

Legislative Analysis



SEXUAL EXTORTION

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

House Bill 5887 as introduced
Sponsor: Rep. John Fitzgerald

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

House Bill 5888 as introduced
Sponsor: Rep. Kara Hope

House Bill 5889 as introduced
Sponsor: Rep. Jenn Hill

Committee: Criminal Justice
Complete to 12-10-24

SUMMARY:

House Bills 5887, 5888, and 5889 would do the following:

- Provide criminal penalties for threatening to distribute sexually explicit photographs or video of another person in order to compel them to do things against their will with the intent of getting additional sexually explicit photographs or videos or anything of value. Penalties would depend on circumstances of the offense, such as previous offenses or certain aggravating factors. (HB 5887)
- Add the proposed felonies to the sentencing guidelines. (HB 5888)
- Require information and education about the provisions of House Bill 5887 to be given to public school students, their parents, and school personnel. (HB 5889)

House Bill 5887 would amend the Michigan Penal Code to provide that an individual who intentionally and maliciously threatens to release, exhibit, or distribute *sexually explicit visual material* of another individual in order to compel (or attempt to compel) another individual to do any act (or refrain from doing any act) against the individual's will with the intent to obtain additional sexually explicit visual material or anything else of value is guilty of a crime punishable as described below.

Sexually explicit visual material would mean a photograph or video that depicts *nudity*, erotic fondling, sexual intercourse, or sadomasochistic abuse.

Nudity would mean displaying an individual's genitalia, an individual's anus, or a female individual's nipples or areola.

Penalties

Except as otherwise described below, an individual who commits an offense described above would be guilty of a crime as follows:

- For a first offense, a felony punishable by imprisonment for up to five years.
- For a second offense, a felony punishable by imprisonment for up to 10 years.
- For a third or subsequent offense, a felony punishable by imprisonment for up to 20 years.

Penalties for aggravated offenses

Under either of the following circumstances, an individual who commits an offense described above would be guilty of a felony punishable by imprisonment for up to 20 years:

- The individual is at least 19 years old and is not a **vulnerable adult**, and the victim is under age 18 or is a vulnerable adult.
- The victim suffers death or **great bodily injury** as a result of the offense.

Vulnerable adult would mean any of the following:

- A person 18 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 or older who is unable to protect themselves 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 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

Great bodily injury would mean bodily injury that causes a substantial risk of death, serious or permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Penalties for juvenile offenders

An individual under age 18 who commits an offense described above would be guilty of a misdemeanor punishable by imprisonment for up to one year. The court could order behavioral health counseling from an appropriate agency or provider as part of the sentence.

Proposed MCL 750.213b

House Bill 5888 would add the felonies proposed by HB 5887 to the sentencing guidelines provisions of the Code of Criminal Procedure, as follows:

- First offense extortion involving sexually explicit visual material would be a Class E crime against a person with a maximum term of imprisonment of five years.
- Second offense extortion involving sexually explicit visual material would be a Class D crime against a person with a maximum term of imprisonment of 10 years.
- Third or subsequent offense extortion involving sexually explicit visual material would be a Class B crime against a person with a maximum term of imprisonment of 20 years.
- Aggravated extortion involving sexually explicit visual material would be a Class B crime against a person with a maximum term of imprisonment of 20 years.

MCL 777.16l

House Bill 5889 would amend the Revised School Code to require the Michigan Department of Education (MDE), in consultation with the Department of Attorney General, to develop a

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

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

notice containing information regarding the provisions of House Bill 5887 and provide it to school districts, intermediate school districts (ISDs), and public school academies (PSAs, or charter schools). School districts, ISDs, and PSAs would have to provide the notice to all of the following individuals and implement a policy to educate the following individuals about the provisions of House Bill 5887:

- School personnel employed by or at a school operated by the district, ISD, or PSA.
- Students enrolled in the district, ISD, or PSA.
- Parents and legal guardians of students enrolled in the district, ISD, or PSA.

Proposed MCL 380.1509

House Bills 5888 and 5889 cannot take effect unless House Bill 5887 is also enacted.

FISCAL IMPACT:

House Bill 5887 would have an indeterminate fiscal impact on the state and on local units of government. The number of individuals that would be convicted under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5888 is a companion bill to House Bill 5887 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the new felonies of extortion involving sexually explicit visual material, first, second, third or subsequent offense, and certain aggravating factors. The first offense would be a Class E felony against a person punishable by a statutory maximum of 5 years. The second offense would be a Class D felony against a person punishable by a statutory maximum of 10 years. The third or subsequent offense and with certain aggravating factors would both be Class B felonies against a person punishable by a statutory maximum of 20 years. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 5889 could create minimal costs for the state and for districts, intermediate districts, and public school academies.

Under the bill, MDE would be required to develop a notice to distribute to districts, ISDs, and PSAs containing information on section 213b of the Michigan Penal Code, which would be added to the code by House Bill 5887. The costs to develop this notice would be absorbed using existing staff time.

Districts, ISDs, and PSAs could also incur increased costs to develop a policy and distribute this notice to employees, students, and parents and legal guardians of students. These costs would likely be minimal and could be absorbed using existing staff time.

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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.