

# Legislative Analysis

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## AGGRAVATED POSSESSION OF CHILD SEXUALLY ABUSIVE MATERIAL

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

**House Bill 5660 as introduced**  
**Sponsor: Rep. Leslie Love**

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

**House Bill 5661 as introduced**  
**Sponsor: Rep. Diana Farrington**

**Committee: Law and Justice**  
**Complete to 4-18-18**

### BRIEF SUMMARY:

House Bill 5660 would amend the Michigan Penal Code to create the offense of aggravated possession of child sexually abusive material, prescribe felony penalties, and require a mandatory minimum sentence of 5 years for certain second or subsequent offenses.

House Bill 5661 would place the maximum term of imprisonment for aggravated possession of child sexually abusive material within the sentencing guidelines chapter of the Code of Criminal Procedure.

Each bill would take effect 90 days after enactment.

### DETAILED SUMMARY:

Current law prohibits knowingly possessing, or knowingly seeking out and accessing, child sexually abusive material (child pornography). A violation is punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000, or both. Under the Sex Offenders Registration Act, a person convicted for a violation is also required to register as a sex offender for 15 years.

**House Bill 5660** would amend Section 145c(4) of the Michigan Penal Code to create an enhanced penalty for possession of child sexually abusive material if the child sexually abusive material meets any of the following criteria:

- Depicts a prepubescent child or a child less than 12 years of age.
- Depicts sadomasochistic abuse or bestiality.
- Includes more than 100 images of child sexually abusive material.

***And if either*** of the following applies to the person who possesses the material:

- The person knows, has reason to know, or should reasonably be expected to know that the depicted child is a child, that the child sexually abusive material includes a child, or that the depiction constituting the child sexually abusive material appears to include a child.

- The person has not taken reasonable precautions to determine the age of the depicted child.

The penalty for a conviction would be imprisonment for not more than 10 years or a fine of not more than \$50,000, or both.

In addition, the bill would provide an enhanced penalty for a second or subsequent offense involving child sexually abusive material. Specifically, for a person convicted of a second or subsequent offense involving any of the prohibited acts involving child sexually abusive material under Section 145c, the sentence imposed would be a mandatory minimum sentence of 5 years.

An offense would constitute a second or subsequent offense if, prior to conviction for the second or subsequent offense, the person had been convicted of an offense under Section 145c or any other crime involving a sexual offense against a minor or had been convicted of an offense under a substantially similar federal statute or statute of another state.

[Note: The Sex Offenders Registration Act classifies a violation of Section 145c(4) as a Tier I offense requiring registration for a period of 15 years. A second conviction involving any Tier I offense requires registration as a Tier II offender for 25 years. A Tier II offender convicted of a subsequent Tier I or Tier II offense becomes a Tier III offender and must register as a sex offender for life.]

### **Definitions**

The following terms are defined in Section 145c of the Penal Code:

***Child*** means a person less than 18 years of age.

***Child sexually abusive activity*** means a child engaging in a ***listed sexual act***, defined in Section 145c as sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

***Child sexually abusive material*** means any depiction, whether made or produced by electronic, mechanical, or other means (which includes, among other things, a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, or computer generated image) of a child or an individual who appears to be a child engaging in a listed sexual act or a book, magazine, computer, or other visual or print or printable medium containing such a depiction.

***Sadomasochistic abuse*** means flagellation or torture (real or simulated) for the purpose of real or simulated sexual stimulation or gratification, by or upon a person, or the condition (real or simulated) of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

MCL 750.145c

**House Bill 5661** would amend the sentencing guidelines chapter of the Code of Criminal Procedure to specify that aggravated possession of child sexually abusive material would be a Class D felony against a person with a maximum term of imprisonment of 10 years.

House Bill 5661 is tie-barred to HB 5660, which means that it cannot take effect unless HB 5660 is also enacted into law.

MCL 777.16g

**FISCAL IMPACT:**

House Bill 5660 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5661 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

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