

HOUSE BILL NO. 82

INTRODUCED BY K. LOVE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMES AGAINST CHILDREN; CREATING THE OFFENSE OF GROOMING OF A CHILD FOR A SEXUAL OFFENSE; REVISING CERTAIN CRIMES TO INCLUDE A LAW ENFORCEMENT OFFICER WHOM THE OFFENDER BELIEVED TO BE A CHILD; REVISING THE OFFENSE OF SEXUAL ABUSE OF CHILDREN TO INCLUDE COMPUTER-GENERATED CHILD PORNOGRAPHY; ADDING THE OFFENSE OF GROOMING OF A CHILD FOR A SEXUAL OFFENSE TO THE DEFINITION OF "SEXUAL OFFENSE"; AMENDING SECTIONS 45-5-504, 45-5-601, 45-5-625, 45-5-711, 45-8-201, 46-23-502, AND 46-23-509, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Grooming of child for sexual offense. (1) A person commits the offense of grooming of a child for a sexual offense if the person purposely or knowingly engages in a pattern of grooming behavior ~~by any means of communication~~, including in-person or electronic communication, aimed at a child or the child's guardian with the intent to:

- (a) manipulate the child into engaging in sexual conduct, actual or simulated;
 - (b) coerce or entice a child under 16 years of age to meet in person to engage in sexual conduct, actual or simulated;
 - (c) distribute or facilitate access to sexually explicit material; or
 - (d) exploit a position of authority to develop an intimate or secretive relationship with a minor.
- (2) (a) Except as provided in subsection (2)(b) or subsection (3), a person convicted of the offense of grooming of a child for a sexual offense shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$10,000.

- (b) If the victim is under 16 years of age, a person convicted of the offense of grooming of a child

for a sexual offense shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(3) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in the state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(4) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, a signal, writing, an image, a sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Grooming" means behavior that seeks to prepare, induce, or persuade a minor to engage in sexual activity or other forms of exploitation, even if no meeting or sexual act is completed. It is the deliberate act of establishing an emotional connection with a minor through manipulation, trust-building, or influence to facilitate future sexual abuse or exploitation. This includes online or in-person activities, use of third parties, or indirect methods to facilitate the manipulation of a child.

(c) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex, as defined in 1-1-201;

- (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
- (C) bestiality;
- (D) masturbation;
- (E) sadomasochistic abuse;
- (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of a person;

or

- (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or
- (ii) the depiction or observation of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(d) "Simulated" means any depiction of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

Section 2. Section 45-5-504, MCA, is amended to read:

"45-5-504. Indecent exposure. (1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals or intimate parts by any means, including electronic communication as defined in 45-5-625(5)(a), under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:

- (a) abuse, humiliate, harass, or degrade another; or
- (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term of not more than 10 years, or both.

(3) (a) A person commits the offense of indecent exposure to a minor if the person commits an offense under subsection (1) and the person knows the conduct will be observed by a person who is under 16 years of age or a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child who is under 16 years of age, and the offender is more than 4 years older than the victim or purported victim.

(b) A person convicted of the offense of indecent exposure to a minor shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years, or both."

Section 3. Section 45-5-601, MCA, is amended to read:

"45-5-601. Prostitution -- patronizing prostitute -- exception. (1) Except as provided in subsection (2)(a), the offense of prostitution is committed if a person engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute may be convicted of prostitution only if the prostitute engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether the compensation is received or to be received or paid or to be paid. A prostitute who is convicted of prostitution may be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid. Except as provided in subsection (3), a patron who is convicted of prostitution shall for the first offense be fined an amount not to exceed \$5,000 or be imprisoned for a term not to exceed 5 years, or both, and for a second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 10 years, or both.

(3) (a) If the person patronized was a child, whether or not the patron was aware of the child's age, or if the person was a person, including a law enforcement officer using an undercover or fictitious identity,

1 whom the patron believed was a child and the patron was 18 years of age or older at the time of the offense,
2 ~~whether or not the patron was aware of the child's age~~, the patron offender:

3 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
4 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
5 subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender
6 is not eligible for parole.

7 (ii) may be fined an amount not to exceed \$50,000; and

8 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive
9 and behavioral phase of a sexual offender treatment program provided or approved by the department of
10 corrections.

11 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
12 subject to supervision by the department of corrections for the remainder of the offender's life and shall
13 participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

14 (4) It is not a violation of this section for a person with an impaired physical ability, physical
15 dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working
16 under the supervision of a clinical social worker, marriage and family therapist, or clinical professional counselor
17 licensed under Title 37, chapter 39.

18 (5) It is not a defense in a prosecution under this section that a child consented to engage in
19 sexual activity.

20 (6) It is not a defense in a prosecution under this section that a defendant believed the child was
21 an adult. Absolute liability, as provided in 45-2-104, is imposed."

