

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0898.02 Jane Ritter x4342

HOUSE BILL 15-1341

HOUSE SPONSORSHIP

Conti and Fields, Carver, Danielson, Keyser, Landgraf, Lawrence, Lontine, Pabon, Priola, Roupe, Sias, Tate, Thurlow, Van Winkle, Vigil, Wilson, Windholz

SENATE SPONSORSHIP

Cooke and Johnston,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING THE PENALTY FROM A CLASS 6 FELONY TO**
102 **A CLASS 5 FELONY FOR SEXUAL EXPLOITATION OF A CHILD BY**
103 **POSSESSION OF SEXUALLY EXPLOITATIVE MATERIAL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Currently, sexual exploitation of a child by possession of sexually exploitative material is a class 6 felony for first-time offenses and a class 4 felony if the possession is of a video, a recording or broadcast of moving visual images, a motion picture or more than 20 different items (video or more than 20 items), or if it is a second or subsequent offense.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill increases current class 6 felonies to class 5 felonies. The bill also changes the term "video tape" to "recording or broadcast of moving visual images".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 18-6-403 as
3 follows:

4 **18-6-403. Sexual exploitation of a child.** (1) The general
5 assembly hereby finds and declares: That the sexual exploitation of
6 children constitutes a wrongful invasion of the child's right of privacy and
7 results in social, developmental, and emotional injury to the child; that a
8 child below the age of eighteen years is incapable of giving informed
9 consent to the use of his or her body for a sexual purpose; and that to
10 protect children from sexual exploitation it is necessary to prohibit the
11 production of material which involves or is derived from such
12 exploitation and to exclude all such material from the channels of trade
13 and commerce.

14 (1.5) The general assembly further finds and declares that the
15 mere possession or control of any sexually exploitative material results in
16 continuing victimization of our children by the fact that such material is
17 a permanent record of an act or acts of sexual abuse of a child; that each
18 time such material is shown or viewed, the child is harmed; that such
19 material is used to break down the will and resistance of other children to
20 encourage them to participate in similar acts of sexual abuse; that laws
21 banning the production and distribution of such material are insufficient
22 to halt this abuse; that in order to stop the sexual exploitation and abuse
23 of our children, it is necessary for the state to ban the possession of any
24 sexually exploitative materials; and that the state has a compelling interest

1 in outlawing the possession of any sexually exploitative materials in order
2 to protect society as a whole, and particularly the privacy, health, and
3 emotional welfare of its children.

4 (2) As used in this section, unless the context otherwise requires:

5 (a) "Child" means a person who is less than eighteen years of age.

6 (b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July
7 1, 2003.)

8 (c) "Erotic fondling" means touching a person's clothed or
9 unclothed genitals or pubic area, developing or undeveloped genitals or
10 pubic area (if the person is a child), buttocks, breasts, or developing or
11 undeveloped breast area (if the person is a child), for the purpose of real
12 or simulated overt sexual gratification or stimulation of one or more of
13 the persons involved. "Erotic fondling" shall not be construed to include
14 physical contact, even if affectionate, which is not for the purpose of real
15 or simulated overt sexual gratification or stimulation of one or more of
16 the persons involved.

17 (d) "Erotic nudity" means the display of the human male or female
18 genitals or pubic area, the undeveloped or developing genitals or pubic
19 area of the human male or female child, the human breasts, or the
20 undeveloped or developing breast area of the human child, for the
21 purpose of real or simulated overt sexual gratification or stimulation of
22 one or more of the persons involved.

23 (e) "Explicit sexual conduct" means sexual intercourse, erotic
24 fondling, erotic nudity, masturbation, sadomasochism, or sexual
25 excitement.

26 (f) "Masturbation" means the real or simulated touching, rubbing,
27 or otherwise stimulating of a person's own clothed or unclothed genitals

1 or pubic area, developing or undeveloped genitals or pubic area (if the
2 person is a child), buttocks, breasts, or developing or undeveloped breast
3 area (if the person is a child), by manual manipulation or self-induced or
4 with an artificial instrument, for the purpose of real or simulated overt
5 sexual gratification or arousal of the person.

