

HOUSE BILL NO. 129

INTRODUCED BY E. HILL SMITH

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRIVACY IN COMMUNICATIONS; PROVIDING THAT THE DISTRIBUTION OF SEXUAL IMAGES WITHOUT THE CONSENT OF THE PERSON DEPICTED IS ILLEGAL; AMENDING SECTION 45-8-213, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. 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 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 an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the 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 to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, and if one person provides the warning, either party may record; or

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if

1 the recording is of a health care emergency telephone communication made to the facility or agency.

2 (d) distributes or disseminates a visual or print medium, including a medium by use of electronic
3 communication, of another person who:

4 (i) is identifiable from the visual medium, as defined in 45-5-625, or print medium itself or from
5 information displayed in connection with the medium;

6 (ii) is engaged in sexual conduct, actual or simulated, as defined in 45-5-625, or whose intimate parts
7 are exposed; and

8 (iii) has not consented to the creation of the visual or print medium or is incapable of consent, as
9 described in 45-5-501.

10 (2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications
11 if the person purposely intercepts an electronic communication. This subsection does not apply to elected or
12 appointed public officials or to public employees when the interception is done in the performance of official duty
13 or to persons given warning of the interception.

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

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

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

20 (4) "Electronic communication" means any transfer between persons of signs, signals, writing, images,
21 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,
22 photoelectronic, or photo-optical system."

23
24 **NEW SECTION. Section 2. Applicability.** [This act] applies to offenses committed on or after [the
25 effective date of this act].

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