

DISSEMINATION OF SEXUALLY EXPLICIT MATERIALS

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Senate Bill 508 (Substitute S-3 as passed by the Senate)
Sponsor: Sen. Steven Bieda

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

Senate Bill 509 (as passed by the Senate without amendment)
Sponsor: Sen. Rick Jones

House Committee: Criminal Justice
Senate Committee: Judiciary
Complete to 2-22-16

SUMMARY:

Senate Bill 508 would, under certain circumstances, make it a separate crime to disseminate sexually explicit visual material (e.g., a photograph or video) on a computer or other electronic device or medium of communication such as a cell phone or a website without consent from the person who is the subject of the material; some exemptions from the prohibition would apply.

Senate Bill 509 would create a misdemeanor penalty for a violation of Senate Bill 508 and an enhanced penalty for repeat violations. The bills would take effect 90 days after enactment.

Senate Bill 508 adds a new section to the Michigan Penal Code (750.145e, proposed). The bill would prohibit a person from intentionally, and with the intent to threaten, coerce, or intimidate, disseminate any sexually explicit visual material of another person if all of the following conditions apply:

- The other person is at least 18 years of age.
- The other person is identifiable from the visual material itself or by information displayed in connection with the material (e.g., by a caption, perhaps). This provision would not apply if the identifying information is supplied by someone other than the person disseminating the material.
- The material had been obtained by the disseminator under circumstances in which a reasonable person would know or understand that the material was to remain private.
- The person knew or reasonably should know that the other person did not consent to the dissemination of the material.

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

"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.

A person who violated the bill's prohibition could still be charged with, convicted of, or punished for another violation of law committed while violating or attempting to violate the bill.

Exemptions

The bill would not apply to any of the following:

- To the extent that the content is provided by another person, certain service providers as listed in the bill (included would be a person providing an interactive computer service, information service, telecommunications service, cable service, commercial mobile service, direct-to-home satellite service, and a video service).
- A person who disseminates sexually explicit visual material that is part of a news report or commentary or an artistic work (e.g., performance, work of art, literary or musical work, motion picture, film, or audiovisual work).
- A law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of duties.
- A person disseminating sexually explicit visual material in the reporting of a crime.

Senate Bill 509 would add Section 145f to the Michigan Penal Code to specify that a person who violates Senate Bill 508 would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a maximum fine of \$500. A second or subsequent violation would be a misdemeanor punishable by imprisonment for not more than one year and/or a maximum fine of \$1,000.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons that might be convicted under the provisions of the bills. The bills could result in increased costs to local correctional systems. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. Also, the bills could have a fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bills affected court caseloads and related administrative costs.

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