

HOUSE BILL NO. 247

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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 OR ACTS
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 OR ACTS FOR THE PURPOSE OF INDUCING OR PERSUADING A CHILD TO PARTICIPATE
IN ANY ACTIVITY THAT IS ILLEGAL;

(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;

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

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

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

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

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

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

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

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

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

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

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

1 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
2 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
3 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

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

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

8 (b) "Sexual conduct" means:

9 (i) actual or simulated:

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

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

13 (C) bestiality;

14 (D) masturbation;

15 (E) sadomasochistic abuse;

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

17 or

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

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

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

24 (d) "Visual medium" means:

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

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