

[COA Opinion: Statute Criminalizing Child Sexually Abusive Material Not Unconstitutional](#)

5/11/2011 by Madelaine Lane

In *People v Roberts*, the Court of Appeals upheld MCL 750.145c, which prohibits the production of child sexually abusive material, concluding that it is not unconstitutionally vague or overbroad. The defendant, who was convicted of three counts of child sexually abusive material, appealed his convictions arguing that MCL 750.145c, the statute he was convicted under, is unconstitutional.

Frist, the defendant argued that MCL 750.145c, which provides a defendant with an affirmative defense as long as the defendant proves by a preponderance of the evidence that the child was emancipated by operation of law, is fatally defective. The Court rejected this argument, concluding that the language regarding “emancipation by operation of law” is not vague because MCL 722.4 provides specific criteria that must be met before a minor is considered emancipated by operation of law. Pursuant to the ordinary language of MCL 722.4, emancipation by operation of law occurs when a minor is legally married, an individual reaches 18 years of age, if the minor is on active duty in the military, or for medical purposes when the minor is in the custody of law enforcement or a prisoner committed to the jurisdiction of the Michigan department of corrections. *People v Hill*, 269 Mich App 505, 524-525; 715 NW2d 301 (2006).

Next the Court concluded that MCL 750.145c is not unconstitutionally overbroad. The United States Supreme Court has held that “[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance” and “the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child.” *New York v Ferber*, 458 US 747, 757-758; 102 S Ct 3348; 73 L Ed 2d 1113 (1982). The Court reasoned that as in *Ferber*, the law at issue in this case provides fair notice of the conduct proscribed and combats the production of materials that depict child sexually abusive activity, the materials do not enjoy the protection of the First Amendment.