

## CHAPTER 274

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 15-1341**

BY REPRESENTATIVE(S) Conti and Fields, Carver, Danielson, Keyser, Landgraf, Lawrence, Lontine, Pabon, Priola, Roupe, Sias, Tate, Thurlow, Van Winkle, Vigil, Wilson, Windholz, Becker K., Brown, Duran, Ginal, Kraft-Tharp, McCann, Melton, Mitsch Bush, Nordberg, Pettersen, Primavera, Rosenthal, Salazar, Tyler, Williams, Winter; also SENATOR(S) Cooke and Johnston, Crowder, Jahn, Kefalas, Kerr, Martinez Humenik, Neville T., Scott, Todd, Woods, Cadman.

**AN ACT**

**CONCERNING INCREASING THE PENALTY FROM A CLASS 6 FELONY TO A CLASS 5 FELONY FOR SEXUAL EXPLOITATION OF A CHILD BY POSSESSION OF SEXUALLY EXPLOITATIVE MATERIAL, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

**SECTION 1.** In Colorado Revised Statutes, **amend** 18-6-403 as follows:

**18-6-403. Sexual exploitation of a child.** (1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a child; that each time such material is shown or viewed, the child is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it

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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.*

is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(a) "Child" means a person who is less than eighteen years of age.

(b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(I) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(II) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any photograph, motion picture, video, ~~video tape~~ RECORDING OR BROADCAST OF MOVING VISUAL IMAGES, 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~~" "RECORDING OR BROADCAST", 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.

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

(a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(b.5) Possesses or controls any sexually exploitative material for any purpose; except that this paragraph (b.5) does not apply to peace officers or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

(4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(5) (a) Except as provided in paragraph (b) of this subsection (5), sexual exploitation of a child is a class 3 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~~ CLASS 5 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~~ RECORDING OR BROADCAST OF MOVING VISUAL IMAGES, or motion picture or more than twenty different items qualifying as sexually exploitative material.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

**SECTION 2.** In Colorado Revised Statutes, **add** 17-18-119 as follows:

**17-18-119. Appropriation to comply with section 2-2-703 - HB 15-1341 - repeal.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO IMPLEMENT HOUSE BILL 15-1341, ENACTED IN 2015:

(a) FOR THE 2015-16 STATE FISCAL YEAR, ELEVEN THOUSAND THIRTY-FOUR DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(b) FOR THE 2016-17 STATE FISCAL YEAR, TWO HUNDRED SEVENTY-FIVE THOUSAND EIGHT HUNDRED FORTY-NINE DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(c) FOR THE 2017-18 STATE FISCAL YEAR, FOUR HUNDRED EIGHTY-SEVEN THOUSAND SEVEN HUNDRED ONE DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(d) FOR THE 2018-19 STATE FISCAL YEAR, FOUR HUNDRED EIGHTY-SEVEN THOUSAND SEVEN HUNDRED ONE DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(e) FOR THE 2019-20 STATE FISCAL YEAR, FOUR HUNDRED EIGHTY-SEVEN THOUSAND SEVEN HUNDRED ONE DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2020.

**SECTION 3. Effective date.** This act takes effect August 5, 2015.

**SECTION 4. 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 4, 2015