

CHAPTER 290

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 03-1191

BY REPRESENTATIVE(S) Clapp, Berry, Boyd, Brophy, Carroll, Cloer, Coleman, Crane, Frangas, Fritz, Hefley, Hoppe, Jahn, Lundberg, May M., McFadyen, Merrifield, Miller, Mitchell, Paccione, Rhodes, Romanoff, Rose, Schultheis, Smith, Spradley, Stafford, Stengel, Veiga, Wiens, and Williams S.;

also SENATOR(S) Jones, Anderson, Andrews, Arnold, Cairns, Chlouber, Evans, Gordon, Groff, Grossman, Hagedorn, Johnson S., Kester, Lamborn, May R., Nichol, Tapia, Taylor, and Teck.

AN ACT

CONCERNING THE PROHIBITION OF COMPUTER DISSEMINATION OF INDECENT MATERIAL TO CHILDREN.

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

SECTION 1. Article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 10
LIABILITY FOR COMPUTER DISSEMINATION
OF INDECENT MATERIAL TO CHILDREN

13-21-1001. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CHILD" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

(2) "SEXUAL CONTACT", "SEXUAL INTRUSION", AND "SEXUAL PENETRATION" SHALL HAVE THE SAME MEANINGS AS SET FORTH IN SECTION 18-3-401 (4), (5), AND (6), C.R.S., RESPECTIVELY.

13-21-1002. Computer dissemination of indecent material to a child - prohibition. (1) A PERSON COMMITS COMPUTER DISSEMINATION OF INDECENT MATERIAL TO A CHILD WHEN:

(a) KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN WHOLE OR IN PART, DEPICTS ACTUAL OR SIMULATED NUDITY, OR SEXUAL CONDUCT,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AS DEFINED IN SECTION 19-1-103 (97), C.R.S., THE PERSON WILLFULLY USES A COMPUTER, COMPUTER NETWORK, OR COMPUTER SYSTEM ALLOWING THE INPUT, OUTPUT, EXAMINATION, OR TRANSFER OF COMPUTER DATA OR COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER, TO INITIATE OR ENGAGE IN SUCH COMMUNICATION WITH A PERSON HE OR SHE BELIEVES TO BE A CHILD; AND

(b) BY MEANS OF SUCH COMMUNICATION THE PERSON IMPORTUNES, INVITES, ENTICES, OR INDUCES A PERSON HE OR SHE BELIEVES TO BE A CHILD TO ENGAGE IN SEXUAL CONTACT, SEXUAL INTRUSION, OR SEXUAL PENETRATION WITH THE PERSON, OR TO ENGAGE IN A SEXUAL PERFORMANCE OR SEXUAL CONDUCT, AS DEFINED IN SECTION 19-1-103 (97), C.R.S., FOR THE PERSON'S BENEFIT.

(2) COMPUTER DISSEMINATION OF INDECENT MATERIAL TO A CHILD IS PROHIBITED. A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY AS PROVIDED IN SECTION 13-21-1003.

(3) IT SHALL NOT BE AN AFFIRMATIVE DEFENSE IN A CIVIL ACTION BROUGHT UNDER THIS PART 10 THAT THE PERSON THE DEFENDANT BELIEVED TO BE A CHILD IN FACT WAS NOT A CHILD.

13-21-1003. Civil penalty - action for recovery - distribution of proceeds - attorney fees. (1) A PERSON WHO IS FOUND IN A CIVIL ACTION BROUGHT UNDER THIS PART 10 TO HAVE COMMITTED COMPUTER DISSEMINATION OF INDECENT MATERIAL TO A CHILD IN VIOLATION OF SECTION 13-21-1002 SHALL FORFEIT AND PAY A CIVIL PENALTY ESTABLISHED PURSUANT TO VERDICT OR JUDGMENT.

