

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0243.01 Jacob Baus x2173

HOUSE BILL 20-1120

HOUSE SPONSORSHIP

Carver and Roberts,

SENATE SPONSORSHIP

Gardner and Fields,

House Committees

Judiciary
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENHANCING THE ENFORCEMENT OF CRIMES OF SEXUAL**
102 **EXPLOITATION OF A CHILD.**

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 defines possession for purposes of sexual exploitation of a child.

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, if the sexually

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.

exploitative material depicts a child who is:

- ! Under 12 years of age;
- ! Subjected to the actual application of physical force or violence; or
- ! Subject to sexual intercourse, sexual intrusion, or sadomasochism.

The bill creates the sexual exploitation of a child surcharge for any person who is convicted 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 fund the enhance the effective investigation and prosecution of computer-facilitated sexual exploitation of children grant program. The grant awards go to law enforcement agencies to assist with developing and acquiring necessary technological or 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) and (5.5)
4 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 [REDACTED]

12 [REDACTED]

13 (i.5) "SEXUAL INTRUSION" MEANS **AN** INTRUSION, HOWEVER
14 SLIGHT, BY AN OBJECT OR A PART OF A PERSON'S BODY, EXCEPT THE
15 MOUTH, TONGUE, OR PENIS, INTO THE GENITAL OR ANAL OPENING OF
16 ANOTHER PERSON'S BODY IF THAT SEXUAL INTRUSION CAN REASONABLY

1 BE CONSTRUED AS BEING FOR THE PURPOSE OF SEXUAL AROUSAL,
2 GRATIFICATION, OR ABUSE.

3 (j) "Sexually exploitative material" means any photograph, motion
4 picture, video, recording or broadcast of moving visual images,
5 LIVESTREAM, print, negative, slide, or other mechanically, electronically,
6 chemically, or digitally reproduced visual material that depicts a child
7 engaged in, participating in, observing, or being used for explicit sexual
8 conduct.

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

11 (b) Prepares, arranges for, publishes, ~~including but not limited to~~
12 ~~publishing through digital or electronic means~~, produces, promotes,
13 makes, sells, finances, offers, exhibits, advertises, deals in, ~~or~~ distributes,
14 TRANSPORTS OR TRANSFERS TO ANOTHER PERSON, OR MAKES ACCESSIBLE
15 TO ANOTHER PERSON, including, but not limited to, ~~distributing~~, through
16 digital or electronic means, any sexually exploitative material; or

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

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

1 performance, OR ACCESSES WITH INTENT TO VIEW OR VIEWS EXPLICIT
2 SEXUAL CONDUCT IN THE FORM OF A PERFORMANCE INVOLVING A CHILD
3 IF THE CONDUCT IN THE PERFORMANCE WAS CAUSED, INDUCED, ENTICED,
4 REQUESTED, DIRECTED, OR SPECIFIED BY THE VIEWER OR POTENTIAL
5 VIEWER.

6 (5) (b) Sexual exploitation of a child by possession of sexually
7 exploitative material pursuant to paragraph (b.5) of subsection (3)
8 SUBSECTION (3)(b.5) of this section is a class 5 felony; except that said
9 offense is a class 4 felony if:

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

11 (II) The possession is of a video, recording or broadcast of
12 moving visual images, or motion picture. ~~or more than twenty different~~
13 ~~items qualifying as sexually 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 increased by four years; for such crimes ~~which~~ THAT
6 constitute class 4 felonies, the maximum sentence in the presumptive
7 range shall be increased by two years; for such crimes ~~which~~ THAT
8 constitute class 5 felonies, the maximum sentence in the presumptive
9 range shall be increased by one year; for such crimes ~~which~~ THAT
10 constitute class 6 felonies, the maximum sentence in the presumptive
11 range shall be 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, 2021, EACH PERSON
25 WHO IS CONVICTED OF SEXUAL EXPLOITATION OF A CHILD AS DESCRIBED
26 IN SECTION 18-6-403, OR WHO RECEIVES A DEFERRED SENTENCE PURSUANT
27 TO SECTION 18-1.3-102, IS REQUIRED TO PAY A SEXUAL EXPLOITATION OF

