27 (k) "Prurient interest" means a shameful or morbid interest in

1 nudity, sex, or excretion.

2 (l) "Child sexually abusive activity" means a child engaging in  
3 a listed sexual act.

4 (m) "Child sexually abusive material" means any depiction,  
5 whether made or produced by electronic, mechanical, or other means,  
6 including a developed or undeveloped photograph, picture, film,  
7 slide, video, electronic visual image, computer diskette, computer  
8 or computer-generated image, or picture, or sound recording which  
9 is of a child or appears to include a child engaging in a listed  
10 sexual act; a book, magazine, computer, computer storage device, or  
11 other visual or print or printable medium containing such a  
12 photograph, picture, film, slide, video, electronic visual image,  
13 computer, or computer-generated image, or picture, or sound  
14 recording; or any reproduction, copy, or print of such a  
15 photograph, picture, film, slide, video, electronic visual image,  
16 book, magazine, computer, or computer-generated image, or picture,  
17 other visual or print or printable medium, or sound recording.

18 (n) "Sadomasochistic abuse" means either of the following:

19 (i) Flagellation or torture, real or simulated, for the purpose  
20 of real or simulated sexual stimulation or gratification, by or  
21 upon a person.

22 (ii) The condition, real or simulated, of being fettered,  
23 bound, or otherwise physically restrained for sexual stimulation or  
24 gratification of a person.

25 (o) "Sexual excitement" means the condition, real or  
26 simulated, of human male or female genitals in a state of real or  
27 simulated overt sexual stimulation or arousal.

1 (p) "Sexual intercourse" means intercourse, real or simulated,  
2 whether genital-genital, oral-genital, anal-genital, or oral-anal,  
3 whether between persons of the same or opposite sex or between a  
4 human and an animal, or with an artificial genital.

5 (2) A person who persuades, induces, entices, coerces, causes,  
6 or knowingly allows a child to engage in a child sexually abusive  
7 activity for the purpose of producing any child sexually abusive  
8 material, or a person who arranges for, produces, makes, **COPIES,**  
9 **REPRODUCES,** or finances, or a person who attempts or prepares or  
10 conspires to arrange for, produce, make, **COPY, REPRODUCE,** or  
11 finance any child sexually abusive activity or child sexually  
12 abusive material **FOR PERSONAL, DISTRIBUTIONAL, OR OTHER PURPOSES** is  
13 guilty of a felony, punishable by imprisonment for not more than 20  
14 years, or a fine of not more than \$100,000.00, or both, if that  
15 person knows, has reason to know, or should reasonably be expected  
16 to know that the child is a child or that the child sexually  
17 abusive material includes a child or that the depiction  
18 constituting the child sexually abusive material appears to include  
19 a child, or that person has not taken reasonable precautions to  
20 determine the age of the child.

21 (3) A person who distributes or promotes, or finances the  
22 distribution or promotion of, or receives for the purpose of  
23 distributing or promoting, or conspires, attempts, or prepares to  
24 distribute, receive, finance, or promote any child sexually abusive  
25 material or child sexually abusive activity is guilty of a felony,  
26 punishable by imprisonment for not more than 7 years, or a fine of  
27 not more than \$50,000.00, or both, if that person knows, has reason

1 to know, or should reasonably be expected to know that the child is  
2 a child or that the child sexually abusive material includes a  
3 child or that the depiction constituting the child sexually abusive  
4 material appears to include a child, or that person has not taken  
5 reasonable precautions to determine the age of the child. This  
6 subsection does not apply to the persons described in section 7 of  
7 1984 PA 343, MCL 752.367.

8 (4) A person who knowingly possesses any child sexually  
9 abusive material is guilty of a felony punishable by imprisonment  
10 for not more than 4 years or a fine of not more than \$10,000.00, or  
11 both, if that person knows, has reason to know, or should  
12 reasonably be expected to know the child is a child or that the  
13 child sexually abusive material includes a child or that the  
14 depiction constituting the child sexually abusive material appears  
15 to include a child, or that person has not taken reasonable  
16 precautions to determine the age of the child. This subsection does  
17 not apply to any of the following:

18 (a) A person described in section 7 of 1984 PA 343, MCL  
19 752.367, a commercial film or photographic print processor acting  
20 ~~pursuant to~~ **UNDER** subsection (8), or a computer technician acting  
21 ~~pursuant to~~ **UNDER** subsection (9).

