

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) WITH THE INTENT TO TERRIFY, INTIMIDATE, THREATEN, FINANCIALLY PROFIT, OR HARASS, distributes or  
 3 disseminates a visual or print medium, including a medium by use of electronic communication, of another person  
 4 who:

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

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

9 (iii) HAS A REASONABLE EXPECTATION OF PRIVACY AND has not consented to the creation OR DISTRIBUTION  
 10 of the IMAGE THAT WAS DISTRIBUTED OR DISSEMINATED IN THE visual or print medium or is incapable of consent, as  
 11 described in 45-5-501.

12 (2) (A) EVIDENCE THAT A PERSON HAS SENT A VISUAL OR PRINT MEDIUM TO ANOTHER PERSON USING AN  
 13 ELECTRONIC DEVICE AS DESCRIBED IN SUBSECTION (1)(D) DOES NOT, ON ITS OWN, REMOVE THE PERSON DEPICTED'S  
 14 REASONABLE EXPECTATION OF PRIVACY.

15 (B) NOTHING IN SUBSECTION (1)(D) MAY BE CONSTRUED TO IMPOSE LIABILITY ON AN INTERACTIVE COMPUTER  
 16 SERVICE, AS DEFINED IN 47 U.S.C. 230(F)(2), FOR CONTENT PROVIDED BY ANOTHER PERSON.

17 ~~(2)~~(3) Except as provided in 69-6-104, a person commits the offense of violating privacy in  
 18 communications if the person purposely intercepts an electronic communication. This subsection does not apply  
 19 to elected or appointed public officials or to public employees when the interception is done in the performance  
 20 of official duty or to persons given warning of the interception.

21 ~~(3)~~(4) (a) A person convicted of the offense of violating privacy in communications shall be fined an  
 22 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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

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

27 ~~(4)~~(5) "Electronic communication" means any transfer between persons of signs, signals, writing, images,  
 28 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,  
 29 photoelectronic, or photo-optical system."

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