

# Legislative Analysis



## SEXTING: PENALTIES FOR MINORS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5607 as introduced**  
**Sponsor: Rep. Graham Filler**

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

**House Bill 5608 as introduced**  
**Sponsor: Rep. Vanessa Guerra**

**Committee: Judiciary**  
**Complete to 6-17-20**

## SUMMARY:

House Bill 5607 would amend the Michigan Penal Code to prohibit an individual enrolled in grades K-12, including a home school program, from knowingly possessing or disseminating sexually explicit visual material of a minor under certain circumstances and provide penalties, including enhanced penalties for repeat offenses. House Bill 5608 would place a felony penalty created by HB 5607 in the sentencing guidelines.

Currently, producing, disseminating, receiving, and possessing sexually explicit pictures of minor children is a felony that can subject a person to a maximum term of imprisonment of four years for the lowest offense of possession to 25 years for production under certain circumstances. Criminal fines can range from a maximum of \$10,000 to \$125,000 depending on the offense. Penalties are based solely on the age of the subject, the content of the images, and the number of images involved.

**House Bill 5607** would add a new section to the Michigan Penal Code to create a misdemeanor penalty that would apply when the subject of the sexually explicit visual material is a minor (less than 18 years of age) or is enrolled in school and was the one who knowingly possessed or disseminated the material and both of the following apply:

- The recipient of the sexually explicit visual material did not disseminate the material to any other person.
- The recipient did not threaten, intimidate, or coerce any individual to create or disseminate the material.

A first offense would be punishable by up to imprisonment for up to 93 days or a fine of up to \$100, or both. A second or subsequent violation would also be a misdemeanor, but would be punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

The bill would also provide a lower penalty than under the child pornography laws for a person who is less than 18 years of age or enrolled in school who knowingly possesses or disseminates sexually explicit visual material if one or more of the following apply:

- The person disseminated the material to an individual who is over 18 years of age.
- The recipient disseminated the material to any individual other than the person who is the subject of the material.
- The person caused the subject of the material to create or disseminate the material by intimidation, threats, or coercion.
- The recipient of the material downloaded it onto an electronic device capable of storing the material.

A first violation would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both. A second or repeat violation would be a felony punishable by imprisonment for up to four years or a fine of up to \$10,000, or both.

The bill would require any device that contains sexually explicit visual material depicting a subject less than 18 years of age to be purged of the material before being released to the owner. However, the court would retain discretion to instead order the device to be forfeited and destroyed by the law enforcement agency.

An individual could still be charged with, convicted of, or punished for any other violation of law committed by that individual while violating the bill's provisions.

For purposes of the bill, the following terms would be defined as follows:

***Disseminate*** would mean to post, distribute, or publish on a computer device, computer network, website, or other electronic device or medium of communication.

***School*** would mean any public or private learning institution that services grades K-12, including any online program or home school program.

***Sexually explicit visual material*** would mean a photograph or video that depicts nudity, erotic fondling, sexual intercourse, or sadomasochistic abuse.

***Nudity*** would mean displaying a person's genitalia or anus or, if the person is a female, her nipples or areola.

[The bill appears to address the practice of *sexting*, often described as sending, receiving, or forwarding sexually explicit messages of oneself to others, usually by computer or mobile phone. Sexting often occurs in dating relationships, although pictures meant for one set of eyes can, and have been, forwarded on to others, and have been implicated in cases of cyberbullying and a practice referred to as *revenge porn*.]

Proposed MCL 750.145h

**House Bill 5608** would place the maximum term of imprisonment for the felony penalty created by HB 5607 for a second or subsequent violation of disseminating certain sexually explicit material within the sentencing guidelines portion of the Code of Criminal Procedure. The offense would be a Class F felony against a person.

The bill is tie-barred to House Bill 5607, meaning that it cannot take effect unless HB 5607 is also enacted into law.

MCL 777.16g

Each bill would take effect 90 days after being enacted.

## **FISCAL IMPACT:**

**House Bill 5607** would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations could be either misdemeanors or felonies under the bill, but, depending on the circumstances, charges could carry lesser penalties than what they would be under current law. Lesser penalties would result in a decrease in costs for the state and for local units of government. Misdemeanor convictions increase 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. Reduced misdemeanor charges would result in reduced costs. Felony convictions increase costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Reduced felony charges would result in reduced costs. Any change in penal fine revenue would affect funding going to public and county law libraries, which are the constitutionally designated recipients of those revenues.

**House Bill 5608** is a companion bill to HB 5607 and amends sentencing guidelines to include second or subsequent offenses of disseminating certain sexually explicit material and soliciting a child to commit an immoral act. The bill would not have a direct fiscal impact on the state or on local units of government.

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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.