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

24 (c) An employee or contract agent of the department of social  
25 services acting within the scope of his or her duties as an  
26 employee or contract agent.

27 (d) A judicial officer or judicial employee acting within the

1 scope of his or her duties as a judicial officer or judicial  
2 employee.

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

5 (f) A physician, psychologist, limited license psychologist,  
6 professional counselor, or registered nurse licensed under the  
7 public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting  
8 within the scope of practice for which he or she is licensed.

9 (g) A social worker registered in this state under article 15  
10 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838,  
11 acting within the scope of practice for which he or she is  
12 registered.

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

17 (6) It is an affirmative defense to a prosecution under this  
18 section that the alleged child is a person who is emancipated by  
19 operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as  
20 proven by a preponderance of the evidence.

21 (7) If a defendant in a prosecution under this section  
22 proposes to offer in his or her defense evidence to establish that  
23 a depiction that appears to include a child was not, in fact,  
24 created using a depiction of any part of an actual person under the  
25 age of 18, the defendant shall at the time of the arraignment on  
26 the information or within 15 days after arraignment but not less  
27 than 10 days before the trial of the case, or at such other time as

1 the court directs, file and serve upon the prosecuting attorney of  
2 record a notice in writing of his or her intention to offer that  
3 defense. The notice shall contain, as particularly as is known to  
4 the defendant or the defendant's attorney, the names of witnesses  
5 to be called in behalf of the defendant to establish that defense.  
6 The defendant's notice shall include specific information as to the  
7 facts that establish that the depiction was not, in fact, created  
8 using a depiction of any part of an actual person under the age of  
9 18. Failure to file a timely notice in conformance with this  
10 subsection precludes a defendant from offering this defense.

11 (8) If a commercial film or photographic print processor  
12 reports to a law enforcement agency having jurisdiction his or her  
13 knowledge or observation, within the scope of his or her  
14 professional capacity or employment, of a film, photograph, movie  
15 film, videotape, negative, or slide depicting a person that the  
16 processor has reason to know or reason to believe is a child  
17 engaged in a listed sexual act; furnishes a copy of the film,  
18 photograph, movie film, videotape, negative, or slide to a law  
19 enforcement agency having jurisdiction; or keeps the film,  
20 photograph, movie film, videotape, negative, or slide according to  
21 the law enforcement agency's instructions, both of the following  
22 shall apply:

23 (a) The identity of the processor shall be confidential,  
24 subject to disclosure only with his or her consent or by judicial  
25 process.

26 (b) If the processor acted in good faith, he or she shall be  
27 immune from civil liability that might otherwise be incurred by his



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1 or her actions. This immunity extends only to acts described in  
2 this subsection.

3 (9) If a computer technician reports to a law enforcement  
4 agency having jurisdiction his or her knowledge or observation,  
5 within the scope of his or her professional capacity or employment,  
6 of an electronic visual image, computer-generated image or picture  
7 or sound recording depicting a person that the computer technician  
8 has reason to know or reason to believe is a child engaged in a  
9 listed sexual act; furnishes a copy of that image, picture, or  
10 sound recording to the law enforcement agency; or keeps the image,  
11 picture, or sound recording according to the law enforcement  
12 agency's instructions, both of the following ~~shall~~ apply:

13 (a) The identity of the computer technician shall be  
14 confidential, subject to disclosure only with his or her consent or  
15 by judicial process.

16 (b) If the computer technician acted in good faith, he or she  
17 ~~shall be~~ **IS** immune from civil liability that might otherwise be  
18 incurred by his or her actions. This immunity extends only to acts  
19 described in this subsection.

20 (10) This section applies uniformly throughout the state and  
21 all political subdivisions and municipalities in the state.

22 (11) A local municipality or political subdivision shall not  
23 enact ~~ordinances, nor~~ **ANY ORDINANCE OR** enforce **ANY** existing  
24 ~~ordinances, rules, ORDINANCE, RULE, or regulations~~ **REGULATION**  
25 governing child sexually abusive activity or child sexually abusive  
26 material as defined by this section.

<<Enacting section 1. This amendatory act takes effect March 1,  
2013.>>