

Legislative Analysis



SEXUALLY EXPLICIT VISUAL MATERIAL OF A VULNERABLE ADULT

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<http://www.house.mi.gov/hfa>

House Bill 4159 (H-1) as referred to second committee
Sponsor: Rep. Padma Kuppa

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

House Bill 4160 (H-1) as referred to second committee
Sponsor: Rep. Julie Calley

1st Committee: Families, Children and Seniors
2nd Committee: Judiciary
Complete to 7-13-21

SUMMARY:

House Bills 4159 and 4160 would each add a new section to the Michigan Penal Code to prohibit certain conduct concerning sexually explicit visual material of a vulnerable adult. HB 4159 would add substantive provisions, and HB 4160 would define terms used in those provisions.

Specifically, the bills would prohibit a person from intentionally and knowingly threatening, commanding, forcing, coercing, or exploiting the vulnerability of a *vulnerable adult* to cause the vulnerable adult to provide him or her, or any other person, with *sexually explicit visual material* of the vulnerable adult. A violation would be a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.

Vulnerable adult would mean any of the following:

- A person 18 years of age or older who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently.
- A person 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age and who is suspected of being abused, neglected, or exploited.¹
- A child who is placed in an adult foster care family home or an adult foster care small group home under section 5(6) or (8) of the child care licensing act (1973 PA 116).²

Sexually explicit visual material would mean a photograph or video that depicts nudity (the display of a person's genitalia or anus or a woman's nipples or areola), erotic fondling, sexual intercourse, or sadomasochistic abuse.

¹ For the definitions of "abuse," "neglect," and "exploitation" that pertain to this provision, see MCL 400.11: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-400-11.pdf>

² See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-722-115.pdf>

Each bill would take effect 90 days after its enactment. The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

Proposed MCL 750.145h (HB 4159) and 750.145i (HB 4160)

BACKGROUND:

Taken together, the bills as substituted and referred are identical to the H-2 substitute for HB 4076 of the 2019-20 legislative session, as that bill was referred from the House Families, Children and Seniors committee to the House Judiciary committee.

FISCAL IMPACT:

House Bills 4159 and 4160 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 bills is not known. New misdemeanor convictions would 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. The fiscal impact on local court systems would depend on how provisions of the bills 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 public libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills (3-16-21):

- Office of the Troy City Attorney
- Troy Police Department
- Troy School District

The following entities indicated support for the bills:

- Michigan State Police (4-20-21)
- Michigan Poverty Law Program (4-20-21)
- Michigan Coalition to End Domestic and Sexual Violence (4-20-21)
- The Arc Michigan (3-16-21)
- Michigan Family Forum (3-16-21)
- Michigan Catholic Conference (3-16-21)

The American Civil Liberties Union of Michigan indicated opposition to the bills. (3-16-21)

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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.