

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

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

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), (3)(b), (3)(b.5), and (3)(d); and **add** (2)(f.5), (2)(i.5), and (5.5) as
4 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 (f.5) "POSSESSION" MEANS THAT A PERSON HAS EXERCISED
12 CONTROL OR AUTHORITY OVER AN ITEM OR PROPERTY, INCLUDING BUT
13 NOT LIMITED TO DIGITAL MATERIALS. "POSSESSION" MAY BE EITHER
14 EXCLUSIVE OR JOINT WITH ANOTHER PERSON IF THE PERSON EXERCISED
15 CONTROL OR AUTHORITY OVER THE ITEM OR PROPERTY. "POSSESSION"
16 INCLUDES THE ABSENCE OF DIRECT PHYSICAL CONTROL OR AUTHORITY

1 OVER AN ITEM OR PROPERTY IF THE PERSON HAS THE POWER TO EXERCISE
2 CONSTRUCTIVE CONTROL OR AUTHORITY OVER THE ITEM OR PROPERTY,
3 INCLUDING THROUGH ANOTHER PERSON. "POSSESSION" INCLUDES BUT IS
4 NOT LIMITED TO THE POWER TO ACCESS, TRANSMIT, MODIFY, SAVE, COPY,
5 PRINT, OR OTHERWISE CONTROL DIGITAL MATERIAL.

6 (i.5) "SEXUAL INTRUSION" MEANS A REAL OR SIMULATED
7 INTRUSION, HOWEVER SLIGHT, BY AN OBJECT OR A PART OF A PERSON'S
8 BODY, EXCEPT THE MOUTH, TONGUE, OR PENIS, INTO THE GENITAL OR
9 ANAL OPENING OF ANOTHER PERSON'S BODY IF THAT SEXUAL INTRUSION
10 CAN REASONABLY BE CONSTRUED AS BEING FOR THE PURPOSE OF SEXUAL
11 AROUSAL, GRATIFICATION, OR ABUSE.

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

14 (b) Prepares, arranges for, publishes, ~~including but not limited to~~
15 ~~publishing through digital or electronic means~~, produces, promotes,
16 makes, sells, finances, offers, exhibits, advertises, deals in, ~~or~~ distributes,
17 TRANSPORTS, TRANSFERS, OR RECEIVES, including, but not limited to,
18 ~~distributing~~, through digital or electronic means, any sexually exploitative
19 material; or

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

1 (d) Causes, induces, entices, or permits a child to engage in, or be
2 used for, any explicit sexual conduct for the purpose of producing a
3 performance, OR ACCESSES OR VIEWS EXPLICIT SEXUAL CONDUCT IN THE
4 FORM OF A PERFORMANCE INVOLVING A CHILD.

5 (5.5) SEXUAL EXPLOITATION OF A CHILD IS AN EXTRAORDINARY
6 RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING
7 RANGE SPECIFIED IN SECTION 18-1.3-401 (10) IF THE SEXUALLY
8 EXPLOITATIVE MATERIAL DEPICTS A CHILD WHO IS:

9 (a) UNDER TWELVE YEARS OF AGE;

10 (b) SUBJECTED TO THE ACTUAL APPLICATION OF PHYSICAL FORCE
11 OR VIOLENCE; OR

12 (c) SUBJECT TO SEXUAL INTERCOURSE, SEXUAL INTRUSION, OR
13 SADOMASOCHISM.

14 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-401, **amend**
15 (10)(a), (10)(b)(XVII), and (10)(b)(XVIII); and **add** (10)(b)(XIX) as
16 follows:

17 **18-1.3-401. Felonies classified - presumptive penalties.**

18 (10) (a) The general assembly hereby finds that certain crimes ~~which~~
19 THAT are listed in ~~paragraph (b) of this subsection (10)~~ SUBSECTION
20 (10)(b) OF THIS SECTION present an extraordinary risk of harm to society
21 and therefore, in the interest of public safety, for such crimes ~~which~~ THAT
22 constitute class 3 felonies, the maximum sentence in the presumptive
23 range shall be increased by four years; for such crimes ~~which~~ THAT
24 constitute class 4 felonies, the maximum sentence in the presumptive
25 range shall be increased by two years; for such crimes ~~which~~ THAT
26 constitute class 5 felonies, the maximum sentence in the presumptive
27 range shall be increased by one year; for such crimes ~~which~~ THAT

1 constitute class 6 felonies, the maximum sentence in the presumptive
2 range shall be increased by six months.

3 (b) Crimes that present an extraordinary risk of harm to society
4 shall include the following:

5 (XVII) A class 3 felony offense of human trafficking for sexual
6 servitude, as described in section 18-3-504; ~~and~~

7 (XVIII) Assault in the second degree, as described in section
8 18-3-203 (1)(i); AND

9 (XIX) SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN
10 SECTION 18-6-403 (5.5).

