

HOUSE BILL NO. 54
INTRODUCED BY NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ~~COMPUTERS, VIDEORECORDERS, FAX MACHINES, AND OTHER ELECTRONIC DEVICES~~ ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking -- exemption -- penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by ~~phone~~ telephone, by mail, ~~by any type of electronic communication, including but not limited to a computer, videorecorder, or fax machine~~ AS DEFINED IN 45-8-213, or by ANY other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device ELECTRONIC COMMUNICATION, AS DEFINED IN 45-8-213, in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device ELECTRONIC COMMUNICATION, AS DEFINED IN 45-8-213, in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device ELECTRONIC COMMUNICATION, AS DEFINED IN 45-8-213, in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not

more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections."

Section 3. Section 45-8-212, MCA, is amended to read:

"45-8-212. Criminal defamation. (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, including by telephone or by a computer, videorecorder, fax machine, or other electronic device ELECTRONIC COMMUNICATION, AS DEFINED IN 45-8-213, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than \$500, or both.

(3) Violation of subsection (2) is justified if:

- (a) the defamatory matter is true;
- (b) the communication is absolutely privileged;
- (c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;
- (d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except

upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

Section 4. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by ~~telephone or electronic mail~~ telephone or by a computer, videorecorder, fax machine, or other electronic device ELECTRONIC COMMUNICATION and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses ~~a telephone or electronic mail~~ a computer, videorecorder, fax machine, or other electronic device AN ELECTRONIC COMMUNICATION to attempt to extort money or any other thing of value from a person or to disturb by repeated ~~telephone calls or electronic mailings~~ communications the peace, quiet, or right of privacy of a person at the place where the ~~telephone call or calls or electronic mailings~~ communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; or

(iii) persons given warning of the transcription or recording.

~~_____ (d) by means of any electronic or mechanical device, machine, instrument, or contrivance or in any other manner:~~

~~_____ (i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line, or by telephone, or by computer, videorecorder, fax machine, or other electronic mail device;~~

~~_____ (ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or~~

~~_____ (iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);~~

~~— (e) discloses the contents of a telegraphic message, electronic mail, or any part of a telegraphic message or a message sent by computer, videorecorder, fax machine, or other electronic mail device and addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court; or~~

~~— (f) opens or reads or causes to be read any sealed letter or a communication sent by computer, videorecorder, fax machine, or other electronic mail device and not addressed to the person opening the letter or reading the electronic mail communication without being authorized to do so by either the writer of the letter, the sender of the electronic mail communication, or the person to whom the letter or electronic mail communication is addressed or, without the like authority, publishes any of the contents of the letter or electronic mail communication knowing the letter or electronic mail communication to have been unlawfully opened.~~

~~— (2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail communication or other message that either originates at or is received by a computer or computer system, videorecorder, fax machine, or other electronic device that is owned, leased, or operated by or for the employer.~~

~~(3)(2)~~ Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts ~~a telephonic or cellular telephone voice or data~~ AN ELECTRONIC communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(4)(3)~~ (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) "ELECTRONIC COMMUNICATION" MEANS ANY TRANSFER BETWEEN PERSONS OF SIGNS, SIGNALS, WRITING, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY NATURE TRANSMITTED IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEM."

Section 5. Section 46-3-112, MCA, is amended to read:

"46-3-112. Requisite act in multiple counties. (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a

common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

~~(3) (a) If an element of an offense under 45-5-220, 45-5-625, 45-8-212, or 45-8-213, involves the sending, publication, distribution, advertisement, interception, opening, reading, or recording of a communication or visual or print medium~~ AN ELECTRONIC COMMUNICATION, the charge may be filed in:

~~_____ (i) the county in or from which the communication was sent, published, distributed, advertised, intercepted, opened, read, or recorded; or~~

~~_____ (ii) in the county in which the communication or visual or print medium was received or to which it was sent~~ THE COUNTY IN OR FROM WHICH THE ELECTRONIC COMMUNICATION WAS SENT OR IN THE COUNTY IN WHICH THE ELECTRONIC COMMUNICATION WAS RECEIVED OR TO WHICH IT WAS SENT.

~~_____ (b) For the purposes of subsection (3)(a), a communication may be sent by:~~

~~_____ (i) mail;~~

~~_____ (ii) telephone;~~

~~_____ (iii) telegraph;~~

~~_____ (iv) computer, videorecorder, fax machine, or other electronic device;~~

~~_____ (v) mechanical device; or~~

~~_____ (vi) other device."~~

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