

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 21-0013.01 Jacob Baus x2173

HOUSE BILL 21-1069

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A BILL FOR AN ACT

101 **CONCERNING ENHANCING THE ENFORCEMENT OF CRIMES OF SEXUAL**
102 **EXPLOITATION OF A CHILD, AND, IN CONNECTION THEREWITH,**
103 **REQUIRING A POST-ENACTMENT REVIEW OF THE**
104 **IMPLEMENTATION OF THIS ACT AND MAKING AN**
105 **APPROPRIATION.**

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://leg.colorado.gov>.)

The bill updates certain actions described as sexual exploitation of a child to reflect access and viewing due to evolving technology.

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

HOUSE
3rd Reading Unamended
April 26, 2021

HOUSE
Amended 2nd Reading
April 23, 2021

The bill makes sexual exploitation of a child an extraordinary risk crime, enhancing the presumptive sentencing range in certain circumstances.

The bill creates the sexual exploitation of children surcharge for any person who is convicted of or receives a deferred sentence for sexual exploitation of a child. Ninety-five percent of the surcharge goes to the sexual exploitation of children surcharge fund. The money in the fund will provide funding to the Colorado bureau of investigation (bureau) to develop and acquire, and allow the bureau to help other law enforcement agencies with developing and acquiring, necessary technological and expert resources to investigate and prosecute computer-facilitated crimes of sexual exploitation of a child.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that for the purpose of performing a post-enactment review of the
4 implementation of HB 21-1069, it is necessary to review the following
5 statewide data for the three years prior and subsequent to the passage of
6 HB 21-1069 in order to assess its impact on sentencing and the filing of
7 counts based on the number of images in violation of section 18-6-403
8 (3)(b.5):

9 (a) The number of cases filed that include a violation of section
10 18-6-403 (3)(b.5) and the number of counts in each case for violation of
11 18-6-403 (3)(b.5);

12 (b) The number of convictions for violation of section 18-6-403
13 (3)(b.5) resulting in a sentence to the department of corrections and the
14 lengths of those sentences; and

15 (c) The number of convictions for violation of section 18-6-403
16 (3)(b.5) resulting in a sentence to probation or a community-based
17 sentence.

18 **SECTION 2.** In Colorado Revised Statutes, 18-6-403, **amend**
19 **(2)(e), (2)(j), (3)(b), (3)(b.5), (3)(d), and (5)(b); and add (2)(i.5), (5.5),**

1 and (5.7) as follows:

2 **18-6-403. Sexual exploitation of a child - legislative declaration**

3 **- definitions.** (2) As used in this section, unless the context otherwise
4 requires:

5 (e) "Explicit sexual conduct" means sexual intercourse, SEXUAL
6 INTRUSION, erotic fondling, erotic nudity, masturbation, sadomasochism,
7 or sexual excitement.

8 (i.5) "SEXUAL INTRUSION" MEANS AN INTRUSION, HOWEVER
9 SLIGHT, BY AN OBJECT OR A PART OF A PERSON'S BODY, EXCEPT THE
10 MOUTH, TONGUE, OR PENIS, INTO THE GENITAL OR ANAL OPENING OF
11 ANOTHER PERSON'S BODY IF THAT SEXUAL INTRUSION CAN REASONABLY
12 BE CONSTRUED AS BEING FOR THE PURPOSE OF SEXUAL AROUSAL,
13 GRATIFICATION, OR ABUSE.

14 (j) "Sexually exploitative material" means any photograph, motion
15 picture, video, recording or broadcast of moving visual images,
16 LIVESTREAM, print, negative, slide, or other mechanically, electronically,
17 chemically, or digitally reproduced visual material that depicts a child
18 engaged in, participating in, observing, or being used for explicit sexual
19 conduct.

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

22 (b) Prepares, arranges for, publishes, ~~including but not limited to~~
23 ~~publishing through digital or electronic means~~, produces, promotes,
24 makes, sells, finances, offers, exhibits, advertises, deals in, ~~or~~ distributes,
25 TRANSPORTS OR TRANSFERS TO ANOTHER PERSON, OR MAKES ACCESSIBLE
26 TO ANOTHER PERSON, including, but not limited to, ~~distributing~~ through
27 digital or electronic means, any sexually exploitative material; or

