



**House
Legislative
Analysis
Section**

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**CRIME OF CHILD PORNOGRAPHY:
REVISE**

House Bill 5296

Sponsor: Rep. Gene DeRossett

House Bill 5297

Sponsor: Rep. Michael Bishop

Committee: Criminal Justice

Complete to 3-18-02

A SUMMARY OF HOUSE BILLS 5296 AND 5297 AS INTRODUCED 10-18-01

The bills would clarify the definition of “child” for the purposes of child pornography, increase the penalty for possession of child pornography, expand the prohibition to include “virtual” child pornography, and include the crime of possessing child pornography in the sentencing guidelines. Specifically, the bills would do the following:

House Bill 5296 would amend the Michigan Penal Code (MCL 750.145c). The bill would clarify the definition of “child” to mean a person who was less than 18 years of age; however, the bill would specify that it would be an affirmative defense to a prosecution under the child pornography laws that the alleged child was a person who was emancipated by operation of law under Section 4(2) of the Emancipation of Minors Act (MCL 722.4), as proven by a preponderance of the evidence. [An emancipation occurs by operation of law when: 1) a minor is legally married; 2) a person reaches the age of 18; 3) during the period of time a minor is on active duty with the U.S. armed forces; 4) during the period of time a minor is in the custody of a law enforcement agency for the purposes of consenting to emergency medical treatment or routine medical care and the parent or guardian cannot be reached; and 5) during the period of time a minor is a prisoner in a facility operated by the Department of Corrections (DOC) or a youth correctional facility operated by the DOC or a private vendor for the purposes of consenting to his or her own preventive health care or medical care.]

In addition, the offense of possessing any child sexually abusive material would be increased from a misdemeanor offense to a felony. The term of imprisonment would be increased from not more than one year to not more than four years. The fine would remain the same at not more than \$10,000. Currently, it is prohibited to possess materials that the person knows, has reason to know, or should reasonably be expected to know is of a child, or the person had not taken reasonable precautions to determine the age of the child in the materials. The bill would expand the prohibition to include child sexually abusive material that included or is intended to appear to include a child or convey the impression that the material included a child. Similar provisions would be added to the prohibition on persuading or coercing a child to engage in a child sexually abusive activity and to the prohibition on distributing or promoting any child sexually abusive material or child sexually abusive activity.

House Bills 5296 and 5297 (3-18-02)

Further, the definition of “child sexually abusive material” would be expanded to include any depiction, whether made or reproduced by electronic, mechanical, or other means and would include – in addition to what is currently in the law – pictures, videos, and computer or computer-generated images or pictures which were of a child or which appeared to include a child, or conveyed the impression that the depiction included a child engaging in a listed sexual act, as well as a computer or computer storage device containing such a photograph or computer-generated image and any reproduction or copy of such picture, video, computer, or computer-generated image.

House Bill 5297 would amend the Code of Criminal Procedure (MCL 777.16g) to specify that child sexually abusive activity or possession of child sexually abusive materials would be a Class F felony against a person with a statutory maximum term of imprisonment of four years. The bill would also make several technical corrections to statutory citations for child abuse crimes.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.