

**First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 15-0898.02 Jane Ritter x4342

**HOUSE BILL 15-1341**

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**A BILL FOR AN ACT**

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

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**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://www.leg.state.co.us/billsummaries>.)*

Currently, sexual exploitation of a child by possession of sexually exploitative material is a class 6 felony for first-time offenses and a class 4 felony if the possession is of a video, a recording or broadcast of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

moving visual images, a motion picture or more than 20 different items (video or more than 20 items), or if it is a second or subsequent offense. The bill increases current class 6 felonies to class 5 felonies. The bill also changes the term "video tape" to "recording or broadcast of moving visual images".

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

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

4           **18-6-403. Sexual exploitation of a child.** (1) The general  
5 assembly hereby finds and declares: That the sexual exploitation of  
6 children constitutes a wrongful invasion of the child's right of privacy and  
7 results in social, developmental, and emotional injury to the child; that a  
8 child below the age of eighteen years is incapable of giving informed  
9 consent to the use of his or her body for a sexual purpose; and that to  
10 protect children from sexual exploitation it is necessary to prohibit the  
11 production of material which involves or is derived from such  
12 exploitation and to exclude all such material from the channels of trade  
13 and commerce.

14           (1.5) The general assembly further finds and declares that the  
15 mere possession or control of any sexually exploitative material results in  
16 continuing victimization of our children by the fact that such material is  
17 a permanent record of an act or acts of sexual abuse of a child; that each  
18 time such material is shown or viewed, the child is harmed; that such  
19 material is used to break down the will and resistance of other children to  
20 encourage them to participate in similar acts of sexual abuse; that laws  
21 banning the production and distribution of such material are insufficient  
22 to halt this abuse; that in order to stop the sexual exploitation and abuse  
23 of our children, it is necessary for the state to ban the possession of any

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

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

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

7 (b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July  
8 1, 2003.)

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

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

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

27 (f) "Masturbation" means the real or simulated touching, rubbing,

1 or otherwise stimulating of a person's own clothed or unclothed genitals  
2 or pubic area, developing or undeveloped genitals or pubic area (if the  
3 person is a child), buttocks, breasts, or developing or undeveloped breast  
4 area (if the person is a child), by manual manipulation or self-induced or  
5 with an artificial instrument, for the purpose of real or simulated overt  
6 sexual gratification or arousal of the person.

7 (g) "Sadomasochism" means:

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

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

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

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

20 (j) "Sexually exploitative material" means any photograph, motion  
21 picture, video, ~~video tape~~ RECORDING OR BROADCAST OF MOVING VISUAL  
22 IMAGES, print, negative, slide, or other mechanically, electronically,  
23 chemically, or digitally reproduced visual material that depicts a child  
24 engaged in, participating in, observing, or being used for explicit sexual  
25 conduct.

26 (k) "Video", "~~video tape~~" "RECORDING OR BROADCAST", or  
27 "motion picture" means any material that depicts a moving image of a

1 child engaged in, participating in, observing, or being used for explicit  
2 sexual conduct.

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

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

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

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

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

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

26 (4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July  
27 1, 2003.)

1 (5) (a) Except as provided in paragraph (b) of this subsection (5),  
2 sexual exploitation of a child is a class 3 felony.

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

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

8 (II) The possession is of a video, ~~video-tape~~ RECORDING OR  
9 BROADCAST OF MOVING VISUAL IMAGES, or motion picture or more than  
10 twenty different items qualifying as sexually exploitative material.

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

16 **SECTION 2.** In Colorado Revised Statutes, **add** 17-18-117 as  
17 follows:

18 **17-18-117. Appropriation to comply with section 2-2-703 - HB**  
19 **15-1341 - repeal.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE  
20 FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO  
21 IMPLEMENT HOUSE BILL 15-1341, ENACTED IN 2015:

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

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

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

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

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

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

11 **SECTION 3. Effective date.** This act takes effect August 5,  
12 2015.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,  
14 determines, and declares that this act is necessary for the immediate  
15 preservation of the public peace, health, and safety.