1 (b.5) ACCESSES WITH INTENT TO VIEW, VIEWS, possesses, or
2 controls any sexually exploitative material for any purpose; except that
3 this subsection (3)(b.5) does not apply to law enforcement personnel,
4 defense counsel personnel, or court personnel in the performance of their
5 official duties, nor does it apply to physicians, psychologists, therapists,
6 or social workers, so long as such persons are licensed in the state of
7 Colorado and the persons possess such materials in the course of a bona
8 fide treatment or evaluation program at the treatment or evaluation site;
9 or

10 (d) Causes, induces, entices, or permits a child to engage in, or be
11 used for, any explicit sexual conduct for the purpose of producing a
12 performance, OR ACCESSES WITH INTENT TO VIEW OR VIEWS EXPLICIT
13 SEXUAL CONDUCT IN THE FORM OF A PERFORMANCE INVOLVING A CHILD
14 IF THE CONDUCT IN THE PERFORMANCE WAS CAUSED, INDUCED, ENTICED,
15 REQUESTED, DIRECTED, OR SPECIFIED BY THE VIEWER OR POTENTIAL
16 VIEWER.

17 (5) (b) Sexual exploitation of a child ~~by possession of sexually~~
18 ~~exploitative material~~ pursuant to ~~paragraph (b.5) of subsection (3)~~
19 SUBSECTION (3)(b.5) of this section is a class 5 felony FOR EACH ITEM OF
20 SEXUALLY EXPLOITATIVE MATERIAL ACCESSED WITH INTENT TO VIEW,
21 VIEWED, POSSESSED, OR CONTROLLED; except that said offense is a class
22 4 felony if:

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

24 (II) The ~~possession~~ ITEM ACCESSED WITH INTENT TO VIEW,
25 VIEWED, POSSESSED, OR CONTROLLED is ~~of~~ a video, recording or broadcast
26 of moving visual images, or motion picture. ~~or more than twenty different~~
27 ~~items qualifying as sexually exploitative material.~~

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(5.5) SEXUAL EXPLOITATION OF A CHILD IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10) IF THE SEXUALLY EXPLOITATIVE MATERIAL DEPICTS A CHILD WHO IS:

- (a) UNDER TWELVE YEARS OF AGE;
- (b) SUBJECTED TO THE ACTUAL APPLICATION OF PHYSICAL FORCE OR VIOLENCE; OR
- (c) SUBJECT TO SEXUAL INTERCOURSE, SEXUAL INTRUSION, OR SADOMASOCHISM.

(5.7) NOTWITHSTANDING SECTION 16-22-113 (3)(c) TO THE CONTRARY, AN ADULT WHO HAS MORE THAN ONE CONVICTION OF 18-6-403 (3)(b.5) IN A SINGLE CRIMINAL CASE IS ELIGIBLE TO PETITION FOR REMOVAL FROM THE REGISTRY PURSUANT TO SECTION 16-22-113.

SECTION 3. In Colorado Revised Statutes, 16-22-113, **amend (3)(c)** as follows:

16-22-113. Petition for removal from registry. (3) The following persons are not eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this article 22 or to the comparable requirements of any other jurisdictions in which they may reside:

- (c) Any adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction, EXCEPT AS PROVIDED IN SECTION 18-6-403 (5.7).

SECTION 4. In Colorado Revised Statutes, 18-1.3-401, **amend (10)(a), (10)(b)(XVII), and (10)(b)(XVIII); and add (10)(b)(XIX)** as follows:

1 **18-1.3-401. Felonies classified - presumptive penalties.**

2 (10) (a) The general assembly hereby finds that certain crimes ~~which~~
3 THAT are listed in ~~paragraph (b) of this subsection (10)~~ SUBSECTION
4 (10)(b) OF THIS SECTION present an extraordinary risk of harm to society
5 and therefore, in the interest of public safety, for such crimes ~~which~~ THAT
6 constitute class 3 felonies, the maximum sentence in the presumptive
7 range ~~shall be~~ IS increased by four years; for such crimes ~~which~~ THAT
8 constitute class 4 felonies, the maximum sentence in the presumptive
9 range ~~shall be~~ IS increased by two years; for such crimes ~~which~~ THAT
10 constitute class 5 felonies, the maximum sentence in the presumptive
11 range ~~shall be~~ IS increased by one year; for such crimes ~~which~~ THAT
12 constitute class 6 felonies, the maximum sentence in the presumptive
13 range ~~shall be~~ IS increased by six months.