22
23 **Section 4.** Section 45-5-625, MCA, is amended to read:

24 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if
25 the person:

26 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
27 conduct, actual or simulated;

28 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or

videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication or in person, persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a ~~person~~ a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated, or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication or any computer-generated child pornography in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or ~~a person~~ a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; ~~or~~

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or ~~a person~~ a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated; or

(j) knowingly threatens to release, exhibit, or distribute any image or video of a child engaging in sexual conduct, actual or simulated, in order to compel the child to provide additional images or videos of a child engaging in sexual conduct, obtain any item of value, or coerce a child to commit or facilitate any crime.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age or is a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger or is a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believed to be 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall

participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) It is not a defense to prosecution under this section that the perceived child is an adult or law enforcement officer.

~~(5)~~(6) As used in this section, the following definitions apply:

(a) "Computer-generated child pornography" means any visual depiction of:

(i) an actual minor that has been created, adapted, or modified to portray that minor engaged in a prohibited sexual act;

(ii) an actual adult that has been created, adapted, or modified to portray that adult as a minor engaged in a prohibited sexual act; or

(iii) an individual indistinguishable from an actual minor created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to portray that individual as a minor engaged in a prohibited sexual act.

~~(a)~~(b) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(c) "Indistinguishable", when used with respect to a visual depiction, means virtually indistinguishable, in that the visual depiction is such that an ordinary person viewing the visual depiction would conclude that the visual depiction is of an actual minor engaged in a prohibited sexual act.

~~(b)~~(d) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex, as defined in 1-1-201;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any

1 person; or

2 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

3 (ii) depiction or observation of a child in the nude or in a state of partial undress with the purpose
4 to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or
5 desire or the sexual response or desire of any person.

6 ~~(e)~~(e) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the
7 appearance of sexual conduct or incipient sexual conduct.

8 ~~(d)~~(f) "Visual medium" means:

9 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or
10 incorporates in any manner any film, photograph, videotape, negative, or slide; or

11 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer
12 or other video screen and any image transmitted to a computer or other video screen by telephone line, cable,
13 satellite transmission, or other method."

14

15 **Section 5.** Section 45-5-711, MCA, is amended to read:

16 **"45-5-711. Child sex trafficking.** (1) A person commits the offense of child sex trafficking by
17 purposely or knowingly:

18 (a) committing the offense of sex trafficking with a child; or

19 (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating,

20 maintaining, enticing, or using a child, or in the case of recruiting or enticing, a person, including a law

21 enforcement officer using an undercover or fictitious identity, whom the offender believes to be a child, for the
22 purposes of commercial sexual activity.

23 (2) (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state
24 prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of
25 a sentence of imprisonment imposed under this subsection (2)(a) except as provided in 46-18-222(1) through
26 (4). During the first 25 years of imprisonment, the offender is not eligible for parole. The exceptions provided in
27 46-18-222(5) and (6) do not apply.

28 (b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:

(i) must be fined in the amount of \$400,000; and

(ii) if released after the mandatory minimum period of imprisonment, is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(3) It is not a defense in a prosecution under this section:

(a) that a child consented to engage in commercial sexual activity; or

(b) that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

Section 6. Section 45-8-201, MCA, is amended to read:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age or a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be under 18 years of age;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age;

(d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age or a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be under 18 years of age; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

(2) A thing is obscene if:

- 1 (a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
- 2 (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or
- 3 simulated; or
- 4 (iii) it is a patently offensive representation or description of masturbation, excretory functions, or
- 5 lewd exhibition of the genitals; and
- 6 (b) taken as a whole the material:
- 7 (i) applying contemporary community standards, appeals to the prurient interest in sex;
- 8 (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive
- 9 way; and
- 10 (iii) lacks serious literary, artistic, political, or scientific value.
- 11 (3) In any prosecution for an offense under this section, evidence is admissible to show:
- 12 (a) the predominant appeal of the material and what effect, if any, it would probably have on the
- 13 behavior of people;
- 14 (b) the artistic, literary, scientific, educational, or other merits of the material;
- 15 (c) the degree of public acceptance of the material in the community;
- 16 (d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the
- 17 material; or
- 18 (e) the purpose of the author, creator, publisher, or disseminator.
- 19 (4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or be
- 20 imprisoned in the county jail for a term not to exceed 6 months, or both.
- 21 (5) Cities, towns, counties, or school districts may adopt ordinances, resolutions, or policies that
- 22 are more restrictive as to obscenity than the provisions of this section."
- 23

24 **Section 7.** Section 46-23-502, MCA, is amended to read:

25 **"46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and

26 this part, the following definitions apply:

- 27 (1) "Department" means the department of corrections provided for in 2-15-2301.
- 28 (2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed