

HOUSE BILL NO. 247

INTRODUCED BY K. DUDIK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SEXUAL ABUSE OF CHILDREN; CLARIFYING THAT COERCING A CHILD IN PERSON TO VIEW SEXUALLY EXPLICIT MATERIAL CONSTITUTES SEXUAL ABUSE OF CHILDREN; AMENDING SECTION 45-5-625, MCA; AND PROVIDING AN APPLICABILITY DATE."

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 or in person, persuades, entices, counsels, coerces, encourages, directs, 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, or view sexually explicit material;

(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 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 in which a child is 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;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;



1 (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of  
2 age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct,  
3 actual or simulated; or

4 (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or  
5 a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the  
6 intention of engaging in sexual conduct, actual or simulated.

7 (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual  
8 abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to  
9 exceed 100 years and may be fined not more than \$10,000.

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

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

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

20 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the  
21 time of the offense, the offender:

22 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not  
23 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this  
24 subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender  
25 is not eligible for parole.

26 (ii) may be fined an amount not to exceed \$50,000; and

27 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and  
28 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

29 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is  
30 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate

1 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

2 (5) As used in this section, the following definitions apply:

3 (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any  
4 nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or  
5 photo-optical system.

6 (b) "Sexual conduct" means:

7 (i) actual or simulated:

8 (A) sexual intercourse, whether between persons of the same or opposite sex;

9 (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical  
10 procedure;

11 (C) bestiality;

12 (D) masturbation;

13 (E) sadomasochistic abuse;

14 (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

15 or

16 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

17 (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate,  
18 harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual  
19 response or desire of any person.

20 (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of  
21 sexual conduct or incipient sexual conduct.

22 (d) "Visual medium" means:

23 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or  
24 incorporates in any manner any film, photograph, videotape, negative, or slide; or

25 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other  
26 video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite  
27 transmission, or other method."

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29 **NEW SECTION. Section 2. Applicability.** [This act] applies to all offenses committed on or after [the  
30 effective date of this act].

31 - END -