11 **SECTION 3.** In Colorado Revised Statutes, 18-21-103, **amend**
12 (4); and **add** (3.3), (3.5), and (3.7) as follows:

13 **18-21-103. Source of revenues - allocation of money - sex**
14 **offender surcharge fund - sexual exploitation of children surcharge**
15 **fund - creation.** (3.3) (a) ON AND AFTER JANUARY 1, 2021, EACH PERSON
16 WHO IS CONVICTED OF SEXUAL EXPLOITATION OF A CHILD AS DESCRIBED
17 IN SECTION 18-6-403, OR WHO RECEIVES A DEFERRED SENTENCE PURSUANT
18 TO SECTION 18-1.3-102, IS REQUIRED TO PAY A SEXUAL EXPLOITATION OF
19 CHILDREN SURCHARGE IN ADDITION TO THE SEX OFFENDER SURCHARGE
20 REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE CLERK
21 OF THE COURT WHERE THE CONVICTION OCCURS OR THE DEFERRED
22 SENTENCE IS ENTERED. THE AMOUNT OF THE ADDITIONAL SURCHARGE IS:

23 (I) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED,
24 TWO THOUSAND DOLLARS;

25 (II) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED,
26 ONE THOUSAND DOLLARS;

27 (III) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS

1 CONVICTED, FIVE HUNDRED DOLLARS; AND

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

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

9 (3.5) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE
10 REQUIRED BY SUBSECTION (3.3) OF THIS SECTION AS FOLLOWS:

11 (a) THE CLERK OF THE COURT SHALL RETAIN FIVE PERCENT FOR
12 ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (3.5).
13 THE CLERK OF THE COURT SHALL TRANSMIT THE AMOUNT RETAINED
14 PURSUANT TO THIS SUBSECTION (3.5)(a) TO THE STATE TREASURER, WHO
15 SHALL CREDIT THE AMOUNT TO THE GENERAL FUND, AND THE AMOUNT IS
16 SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE COSTS
17 OF SUCH ADMINISTRATION.

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

22 (3.7) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
23 SEXUAL EXPLOITATION OF CHILDREN SURCHARGE FUND THAT CONSISTS OF
24 MONEY RECEIVED BY THE STATE TREASURER PURSUANT TO SUBSECTION
25 (3.5) OF THIS SECTION. THE MONEY IN THE FUND IS CONTINUOUSLY
26 APPROPRIATED TO THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT
27 OF PUBLIC SAFETY FOR THE CREATION AND ADMINISTRATION OF A GRANT

1 PROGRAM TO ENHANCE THE EFFECTIVE INVESTIGATION AND PROSECUTION
2 OF COMPUTER-FACILITATED SEXUAL EXPLOITATION OF CHILDREN
3 PURSUANT TO SECTION 24-33.5-524.

4 (b) THE STATE TREASURER MAY INVEST ANY MONEY IN THE FUND
5 NOT EXPENDED FOR THE PURPOSE OF THIS SECTION AS PROVIDED BY LAW.
6 THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED
7 FROM THE INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY MONEY
8 NOT APPROPRIATED BY THE GENERAL ASSEMBLY AND ALL UNEXPENDED
9 AND UNENCUMBERED MONEY AT THE END OF THE FISCAL YEAR REMAIN IN
10 THE FUND AND MUST NOT BE TRANSFERRED OR REVERT TO THE GENERAL
11 FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

12 (4) The court may waive all or any portion of ~~the~~ A surcharge
13 required by this section if the court finds that a person ~~convicted of a sex~~
14 ~~offense~~ is indigent or financially unable to pay all or any portion of such
15 surcharge. The court shall waive only that portion of ~~the~~ A surcharge
16 ~~which~~ THAT the court has found that the person ~~convicted of a sex offense~~
17 is financially unable to pay.

18 **SECTION 4.** In Colorado Revised Statutes, **add** 24-33.5-524 as
19 follows:

20 **24-33.5-524. Enhance effective investigation and prosecution**
21 **of computer-facilitated sexual exploitation of children - grant**
22 **program - creation - fund.** (1) (a) THERE IS CREATED IN THE DIVISION
23 THE ENHANCE THE EFFECTIVE INVESTIGATION AND PROSECUTION OF
24 COMPUTER-FACILITATED SEXUAL EXPLOITATION OF CHILDREN GRANT
25 PROGRAM, REFERRED TO IN THIS SECTION AS THE "GRANT PROGRAM", TO
26 AWARD GRANTS TO LAW ENFORCEMENT AGENCIES TO ASSIST WITH
27 DEVELOPING AND ACQUIRING NECESSARY TECHNOLOGICAL OR EXPERT

1 RESOURCES TO INVESTIGATE AND PROSECUTE COMPUTER-FACILITATED
2 CRIMES OF SEXUAL EXPLOITATION OF A CHILD AS DESCRIBED IN SECTION
3 18-6-403.

