

H.936

An act relating to sexual exploitation of children

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. chapter 64 is amended to read:

CHAPTER 64. SEXUAL EXPLOITATION OF CHILDREN

§ 2821. DEFINITIONS

As used in this chapter:

(1) “Child” means any person under ~~the age of~~ 16 years of age.

(2) “Sexual conduct” means any of the following:

(A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva, or the mouth and the vulva;

(B) any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desire of any person;

(C) any intentional touching, not through the clothing, of the genitals, anus, or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desire of any person;

(D) masturbation;

(E) bestiality; or

(F) sadomasochistic abuse for sexual purposes.

(4) “Sexual performance” means any performance or any part of a performance, ~~which~~ that includes sexual conduct by, with, or on a child.

(5) “Promote” means to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, make available, or offer to do the same, by any means, including electronic transmission, file sharing, or peer-to-peer networks.

(6) “Peer-to-peer network” means a network in which two or more computers or devices share files without requiring a separate server computer or server software.

#### § 2822. USE OF A CHILD IN A SEXUAL PERFORMANCE

(a) No person shall, with knowledge of the character and content, promote a sexual performance by a child or a performance that contains a lewd exhibition of the genitals, anus, or breasts of a child, or hire, employ, procure, use, cause, or induce a child to engage in such a performance.

(b) In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained ~~the age of~~ 16 years of age; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.

#### § 2823. CONSENTING TO A SEXUAL PERFORMANCE

No person who is the parent, legal guardian, or custodian of a child may, with knowledge of the character and content, consent to the participation of that child in a sexual performance or a performance including a lewd exhibition of the genitals by that child.

§ 2824. PROMOTING A RECORDING OF SEXUAL CONDUCT

(a) No person may, with knowledge of the character and content, promote any photograph, film, or visual recording of sexual conduct by, with, or on a child, or of a lewd exhibition of a child's genitals or anus. This subsection does not apply to paintings, drawings, or to nonvisual or written descriptions of sexual conduct.

(b) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses:

(1) that the recording was promoted for a bona fide medical, psychological, social work, legislative, judicial, or law enforcement purpose, by or to a physician, psychologist, social worker, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter;

(2) that the defendant was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum, or library;

(3) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained ~~the age of~~ 16 years of age when the recording was made.

§ 2825. PENALTIES

(a) A person who violates section 2822, 2823, or 2824 of this title shall be imprisoned not more than 10 years or fined not more than \$20,000.00, or both.

(b) Upon conviction for a violation of section 2822, 2823, or 2824 of this title of a person who has earlier been convicted under any of those sections, the person shall be imprisoned not less than one year nor more than 15 years or fined not more than \$50,000.00, or both.

(c) A person who violates section 2827 of this title by possessing or accessing with intent to view a photograph, film, or visual depiction, including a depiction stored electronically, which constitutes:

(1) a clearly lewd exhibition of a child's genitals or anus, other than a depiction of sexual conduct by a child, shall be imprisoned not more than two years or fined not more than \$5,000.00, or both;

(2) sexual conduct by, with, or on a child, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(d) A person who violates section 2827 of this title after being convicted of a previous violation of the same section shall be imprisoned not more than 10 years or fined not more than \$50,000.00, or both.

(e) A person who violates section 2828 of this title shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

§ 2826. EVIDENCE OF AGE

The age of a person who participated in sexual conduct or a performance that contains a lewd exhibition of the genitals, anus, or breasts, or who was solicited for either by means designated under section 2828 of this ~~chapter~~ title may be established by any method acceptable under the rules of evidence, including but not limited to the following methods:

- (1) inferences drawn by the trier of fact from inspection of a document that depicts sexual conduct;
- (2) testimony as to the apparent age of the person by a witness to sexual conduct; or
- (3) expert medical testimony based upon the appearance of the person depicted in a recording of sexual conduct.

§ 2827. POSSESSION OF CHILD ~~PORNOGRAPHY~~ SEXUAL ABUSE

MATERIAL

(a) No person shall, with knowledge of the character and content, possess or knowingly access with intent to view any photograph, film, or visual depiction, including any depiction ~~which~~ that is stored electronically, of sexual conduct by, with, or on a child or of a clearly lewd exhibition of a child's genitals or anus.

(b) This section ~~does~~ shall not apply:

(1) if the depiction was possessed for a bona fide medical, psychological, social work, legislative, judicial, or law enforcement purpose, by a physician, psychologist, social worker, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter;

(2) if the person was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum, or library; or

(3) to paintings, drawings, or nonvisual or written descriptions of sexual conduct.

(c) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses, which shall be proven by a preponderance of the evidence:

(1) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained ~~the age of~~ 16 years of age when the depiction was made;

(2) that the defendant in good faith took reasonable steps, whether successful or not, to destroy or eliminate the depiction.

§ 2828. LURING A CHILD

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under ~~the age of~~ 16 years of age or another person believed by the person to be a child under ~~the age of~~ 16 years of age, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years ~~old~~ of age, the child is at least 15 years ~~old~~ of age, and the conduct is consensual.

Sec. 2. LEGISLATIVE PROPOSAL

The Attorney General, in collaboration with the Defender General and the Department of State's Attorneys and Sheriffs, shall examine the issue of simulated sexual conduct by, with, or on a child under 16 years of age as it relates to child sexual abuse material for the purpose of developing a clear, narrowly tailored legislative proposal that prohibits such conduct while ensuring that a substantial amount of constitutionally protected speech is not inadvertently swept into the purview of the statute. The Attorney General shall submit the recommendation not later than November 1, 2020 to the Joint Legislative Committee on Justice Oversight.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.