6 (g) "Sadomasochism" means:

7 (I) Real or simulated flagellation or torture for the purpose of real
8 or simulated sexual stimulation or gratification; or

9 (II) The real or simulated condition of being fettered, bound, or
10 otherwise physically restrained for sexual stimulation or gratification of
11 a person.

12 (h) "Sexual excitement" means the real or simulated condition of
13 human male or female genitals when in a state of real or simulated overt
14 sexual stimulation or arousal.

15 (i) "Sexual intercourse" means real or simulated intercourse,
16 whether genital-genital, oral-genital, anal-genital, or oral-anal, between
17 persons of the same or opposite sex, or between a human and an animal,
18 or with an artificial genital.

19 (j) "Sexually exploitative material" means any photograph, motion
20 picture, video, ~~video tape~~ RECORDING OR BROADCAST OF MOVING VISUAL
21 IMAGES, print, negative, slide, or other mechanically, electronically,
22 chemically, or digitally reproduced visual material that depicts a child
23 engaged in, participating in, observing, or being used for explicit sexual
24 conduct.

25 (k) "Video", "~~video tape~~" "RECORDING OR BROADCAST", or
26 "motion picture" means any material that depicts a moving image of a
27 child engaged in, participating in, observing, or being used for explicit

1 sexual conduct.

2 (3) A person commits sexual exploitation of a child if, for any
3 purpose, he or she knowingly:

4 (a) Causes, induces, entices, or permits a child to engage in, or be
5 used for, any explicit sexual conduct for the making of any sexually
6 exploitative material; or

7 (b) Prepares, arranges for, publishes, including but not limited to
8 publishing through digital or electronic means, produces, promotes,
9 makes, sells, finances, offers, exhibits, advertises, deals in, or distributes,
10 including but not limited to distributing through digital or electronic
11 means, any sexually exploitative material; or

12 (b.5) Possesses or controls any sexually exploitative material for
13 any purpose; except that this paragraph (b.5) does not apply to peace
14 officers or court personnel in the performance of their official duties, nor
15 does it apply to physicians, psychologists, therapists, or social workers,
16 so long as such persons are licensed in the state of Colorado and the
17 persons possess such materials in the course of a bona fide treatment or
18 evaluation program at the treatment or evaluation site; or

19 (c) Possesses with the intent to deal in, sell, or distribute,
20 including but not limited to distributing through digital or electronic
21 means, any sexually exploitative material; or

22 (d) Causes, induces, entices, or permits a child to engage in, or be
23 used for, any explicit sexual conduct for the purpose of producing a
24 performance.

25 (4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July
26 1, 2003.)

27 (5) (a) Except as provided in paragraph (b) of this subsection (5),

1 sexual exploitation of a child is a class 3 felony.

2 (b) Sexual exploitation of a child by possession of sexually
3 exploitative material pursuant to paragraph (b.5) of subsection (3) of this
4 section is a ~~class 6~~ CLASS 5 felony; except that said offense is a class 4
5 felony if:

6 (I) It is a second or subsequent offense; or

7 (II) The possession is of a video, ~~video tape~~ RECORDING OR
8 BROADCAST OF MOVING VISUAL IMAGES, or motion picture or more than
9 twenty different items qualifying as sexually exploitative material.

10 (6) If any provision of this section or the application thereof to any
11 person or circumstances is held invalid, such invalidity shall not affect
12 other provisions or applications of this section which can be given effect
13 without the invalid provision or application, and to this end the provisions
14 of this section are declared to be severable.

15 **SECTION 2. Potential appropriation.** Pursuant to section
16 2-2-703, C.R.S., any bill that results in a net increase in periods of
17 imprisonment in the state correctional facilities must include an
18 appropriation of moneys that is sufficient to cover any increased capital
19 construction and operational costs for the first five fiscal years in which
20 there is a fiscal impact. Because this act may increase periods of
21 imprisonment, this act may require a five-year appropriation.

22 **SECTION 3. Effective date.** This act takes effect August 5,
23 2015.

24 **SECTION 4. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.