14 (b) Crimes that present an extraordinary risk of harm to society
15 ~~shall~~ include the following:

16 (XVII) A class 3 felony offense of human trafficking for sexual
17 servitude, as described in section 18-3-504; ~~and~~

18 (XVIII) Assault in the second degree, as described in section
19 18-3-203 (1)(i); AND

20 (XIX) SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN
21 SECTION 18-6-403 (5.5).

22 **SECTION 5.** In Colorado Revised Statutes, 18-21-103, **amend**
23 (4); and **add** (3.3), (3.5), and (3.7) as follows:

24 **18-21-103. Source of revenues - allocation of money - sex**
25 **offender surcharge fund - sexual exploitation of children surcharge**
26 **fund - creation.** (3.3) (a) ON AND AFTER JANUARY 1, 2022, EACH PERSON
27 WHO IS CONVICTED OF OR RECEIVES A DEFERRED SENTENCE PURSUANT TO

1 SECTION 18-1.3-102 FOR SEXUAL EXPLOITATION OF A CHILD, AS
2 DESCRIBED IN SECTION 18-6-403, IS REQUIRED TO PAY A SEXUAL
3 EXPLOITATION OF CHILDREN SURCHARGE IN ADDITION TO THE SEX
4 OFFENDER SURCHARGE REQUIRED PURSUANT TO SUBSECTION (1) OF THIS
5 SECTION TO THE CLERK OF THE COURT WHERE THE CONVICTION OCCURS OR
6 THE DEFERRED SENTENCE IS ENTERED. THE AMOUNT OF THE ADDITIONAL
7 SURCHARGE IS, BASED ON THE HIGHEST PENALTY LEVEL AMONG THE
8 CRIMES OF CONVICTION OR DEFERRED SENTENCE IN THE CASE:

9 (I) FOR A CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED, TWO
10 THOUSAND DOLLARS;

11 (II) FOR A CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED, ONE
12 THOUSAND DOLLARS;

13 (III) FOR A CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED,
14 FIVE HUNDRED DOLLARS; AND

15 (IV) FOR A CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED,
16 TWO HUNDRED AND FIFTY DOLLARS.

17 (b) A JUVENILE WHO IS CONVICTED OR RECEIVES A DEFERRED
18 SENTENCE PURSUANT TO SECTION 18-1.3-102 FOR SEXUAL EXPLOITATION
19 OF A CHILD, AS DESCRIBED IN SECTION 18-6-403, IS NOT REQUIRED TO PAY
20 AN ADDITIONAL SURCHARGE PURSUANT TO SUBSECTION (3.3)(a) OF THIS
21 SECTION.

22 (3.5) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE
23 REQUIRED BY SUBSECTION (3.3) OF THIS SECTION AS FOLLOWS:

24 (a) THE CLERK OF THE COURT SHALL RETAIN FIVE PERCENT FOR
25 ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (3.5).
26 THE CLERK OF THE COURT SHALL TRANSMIT THE AMOUNT RETAINED
27 PURSUANT TO THIS SUBSECTION (3.5)(a) TO THE STATE TREASURER, WHO

1 SHALL CREDIT THE AMOUNT TO THE GENERAL FUND. THE AMOUNT IS
2 SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE COSTS
3 OF SUCH ADMINISTRATION.

4 (b) THE CLERK OF THE COURT SHALL TRANSMIT NINETY-FIVE
5 PERCENT TO THE STATE TREASURER, WHO SHALL CREDIT THE AMOUNT TO
6 THE SEXUAL EXPLOITATION OF CHILDREN SURCHARGE FUND CREATED IN
7 SUBSECTION (3.7) OF THIS SECTION.

8 (3.7) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
9 SEXUAL EXPLOITATION OF CHILDREN SURCHARGE FUND, REFERRED TO IN
10 THIS SUBSECTION (3.7) AS THE "FUND", THAT CONSISTS OF MONEY
11 RECEIVED BY THE STATE TREASURER PURSUANT TO SUBSECTION (3.5) OF
12 THIS SECTION. THE MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED
13 TO THE COLORADO BUREAU OF INVESTIGATION IN THE DEPARTMENT OF
14 PUBLIC SAFETY TO ENHANCE THE EFFECTIVE INVESTIGATION AND
15 PROSECUTION OF COMPUTER-FACILITATED SEXUAL EXPLOITATION OF
16 CHILDREN PURSUANT TO SECTION 24-33.5-430.