1 CHILDREN SURCHARGE IN ADDITION TO THE SEX OFFENDER SURCHARGE
2 REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE CLERK
3 OF THE COURT WHERE THE CONVICTION OCCURS OR THE DEFERRED
4 SENTENCE IS ENTERED. THE AMOUNT OF THE ADDITIONAL SURCHARGE IS,
5 BASED ON THE MOST SERIOUS CRIME OF CONVICTION IN THE CASE:

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

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

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

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

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

19 (3.5) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE
20 REQUIRED BY SUBSECTION (3.3) OF THIS SECTION AS FOLLOWS:

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

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

5 (3.7) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
6 SEXUAL EXPLOITATION OF CHILDREN SURCHARGE FUND THAT CONSISTS OF
7 MONEY RECEIVED BY THE STATE TREASURER PURSUANT TO SUBSECTION
8 (3.5) OF THIS SECTION. THE MONEY IN THE FUND IS CONTINUOUSLY
9 APPROPRIATED TO THE COLORADO BUREAU OF INVESTIGATION IN THE
10 DEPARTMENT OF PUBLIC SAFETY TO ENHANCE THE EFFECTIVE
11 INVESTIGATION AND PROSECUTION OF COMPUTER-FACILITATED SEXUAL
12 EXPLOITATION OF CHILDREN PURSUANT TO SECTION 24-33.5-430.

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

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

27 **SECTION 4.** In Colorado Revised Statutes, **add** 24-33.5-430 as

1 follows:

2 **24-33.5-430. Enhance effective investigation and prosecution**
3 **of computer-facilitated sexual exploitation of children - fund.**

4 (1) (a) THE BUREAU SHALL DEVELOP AND ACQUIRE, AND MAY ASSIST
5 OTHER LAW ENFORCEMENT AGENCIES WITH DEVELOPING AND ACQUIRING,
6 NECESSARY TECHNOLOGICAL OR EXPERT RESOURCES TO INVESTIGATE AND
7 PROSECUTE COMPUTER-FACILITATED CRIMES OF SEXUAL EXPLOITATION OF
8 A CHILD AS DESCRIBED IN SECTION 18-6-403.

9 (b) THE BUREAU SHALL USE THE MONEY TO DEVELOP OR ACQUIRE,
10 OR TO ASSIST OTHER LAW ENFORCEMENT AGENCIES WITH DEVELOPING OR
11 ACQUIRING, NECESSARY TECHNOLOGICAL OR EXPERT RESOURCES TO
12 INVESTIGATE AND PROSECUTE COMPUTER-FACILITATED CRIMES OF SEXUAL
13 EXPLOITATION OF A CHILD AS DESCRIBED IN SECTION 18-6-403.

14 [REDACTED]

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

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

1 (4) THE BUREAU MAY PROMULGATE SUCH RULES AS MAY BE
2 NECESSARY TO PERFORM THE FUNCTIONS OF THIS SECTION.

3 **SECTION 5. Potential appropriation.** Pursuant to section
4 2-2-703, C.R.S., any bill that results in a net increase in periods of
5 imprisonment in state correctional facilities must include an appropriation
6 of money that is sufficient to cover any increased capital construction, any
7 operational costs, and increased parole costs that are the result of the bill
8 for the department of corrections in each of the first five years following
9 the effective date of the bill. Because this act may increase periods of
10 imprisonment, this act may require a five-year appropriation.

11 **SECTION 6. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly (August 5, 2020, if adjournment sine die is on May 6,
15 2020); except that, if a referendum petition is filed pursuant to section 1
16 (3) of article V of the state constitution against this act or an item, section,
17 or part of this act within such period, then the act, item, section, or part
18 will not take effect unless approved by the people at the general election
19 to be held in November 2020 and, in such case, will take effect on the
20 date of the official declaration of the vote thereon by the governor.

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