(2) (a) AN ACTION TO RECOVER A CIVIL PENALTY UNDER THIS PART 10 MAY BE BROUGHT BY ANY PRIVATE INDIVIDUAL. VENUE FOR THE ACTION SHALL BE PROPER IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE DEFENDANT RESIDES OR MAINTAINS A PRINCIPAL PLACE OF BUSINESS IN THIS STATE, OR IN THE COUNTY IN WHICH THE DEFENDANT SENT THE COMMUNICATION, OR IN THE COUNTY IN WHICH THE RECIPIENT RECEIVED THE COMMUNICATION.

(b) THE ACTION SHALL BE BROUGHT IN THE NAME OF THE PERSON SEEKING RECOVERY OF THE CIVIL PENALTY.

(3) IN DETERMINING THE LIABILITY FOR OR THE AMOUNT OF A CIVIL PENALTY PURSUANT TO THIS SECTION, THE COURT OR JURY SHALL CONSIDER THE NATURE, CIRCUMSTANCES, AND GRAVITY OF THE ALLEGED VIOLATION AND THE ALLEGED VIOLATOR'S DEGREE OF CULPABILITY, HISTORY OF PRIOR VIOLATIONS, CRIMINAL CONVICTIONS, AND LEVEL OF COOPERATION WITH ANY INVESTIGATION OF THE ALLEGED VIOLATION.

(4) NO ACTION MAY BE BROUGHT OR MAINTAINED PURSUANT TO THIS SECTION WITHOUT THE WRITTEN CONSENT OF THE CHILD 'S PARENT OR GUARDIAN, WHICH CONSENT MAY BE WITHDRAWN AT ANY TIME.

(5) A CHILD ALLEGED TO BE A VICTIM OF COMPUTER DISSEMINATION OF INDECENT MATERIAL TO A CHILD, OR HIS OR HER PARENT OR GUARDIAN, SHALL HAVE THE RIGHT TO INTERVENE AND ASSUME CONTROL OF ANY CASE BROUGHT PURSUANT TO THIS SECTION.

(6) IN A CASE IN WHICH THE COURT AWARDS A CIVIL PENALTY PURSUANT TO THIS SECTION, THE COURT SHALL ORDER THE DISTRIBUTION AS FOLLOWS:

(a) IN A CASE BROUGHT BY A CHILD OR OTHER RECIPIENT OF INDECENT MATERIAL AS DESCRIBED IN SUBSECTION 13-21-1002 (1), ONE HUNDRED PERCENT TO THE PLAINTIFF;

(b) IN A CASE BROUGHT BY A PLAINTIFF OTHER THAN A CHILD OR RECIPIENT OF INDECENT MATERIAL, FORTY PERCENT TO THE PLAINTIFF AND SIXTY PERCENT TO THE CHILD OR RECIPIENT;

(c) IN A CASE INITIATED BY A PLAINTIFF AND IN WHICH THE CHILD'S PARENT OR GUARDIAN HAS INTERVENED, EIGHTY PERCENT TO THE CHILD AND TWENTY PERCENT TO THE PLAINTIFF.

(7) IF A PLAINTIFF IS AWARDED A DISTRIBUTION OF THE CIVIL PENALTY PURSUANT TO SUBSECTION (6) OF THIS SECTION, THE COURT SHALL AWARD JUDGMENT TO THE PLAINTIFF FOR THE PLAINTIFF'S REASONABLE ATTORNEY FEES AND COSTS.

(8) NOTHING IN THIS PART 10 SHALL BE CONSTRUED TO LIMIT OR ABROGATE:

(a) A CRIMINAL ACTION BROUGHT TO PROSECUTE AN ACT DESCRIBED IN THE CRIMINAL LAWS OF THIS STATE;

(b) ANY RIGHT OR CAUSE OF ACTION THAT A PERSON, ON THE PERSON'S OWN BEHALF OR ON BEHALF OF ANOTHER, MAY HAVE;

(c) THE ABILITY TO INCLUDE IN A CIVIL ACTION BROUGHT UNDER THIS PART 10 ADDITIONAL CLAIMS THAT ARE OTHERWISE PERMITTED BY LAW TO BE BROUGHT IN A CIVIL ACTION.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to causes of action arising on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 2003