



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 878 and 879 (as introduced 2-27-18)
Sponsor: Senator Curtis Hertel, Jr. (S.B. 878)
Senator Margaret E. O'Brien (S.B. 879)
Committee: Judiciary

Date Completed: 2-27-18

CONTENT

Senate Bill 878 would amend Section 145c of the Michigan Penal Code to do the following:

- **Prescribe an enhanced felony penalty for a person who knowingly possessed or knowingly accessed child sexually abusive material that depicted a prepubescent child or sadomasochistic abuse or bestiality, or included more than 100 images, if the person knew or had reason to know that the depicted child was a child.**
- **Prescribe a mandatory minimum sentence of five years' imprisonment if a person were convicted of a second or subsequent offense under Section 145c.**

Senate Bill 879 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed by Senate Bill 878 as a Class D offense against a person with a statutory maximum of 10 years.

Senate Bill 879 is tie-barred to Senate Bill 878. Each bill would take effect 90 days after its enactment.

Senate Bill 878 is discussed in greater detail below.

Under Section 145c of the Penal Code, a person who knowingly possesses or knowingly seeks and accesses any child sexually abusive material is guilty of a felony punishable by imprisonment for up to four years or a maximum fine of \$10,000, or both, if he or she knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. Under the bill, this would apply except as otherwise provided.

Under the bill, a person who knowingly possessed or knowingly sought and accessed any child sexually abusive material would be guilty of a felony punishable by imprisonment for up to 10 years or a maximum fine of \$50,000, or both, if both of the following applied:

- The child sexually abusive material depicted a prepubescent child or child less than 12 years of age, depicted sadomasochistic abuse or bestiality, or included more than 100 images of child sexually abusive material.
- The person knew, had reason to know, or should reasonably have been expected to know that the depicted child was a child, or that the sexually abusive material included a child,

-- or that the depiction constituting the material appeared to include a child, or the person had not taken reasonable precaution to determine the age of the depicted child.

If a person were convicted of a second or subsequent offense under Section 145c, the sentence imposed for that offense would be a mandatory minimum sentence of at least five years. For the purposes of Section 145c, an offense would be considered a second or subsequent offense if, before conviction of the second or subsequent offense, the offender had been convicted under Section 145c or of another crime involving a sexual offense against a minor, or a substantially similar statute of another state or the United States.

MCL 750.145c (S.B. 878)
777.16g (S.B. 879)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 878

The bill could have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase demands on court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

Senate Bill 879

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.