

**Michigan**  
THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.135 Children; exposing with intent to injure or abandon; surrender of child to emergency service provider; applicability of subsection (1); definitions.  
Sec. 135.

(1) Except as provided in subsection (3), a father or mother of a child under the age of 6 years, or another individual, who exposes the child in any street, field, house, or other place, with intent to injure or wholly to abandon the child, is guilty of a felony, punishable by imprisonment for not more than 10 years.

(2) Except for a situation involving actual or suspected child abuse or child neglect, it is an affirmative defense to a prosecution under subsection (1) that the child was not more than 72 hours old and was surrendered to an emergency service provider under chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20. A criminal investigation shall not be initiated solely on the basis of a newborn being surrendered to an emergency service provider under chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20.

(3) Subsection (1) does not apply to a mother of a newborn who is surrendered under the born alive infant protection act. Subsection (1) applies to an attending physician who delivers a live newborn as a result of an attempted abortion and fails to comply with the requirements of the born alive infant protection act.

(4) As used in this section:

(a) "Emergency service provider" means a uniformed employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty.

(b) "Fire department" means an organized fire department as that term is defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

(c) "Hospital" means a hospital that is licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(d) "Police station" means a police station as that term is defined in section 43 of the Michigan vehicle code, 1949 PA 300, MCL 257.43.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;--CL 1948, 750.135 ;--Am. 2000, Act 233, Eff. Jan. 1, 2001 ;--Am. 2002, Act 689, Eff. Mar. 31, 2003 .

Compiler's Note: Enacting section 1 of Act 233 of 2000 provides: "Enacting section 1. Section 135 of the Michigan penal code, 1931 PA 328, MCL 750.135, as amended by this amendatory act, does not apply to a violation of that section committed before the effective date of this amendatory act."

Former Law: See section 31 of Ch. 153 of R.S. 1846, being CL 1857, § 5741; CL 1871, § 7540; How., § 9105; CL 1897, § 11500; CL 1915, § 15222; CL 1929, § 16738; and Act 200 of 1875.

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750.136b Definitions; child abuse.  
Sec. 136b.

(1) As used in this section:

(a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(c) "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.

(d) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) "Physical harm" means any injury to a child's physical condition.

(f) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

(a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

(5) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years.

(6) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(7) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

History: Add. 1988, Act 251, Eff. Sept. 1, 1988 ;--Am. 1999, Act 273, Eff. Apr. 3, 2000 .

Compiler's Note: Section 4 of Act 251 of 1988 provides: "All proceedings pending and liabilities existing at the time this amendatory act takes effect are saved and may be prosecuted according to the law in force when they are commenced pursuant to section 4a of chapter 1 of the Revised Statutes of 1846, being section 8.4a of the Michigan Compiled Laws."

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750.145a Accosting, enticing or soliciting child for immoral purpose.  
Sec. 145a.

A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

History: Add. 1935, Act 174, Eff. Sept. 21, 1935 ;--Am. 1939, Act 88, Eff. Sept. 29, 1939 ;--CL 1948, 750.145a ;--Am. 2002, Act 45, Eff. June 1, 2002 .

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750.145b Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty.  
Sec. 145b.

(1) A person convicted of violating section 145a who has 1 or more prior convictions is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(2) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(3) As used in this section, "prior conviction" means a violation of section 145a or a violation of a law of another state substantially corresponding to section 145a.

History: Add. 1935, Act 174, Eff. Sept. 21, 1935 ;--Am. 1939, Act 88, Eff. Sept. 29, 1939 ;--CL 1948, 750.145b ;--Am. 2002, Act 45, Eff. June 1, 2002 .

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750.145c Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.  
Sec. 145c.

(1) As used in this section:

(a) “Appears to include a child” means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(i) It was created using a depiction of any part of an actual person under the age of 18.

(ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) “Child” means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) “Commercial film or photographic print processor” means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) “Contemporary community standards” means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(e) “Erotic fondling” means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(f) “Erotic nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, “lascivious” means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(g) “Listed sexual act” means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(h) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(i) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(j) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

(k) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(l) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(m) "Sadomasochistic abuse" means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(n) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(o) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that 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.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that 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. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person 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. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, or to a commercial film or photographic print processor acting pursuant to subsection (8).

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to the local prosecuting attorney his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to

know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to the prosecuting attorney; or keeps the film, photograph, movie film, videotape, negative, or slide according to the prosecuting attorney's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(10) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

History: Add. 1977, Act 301, Eff. Mar. 30, 1978 ;--Am. 1988, Act 110, Eff. June 1, 1988 ;--Am. 1994, Act 444, Eff. Apr. 1, 1995 ;--Am. 2002, Act 629, Eff. Mar. 31, 2003 .

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750.145d Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions.  
Sec. 145d.

(1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows:

(a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(9) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(g) "Minor" means an individual who is less than 18 years of age.

History: Add. 1999, Act 32, Eff. Aug. 1, 1999 ;--Am. 1999, Act 235, Eff. Mar. 10, 2000 ;--Am. 2000, Act 185, Eff. Sept. 18, 2000 .

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750.145n Vulnerable adult abuse; first degree; second degree; third degree; fourth degree; authority to prevent vulnerable adult from being harmed or harming others not prohibited; applicability of section to act carried out by patient advocate.

Sec. 145n.

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to a vulnerable adult. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5512 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5512.

History: Add. 1994, Act 149, Eff. Oct. 1, 1994 ;--Am. 2000, Act 66, Eff. Apr. 1, 2000 .

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