

## CHAPTER 343

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 09-1163**

BY REPRESENTATIVE(S) Gardner C., Baumgardner, Bradford, King S., Looper, May, McNulty, Murray, Scanlan, Summers, Tipton, Todd, Vaad, Casso, Court, Frangas, Gagliardi, Gardner B., Gerou, Green, Kefalas, Lambert, Marostica, Nikkel, Primavera, Priola, Roberts, Schafer S., Stephens, Swalm, Vigil, Waller, Apuan, Kerr A., Kerr J., Labuda, Massey, Pace, Rice; also SENATOR(S) Romer, Spence, Brophy, Harvey, Gibbs, Groff, Isgar, Kester, King K., Kopp, Mitchell, Newell, Penry, Renfroe, Scheffel, Schultheis, Tochtrop, White, Williams, Cadman, Heath, Hodge, Hudak, Schwartz.

**AN ACT****CONCERNING CRIMES IN WHICH THE VICTIM IS A CHILD.**

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

**SECTION 1.** 18-3-405.4, Colorado Revised Statutes, is amended to read:

**18-3-405.4. Internet sexual exploitation of a child.** (1) ~~A person~~ AN ACTOR commits internet sexual exploitation of a child if ~~a person, who is at least four years older than a child who is under fifteen years of age,~~ THE ACTOR knowingly importunes, invites, or entices ~~the child~~ through communication via a computer network or system A PERSON WHOM THE ACTOR KNOWS OR BELIEVES TO BE UNDER FIFTEEN YEARS OF AGE AND AT LEAST FOUR YEARS YOUNGER THAN THE ACTOR, to:

(a) Expose or touch the ~~child's~~ PERSON'S own or another person's intimate parts while communicating with the ~~person~~ ACTOR via a computer network or system; or

(b) Observe the ~~person's~~ ACTOR'S intimate parts ~~while communicating with the person~~ via a computer network or system.

(2) ~~It shall not be an affirmative defense to this section that the child was actually a law enforcement officer posing as a child under fifteen years of age.~~

(3) Internet sexual exploitation of a child is a class 4 felony.

**SECTION 2.** 18-6-401 (7) (a) (V), (7) (a) (VI), (7) (b), and (7) (e), Colorado

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

Revised Statutes, are amended to read:

**18-6-401. Child abuse.** (7) (a) Where death or injury results, the following shall apply:

(V) When a person acts knowingly or recklessly and the child abuse results in any injury other than serious bodily injury, it is a class 1 misdemeanor; except that, if ~~the underlying factual basis of the child abuse, which would constitute a misdemeanor, has been found by the trier of fact to include one of the acts~~ IT IS COMMITTED UNDER THE CIRCUMSTANCES described in paragraph (e) of this subsection (7), ~~subsequent to a prior conviction under this section;~~ then it is a class 5 felony.

(VI) When a person acts with criminal negligence and the child abuse results in any injury other than serious bodily injury to the child, it is a class 2 misdemeanor; except that, if ~~the underlying factual basis of the child abuse, which would constitute a misdemeanor, has been found by the trier of fact to include one of the acts~~ IT IS COMMITTED UNDER THE CIRCUMSTANCES described in paragraph (e) of this subsection (7), ~~subsequent to a prior conviction under this section;~~ then it is a class 5 felony.

(b) Where no death or injury results, the following shall apply:

(I) An act of child abuse when a person acts knowingly or recklessly is a class 2 misdemeanor; except that, if ~~the underlying factual basis of the child abuse, which would constitute a misdemeanor, has been found by the trier of fact to include one of the acts~~ IT IS COMMITTED UNDER THE CIRCUMSTANCES described in paragraph (e) of this subsection (7), ~~subsequent to a prior conviction under this section;~~ then it is a class 5 felony.

(II) An act of child abuse when a person acts with criminal negligence is a class 3 misdemeanor; except that, if ~~the underlying factual basis of the child abuse, which would constitute a misdemeanor, has been found by the trier of fact to include one of the acts~~ IT IS COMMITTED UNDER THE CIRCUMSTANCES described in paragraph (e) of this subsection (7), ~~subsequent to a prior conviction under this section;~~ then it is a class 5 felony.

(e) ~~If~~ A person WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS SECTION OR OF AN OFFENSE IN ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES THAT WOULD CONSTITUTE CHILD ABUSE IF COMMITTED IN THIS STATE AND WHO commits child abuse ~~by engaging in one of the following acts, then such person shall be punished for a second or subsequent conviction as provided in subparagraph (V) or (VI) of paragraph (a) of this subsection (7) or as provided in subparagraph (I) or (II) of paragraph (b) of this subsection (7)~~ COMMITS A CLASS 5 FELONY IF THE TRIER OF FACT FINDS THAT THE NEW OFFENSE INVOLVED ANY OF THE FOLLOWING ACTS:

(I) THE DEFENDANT, WHO WAS IN A POSITION OF TRUST, AS DESCRIBED IN SECTION 18-3-401 (3.5), IN RELATION TO THE CHILD, PARTICIPATED IN a continued pattern of conduct that ~~results in~~ RESULTED IN THE CHILD'S malnourishment or ~~lack of~~ FAILED TO ENSURE THE CHILD'S ACCESS TO proper medical care; ~~of the child;~~

(II) THE DEFENDANT PARTICIPATED IN a continued pattern of cruel punishment or unreasonable isolation or confinement of the child;

(III) THE DEFENDANT MADE repeated threats ~~by such person~~, of harm or death to the child or to a significant person in the child's life, which threats ~~are~~ WERE made in the presence of the child;

(IV) THE DEFENDANT COMMITTED a continued pattern of acts of domestic violence, ~~committed by such person~~, as that term is defined in section 18-6-800.3, in the presence of the child; or

(V) THE DEFENDANT PARTICIPATED IN a continued pattern of extreme deprivation of hygienic or sanitary conditions in the child's daily living environment.

**SECTION 3.** 18-6-403 (2) (j) and (5), Colorado Revised Statutes, are amended, and the said 18-6-403 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**18-6-403. Sexual exploitation of children.** (2) As used in this section, unless the context otherwise requires:

(j) "Sexually exploitative material" means any photograph, motion picture, VIDEO, video tape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(k) "VIDEO", "VIDEO TAPE", OR "MOTION PICTURE" MEANS ANY MATERIAL THAT DEPICTS A MOVING IMAGE OF A CHILD ENGAGED IN, PARTICIPATING IN, OBSERVING, OR BEING USED FOR EXPLICIT SEXUAL CONDUCT.

(5) (a) ~~The~~ EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (5), sexual exploitation of a child is a class 3 felony. ~~except that sexual exploitation of a child by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony, but a second or subsequent offense by such possession or a first or subsequent offense of possession of more than twenty different items qualifying as sexually exploitative material is a class 4 felony.~~

(b) SEXUAL EXPLOITATION OF A CHILD BY POSSESSION OF SEXUALLY EXPLOITATIVE MATERIAL PURSUANT TO PARAGRAPH (b.5) OF SUBSECTION (3) OF THIS SECTION IS A CLASS 6 FELONY; EXCEPT THAT SAID OFFENSE IS A CLASS 4 FELONY IF:

(I) IT IS A SECOND OR SUBSEQUENT OFFENSE; OR

(II) THE POSSESSION IS OF A VIDEO, VIDEO TAPE, OR MOTION PICTURE OR MORE THAN TWENTY DIFFERENT ITEMS QUALIFYING AS SEXUALLY EXPLOITATIVE MATERIAL.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2009, and shall apply to offenses committed on or after said date.

**SECTION 5. 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 1, 2009