

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0013.01 Jacob Baus x2173

HOUSE BILL 21-1069

HOUSE SPONSORSHIP

Carver and Roberts,

SENATE SPONSORSHIP

Fields and Gardner,

House Committees

Judiciary
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENHANCING THE ENFORCEMENT OF CRIMES OF SEXUAL**
102 **EXPLOITATION OF A CHILD, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN 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.

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

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
Amended 2nd Reading
April 23, 2021

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.** In Colorado Revised Statutes, 18-6-403, **amend**
3 (2)(e), (2)(j), (3)(b), (3)(b.5), (3)(d), and (5)(b); and **add** (2)(i.5), (5)(c),
4 and (5.5) as follows:

5 **18-6-403. Sexual exploitation of a child - legislative declaration**
6 **- definitions.** (2) As used in this section, unless the context otherwise
7 requires:

8 (e) "Explicit sexual conduct" means sexual intercourse, SEXUAL
9 INTRUSION, erotic fondling, erotic nudity, masturbation, sadomasochism,
10 or sexual excitement.

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

17 (j) "Sexually exploitative material" means any photograph, motion
18 picture, video, recording or broadcast of moving visual images,
19 LIVESTREAM, print, negative, slide, or other mechanically, electronically,
20 chemically, or digitally reproduced visual material that depicts a child

1 engaged in, participating in, observing, or being used for explicit sexual
2 conduct.

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

5 (b) Prepares, arranges for, publishes, ~~including but not limited to~~
6 ~~publishing through digital or electronic means~~, produces, promotes,
7 makes, sells, finances, offers, exhibits, advertises, deals in, ~~or~~ distributes,
8 TRANSPORTS OR TRANSFERS TO ANOTHER PERSON, OR MAKES ACCESSIBLE
9 TO ANOTHER PERSON, including, but not limited to, ~~distributing~~ through
10 digital or electronic means, any sexually exploitative material; or

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

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

27 (5) (b) Sexual exploitation of a child ~~by possession of sexually~~

1 ~~exploitative material~~ pursuant to ~~paragraph (b.5) of subsection (3)~~
2 SUBSECTION (3)(b.5) of this section is a class 5 felony FOR EACH ITEM OF
3 SEXUALLY EXPLOITATIVE MATERIAL ACCESSED WITH INTENT TO VIEW,
4 VIEWED, POSSESSED, OR CONTROLLED; except that said offense is a class
5 4 felony if:

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

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

11 (c) A PERSON WHO COMMITS SEXUAL EXPLOITATION OF A CHILD IS
12 SUBJECT TO SEPARATE PUNISHMENTS FOR EACH ITEM OF SEXUALLY
13 EXPLOITATIVE MATERIAL.

14 (5.5) SEXUAL EXPLOITATION OF A CHILD IS AN EXTRAORDINARY
15 RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING
16 RANGE SPECIFIED IN SECTION 18-1.3-401 (10) IF THE SEXUALLY
17 EXPLOITATIVE MATERIAL DEPICTS A CHILD WHO IS:

18 (a) UNDER TWELVE YEARS OF AGE;

19 (b) SUBJECTED TO THE ACTUAL APPLICATION OF PHYSICAL FORCE
20 OR VIOLENCE; OR

21 (c) SUBJECT TO SEXUAL INTERCOURSE, SEXUAL INTRUSION, OR
22 SADOMASOCHISM.

23 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-401, **amend**
24 (10)(a), (10)(b)(XVII), and (10)(b)(XVIII); and **add** (10)(b)(XIX) as
25 follows:

26 **18-1.3-401. Felonies classified - presumptive penalties.**

27 (10) (a) The general assembly hereby finds that certain crimes ~~which~~

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

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

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

16 (XVIII) Assault in the second degree, as described in section
17 18-3-203 (1)(i); AND

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

20 **SECTION 3.** In Colorado Revised Statutes, 18-21-103, **amend**
21 (4); and **add** (3.3), (3.5), and (3.7) as follows:

