

CHAPTER 368

CRIMINAL LAW AND PROCEDURE

SENATE BILL 08-238

BY SENATOR(S) Bacon;
also REPRESENTATIVE(S) King, Buescher, Green, and Stafford.

AN ACT

CONCERNING A PROHIBITION ON THE REPRODUCTION OF SEXUALLY EXPLOITATIVE MATERIAL IN A CRIMINAL CASE.

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

SECTION 1. Article 9 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 6
PROHIBITION ON REPRODUCTION OF
SEXUALLY EXPLOITATIVE MATERIAL**

16-9-601. Prohibition on reproduction of sexually exploitative material.

(1) FOR PURPOSES OF THIS PART 6, "SEXUALLY EXPLOITATIVE MATERIAL" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 18-6-403 (2) (j), C.R.S.

(2) FOR THE REASONS STATED IN SECTION 18-6-403 (1) AND (1.5), C.R.S., REGARDING THE HARM AND VICTIMIZATION RELATED TO SEXUALLY EXPLOITATIVE MATERIAL, IN A CRIMINAL PROCEEDING, ALL SEXUALLY EXPLOITATIVE MATERIAL SHALL REMAIN IN THE CARE, CUSTODY, AND CONTROL OF EITHER THE PROSECUTION, A LAW ENFORCEMENT AGENCY, OR THE COURT.

(3) (a) NOTWITHSTANDING ANY PROVISION OF THE COLORADO RULES OF CRIMINAL PROCEDURE, A COURT SHALL DENY A REQUEST BY THE DEFENDANT IN A CRIMINAL PROCEEDING TO COPY, PHOTOGRAPH, DUPLICATE, OR OTHERWISE REPRODUCE SEXUALLY EXPLOITATIVE MATERIAL, SO LONG AS THE PROSECUTING ATTORNEY MAKES THE MATERIAL REASONABLY AVAILABLE TO THE DEFENDANT; EXCEPT THAT IF, AFTER A HEARING, THE DEFENDANT SHOWS THAT FOR REASONS SPECIFIC TO THE CASE, THE ACCESS PROVIDED BY THE PROSECUTING ATTORNEY DOES

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

NOT PROVIDE AMPLE OPPORTUNITY FOR INSPECTION, VIEWING, AND EXAMINATION BY A DEFENSE EXPERT, THE COURT MAY ORDER REPRODUCTION OF THE MATERIAL WITH AN APPROPRIATE PROTECTIVE ORDER.

(b) FOR PURPOSES OF PARAGRAPH (a) OF THIS SUBSECTION (3), SEXUALLY EXPLOITATIVE MATERIAL SHALL BE DEEMED TO BE REASONABLY AVAILABLE TO THE DEFENDANT IF THE PROSECUTING ATTORNEY PROVIDES AMPLE OPPORTUNITY FOR INSPECTION, VIEWING, AND EXAMINATION, AT THE PROSECUTOR'S OFFICE OR A LAW ENFORCEMENT FACILITY, OF THE PROPERTY OR MATERIAL BY THE DEFENDANT, HIS OR HER ATTORNEY, AND ANY INDIVIDUAL THE DEFENDANT MAY SEEK TO QUALIFY TO FURNISH EXPERT TESTIMONY AT TRIAL.

SECTION 2. Effective - applicability. This act shall take effect upon passage and shall apply to all cases pending or filed on or after the effective date of this act.

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: June 2, 2008