

HOUSE BILL NO. 82

INTRODUCED BY J. PARKER, AUGARE, BERGREN, CAMPBELL, COHENOUR, CORDIER, EBINGER,
 FRENCH, GALLIK, HANDS, HENRY, HOLLENBAUGH, JACOBSON, KOOPMAN, KOTTEL, MCALPIN,
 MCGILLVRAY, NOONAN, O'HARA, RICE, STOKER, VILLA, WARD, WILSON, WINDY BOY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ELEMENTS OF THE CRIME OF POSSESSION OF CHILD PORNOGRAPHY; PROVIDING DEFINITIONS; AND AMENDING SECTION SECTIONS 45-5-625 AND 50-19-501, MCA; AND REPEALING SECTION 45-5-620, MCA."

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

Section 1. 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, by any means of communication, including electronic communication ~~as defined in 45-8-213~~, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, ~~as defined in 45-8-213~~; in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, ~~as defined in 45-8-213~~; in which a child:

(i) is engaged in sexual conduct, actual or simulated; ~~or~~

~~(ii) is depicted in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person;~~

(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 electronic communication, ~~as defined in 45-8-213~~; in which a child is 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.

(4) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "ELECTRONIC ELECTRONIC COMMUNICATION" MEANS A SIGN, SIGNAL, WRITING, IMAGE, SOUND, DATA, OR INTELLIGENCE OF ANY NATURE TRANSMITTED OR CREATED IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEM.

(B) "SEXUAL CONDUCT" MEANS:

(I) ACTUAL OR SIMULATED:

(A) SEXUAL INTERCOURSE, WHETHER BETWEEN PERSONS OF THE SAME OR OPPOSITE SEX;

(B) PENETRATION OF THE VAGINA OR RECTUM BY ANY OBJECT, EXCEPT WHEN DONE AS PART OF A RECOGNIZED MEDICAL PROCEDURE;

(C) BESTIALITY;

(D) MASTURBATION;

(E) SADOMASOCHISTIC ABUSE;

(F) LEWD EXHIBITION OF THE GENITALS, BREASTS, PUBIC OR RECTAL AREA, OR OTHER INTIMATE PARTS OF ANY PERSON; OR

(G) DEFECAATION OR URINATION FOR THE PURPOSE OF THE SEXUAL STIMULATION OF THE VIEWER; OR

(II) DEPICTION OF A CHILD IN THE NUDE OR IN A STATE OF PARTIAL UNDRRESS WITH THE PURPOSE TO ABUSE, HUMILIATE, HARASS, OR DEGRADE THE CHILD OR TO AROUSE OR GRATIFY THE PERSON'S OWN SEXUAL RESPONSE OR DESIRE OR THE SEXUAL RESPONSE OR DESIRE OF ANY PERSON.

(C) "SIMULATED" MEANS ANY DEPICTING OF THE GENITALS OR PUBIC OR RECTAL AREA THAT GIVES THE APPEARANCE OF SEXUAL CONDUCT OR INCIPIENT SEXUAL CONDUCT.

(D) "VISUAL MEDIUM" MEANS:

(I) ANY FILM, PHOTOGRAPH, VIDEOTAPE, NEGATIVE, SLIDE, OR PHOTOGRAPHIC REPRODUCTION THAT CONTAINS OR INCORPORATES IN ANY MANNER ANY FILM, PHOTOGRAPH, VIDEOTAPE, NEGATIVE, OR SLIDE; OR

(II) ANY DISK, DISKETTE, OR OTHER PHYSICAL MEDIA THAT ALLOWS AN IMAGE TO BE DISPLAYED ON A COMPUTER OR OTHER VIDEO SCREEN AND ANY IMAGE TRANSMITTED TO A COMPUTER OR OTHER VIDEO SCREEN BY TELEPHONE LINE, CABLE, SATELLITE TRANSMISSION, OR OTHER METHOD."

SECTION 2. SECTION 50-19-501, MCA, IS AMENDED TO READ:

"50-19-501. Nursing mother and infant protection. (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health and family values. A mother has a right to breastfeed the mother's child in any location, public or private, where the mother and child are otherwise authorized to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

(2) A unit of local government may not prohibit breastfeeding in public by local ordinance.

(3) The act of breastfeeding may not be considered:

(a) a nuisance as provided in Title 27, chapter 30;

(b) indecent exposure as provided for in 45-5-504;

(c) sexual conduct as defined in ~~45-5-620(1)(f)~~ 45-5-625; or

(d) obscenity as provided for in 45-8-201."

NEW SECTION. SECTION 3. REPEALER. SECTION 45-5-620, MCA, IS REPEALED.

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