22 **18-21-103. Source of revenues - allocation of money - sex**
23 **offender surcharge fund - sexual exploitation of children surcharge**
24 **fund - creation.** (3.3) (a) ON AND AFTER JANUARY 1, 2022, EACH PERSON
25 WHO IS CONVICTED OF OR RECEIVES A DEFERRED SENTENCE PURSUANT TO
26 SECTION 18-1.3-102 FOR SEXUAL EXPLOITATION OF A CHILD, AS
27 DESCRIBED IN SECTION 18-6-403, IS REQUIRED TO PAY A SEXUAL

1 EXPLOITATION OF CHILDREN SURCHARGE IN ADDITION TO THE SEX
2 OFFENDER SURCHARGE REQUIRED PURSUANT TO SUBSECTION (1) OF THIS
3 SECTION TO THE CLERK OF THE COURT WHERE THE CONVICTION OCCURS OR
4 THE DEFERRED SENTENCE IS ENTERED. THE AMOUNT OF THE ADDITIONAL
5 SURCHARGE IS, BASED ON THE HIGHEST PENALTY LEVEL AMONG THE
6 CRIMES OF CONVICTION OR DEFERRED SENTENCE IN THE CASE:

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

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

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

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

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

20 (3.5) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE
21 REQUIRED BY SUBSECTION (3.3) OF THIS SECTION AS FOLLOWS:

22 (a) THE CLERK OF THE COURT SHALL RETAIN FIVE PERCENT FOR
23 ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (3.5).
24 THE CLERK OF THE COURT SHALL TRANSMIT THE AMOUNT RETAINED
25 PURSUANT TO THIS SUBSECTION (3.5)(a) TO THE STATE TREASURER, WHO
26 SHALL CREDIT THE AMOUNT TO THE GENERAL FUND. THE AMOUNT IS
27 SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE COSTS

1 OF SUCH ADMINISTRATION.

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

6 (3.7) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
7 SEXUAL EXPLOITATION OF CHILDREN SURCHARGE FUND, REFERRED TO IN
8 THIS SUBSECTION (3.7) AS THE "FUND", THAT CONSISTS OF MONEY
9 RECEIVED BY THE STATE TREASURER PURSUANT TO SUBSECTION (3.5) OF
10 THIS SECTION. THE MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED
11 TO THE COLORADO BUREAU OF INVESTIGATION IN THE DEPARTMENT OF
12 PUBLIC SAFETY TO ENHANCE THE EFFECTIVE INVESTIGATION AND
13 PROSECUTION OF COMPUTER-FACILITATED SEXUAL EXPLOITATION OF
14 CHILDREN PURSUANT TO SECTION 24-33.5-430.

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

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

1 financially unable to pay.

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

4 **24-33.5-430. Enhance effective investigation and prosecution**
5 **of computer-facilitated sexual exploitation of children - rules.** (1) THE
6 BUREAU SHALL DEVELOP AND ACQUIRE, AND MAY ASSIST OTHER LAW
7 ENFORCEMENT AGENCIES WITH DEVELOPING AND ACQUIRING, NECESSARY
8 TECHNOLOGICAL OR EXPERT RESOURCES TO INVESTIGATE AND PROSECUTE
9 COMPUTER-FACILITATED CRIMES OF SEXUAL EXPLOITATION OF A CHILD AS
10 DESCRIBED IN SECTION 18-6-403.

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

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

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

26 **SECTION 5. Appropriation.** For the 2021-22 state fiscal year,
27 \$1,894 is appropriated to the judicial department. This appropriation is

1 from the general fund. To implement this act, the department may use this
2 appropriation for trial court programs. █

3 **SECTION 6. Act subject to petition - effective date -**
4 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
5 the expiration of the ninety-day period after final adjournment of the
6 general assembly; except that, if a referendum petition is filed pursuant
7 to section 1 (3) of article V of the state constitution against this act or an
8 item, section, or part of this act within such period, then the act, item,
9 section, or part will not take effect unless approved by the people at the
10 general election to be held in November 2022 and, in such case, will take
11 effect on the date of the official declaration of the vote thereon by the
12 governor.

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