4 (b) GRANT RECIPIENTS SHALL USE THE MONEY RECEIVED THROUGH
5 THE GRANT PROGRAM FOR ANY EXPENSE RELATED TO DEVELOPING OR
6 ACQUIRING NECESSARY TECHNOLOGICAL OR EXPERT RESOURCES TO
7 INVESTIGATE AND PROSECUTE COMPUTER-FACILITATED CRIMES OF SEXUAL
8 EXPLOITATION OF A CHILD AS DESCRIBED IN SECTION 18-6-403.

9 (c) THE DIVISION SHALL:

10 (I) SOLICIT AND REVIEW APPLICATIONS FOR GRANTS FROM LAW
11 ENFORCEMENT AGENCIES; AND

12 (II) SELECT LAW ENFORCEMENT AGENCIES TO RECEIVE GRANTS,
13 AND DETERMINE THE AMOUNT OF EACH GRANT.

14 (d) IN AWARDING GRANTS, THE DIVISION SHALL GIVE PRIORITY TO
15 A LAW ENFORCEMENT AGENCY THAT DEMONSTRATES A LACK OF
16 TECHNOLOGICAL OR EXPERT RESOURCES NECESSARY TO EFFECTIVELY
17 INVESTIGATE AND PROSECUTE COMPUTER-FACILITATED CRIMES OF SEXUAL
18 EXPLOITATION OF A CHILD AS DESCRIBED IN SECTION 18-6-403.

19 (2) THE GRANT PROGRAM IS FUNDED PURSUANT TO THE SEXUAL
20 EXPLOITATION OF CHILDREN SURCHARGE FUND CREATED IN SECTION
21 18-21-103 (3.7).

22 (3) THE DIVISION MAY APPLY FOR GIFTS, GRANTS, OR DONATIONS
23 FROM THE FEDERAL GOVERNMENT AND ANY PUBLIC OR PRIVATE SOURCE.
24 THE DIVISION SHALL TRANSMIT ANY MONEY RECEIVED TO THE STATE
25 TREASURER FOR DEPOSIT IN THE SEXUAL EXPLOITATION OF CHILDREN
26 SURCHARGE FUND CREATED IN SECTION 18-21-103 (3.7). THE DIVISION
27 SHALL MAKE GRANT PAYMENTS FROM GENERAL FUND MONEY

1 APPROPRIATED TO THE DIVISION BY THE GENERAL ASSEMBLY FOR THE
2 PROGRAM AND MONEY APPROPRIATED FROM THE SEXUAL EXPLOITATION
3 OF CHILDREN SURCHARGE FUND.

4 (4) THE DIVISION SHALL IMPLEMENT THE GRANT PROGRAM IN
5 ACCORDANCE WITH THIS SECTION. THE DIVISION SHALL PROMULGATE
6 SUCH RULES AS ARE REQUIRED IN THIS SECTION AND SUCH ADDITIONAL
7 RULES AS MAY BE NECESSARY TO IMPLEMENT THE GRANT PROGRAM. AT
8 A MINIMUM, THE RULES MUST SPECIFY THE TIME FRAMES FOR APPLYING
9 FOR GRANTS, THE FORM OF THE GRANT PROGRAM APPLICATION, AND THE
10 TIME FRAMES FOR DISTRIBUTING GRANT MONEY.

11 **SECTION 5. Potential appropriation.** Pursuant to section
12 2-2-703, C.R.S., any bill that results in a net increase in periods of
13 imprisonment in state correctional facilities must include an appropriation
14 of money that is sufficient to cover any increased capital construction, any
15 operational costs, and increased parole costs that are the result of the bill
16 for the department of corrections in each of the first five years following
17 the effective date of the bill. Because this act may increase periods of
18 imprisonment, this act may require a five-year appropriation.

19 **SECTION 6. Act subject to petition - effective date -**
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
21 the expiration of the ninety-day period after final adjournment of the
22 general assembly (August 5, 2020, if adjournment sine die is on May 6,
23 2020); except that, if a referendum petition is filed pursuant to section 1
24 (3) of article V of the state constitution against this act or an item, section,
25 or part of this act within such period, then the act, item, section, or part
26 will not take effect unless approved by the people at the general election
27 to be held in November 2020 and, in such case, will take effect on the

- 1 date of the official declaration of the vote thereon by the governor.
- 2 (2) Section 1 of this act applies to offenses committed on or after
- 3 the applicable effective date of this act.