17 (b) THE STATE TREASURER MAY INVEST ANY MONEY IN THE FUND
18 NOT EXPENDED FOR THE PURPOSE OF THIS SECTION AS PROVIDED BY LAW.
19 THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED
20 FROM THE INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY MONEY
21 NOT APPROPRIATED BY THE GENERAL ASSEMBLY AND ALL UNEXPENDED
22 AND UNENCUMBERED MONEY AT THE END OF THE FISCAL YEAR REMAINS
23 IN THE FUND AND MUST NOT BE TRANSFERRED OR REVERT TO THE
24 GENERAL FUND AT THE END OF ANY FISCAL YEAR.

25 (4) The court may waive all or any portion of ~~the~~ A surcharge
26 required by this section if the court finds that a person ~~convicted of a sex~~
27 ~~offense~~ is indigent or financially unable to pay all or any portion of such

1 surcharge. The court shall waive only that portion of ~~the~~ A surcharge
2 ~~which~~ IF the court has found that the person ~~convicted of a sex offense~~ is
3 financially unable to pay.

4 **SECTION 6.** In Colorado Revised Statutes, **add** 24-33.5-430 as
5 follows:

6 **24-33.5-430. Enhance effective investigation and prosecution**
7 **of computer-facilitated sexual exploitation of children - rules.** (1) THE
8 BUREAU SHALL DEVELOP AND ACQUIRE, AND MAY ASSIST OTHER LAW
9 ENFORCEMENT AGENCIES WITH DEVELOPING AND ACQUIRING, NECESSARY
10 TECHNOLOGICAL OR EXPERT RESOURCES TO INVESTIGATE AND PROSECUTE
11 COMPUTER-FACILITATED CRIMES OF SEXUAL EXPLOITATION OF A CHILD AS
12 DESCRIBED IN SECTION 18-6-403.

13 (2) THE COSTS OF PERFORMING THE FUNCTIONS OF THIS SECTION
14 ARE FUNDED PURSUANT TO THE SEXUAL EXPLOITATION OF CHILDREN
15 SURCHARGE FUND CREATED IN SECTION 18-21-103 (3.7).

16 (3) THE BUREAU MAY APPLY FOR GIFTS, GRANTS, OR DONATIONS
17 FROM THE FEDERAL GOVERNMENT AND ANY PUBLIC OR PRIVATE SOURCE.
18 THE BUREAU SHALL TRANSMIT ANY MONEY RECEIVED TO THE STATE
19 TREASURER FOR DEPOSIT IN THE SEXUAL EXPLOITATION OF CHILDREN
20 SURCHARGE FUND CREATED IN SECTION 18-21-103 (3.7). THE BUREAU
21 SHALL PERFORM THE FUNCTIONS OF THIS SECTION FROM GENERAL FUND
22 MONEY APPROPRIATED TO THE BUREAU BY THE GENERAL ASSEMBLY FOR
23 THE PERFORMANCE OF THE FUNCTIONS OF THIS SECTION AND MONEY
24 APPROPRIATED FROM THE SEXUAL EXPLOITATION OF CHILDREN
25 SURCHARGE FUND.

26 (4) THE BUREAU MAY PROMULGATE RULES AS NECESSARY TO
27 PERFORM THE FUNCTIONS OF THIS SECTION.

1 **SECTION 7. Accountability.** Notwithstanding the requirement
2 to conduct a review of the implementation of this act either two or five
3 years after the enactment of the act, three years after this act becomes law
4 and in accordance with section 2-2-1201, Colorado Revised Statutes, the
5 legislative service agencies of the Colorado general assembly shall
6 conduct a post-enactment review of the implementation of this act
7 utilizing the information contained in the legislative declaration set forth
8 in section 1 of this act.

9 **SECTION 8. Appropriation.** For the 2021-22 state fiscal year,
10 \$1,894 is appropriated to the judicial department. This appropriation is
11 from the general fund. To implement this act, the department may use this
12 appropriation for trial court programs. ■

13 **SECTION 9. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly; except that, if a referendum petition is filed pursuant
17 to section 1 (3) of article V of the state constitution against this act or an
18 item, section, or part of this act within such period, then the act, item,
19 section, or part will not take effect unless approved by the people at the
20 general election to be held in November 2022 and, in such case, will take
21 effect on the date of the official declaration of the vote thereon by the
22 governor.

23 (2) Section 1 of this act applies to offenses committed on or after
24 the applicable effective date of this act.