

1 Introduced by Committee on Judiciary

2 Date:

3 Subject: Crimes and criminal procedure; sexual exploitation of children

4 Statement of purpose of bill as introduced: This bill proposes to amend the
5 laws regarding sexual exploitation of children by criminalizing the simulation
6 of prohibited conduct; to expand the definition of “sexual performance” and of
7 “promote”; and to prohibit possessing or accessing with intent to view a visual
8 portrayal of a child who is nude or partially clothed if the visual portrayal is
9 unrelated to the sale of a commercially available legal product, used for purely
10 prurient purposes, and has no serious literary, artistic, political, or scientific
11 value.

12 An act relating to sexual exploitation of children

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

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

15 CHAPTER 64. SEXUAL EXPLOITATION OF CHILDREN

16 § 2821. DEFINITIONS

17 As used in this chapter:

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

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

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

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

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

11 (D) masturbation;

12 (E) bestiality; ~~or~~

13 (F) sadomasochistic abuse for sexual purposes; or

14 (G) any simulation of any of the above described conduct.

15 (3) “Performance” means:

16 (A) an event that is photographed, filmed, or visually recorded; or

17 (B) a play, dance, or other visual presentation or exhibition before an
18 audience.

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

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

5 § 2822. USE OF A CHILD IN A SEXUAL PERFORMANCE

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

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

16 § 2823. CONSENTING TO A SEXUAL PERFORMANCE

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

1 § 2824. PROMOTING A RECORDING OF SEXUAL CONDUCT

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

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

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

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

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

1 § 2825. PENALTIES

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

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

8 (c) A person who violates section 2827 of this title by possessing or
9 accessing with intent to view a photograph, film, or visual depiction, including
10 a depiction stored electronically, ~~which constitutes~~ shall be subject to the
11 following penalties:

12 (1) Imprisoned not more than one year or fined not more than \$2,500.00,
13 or both, if the violation involved a visual portrayal of a child who is nude or
14 partially clothed and the visual portrayal is:

15 (A) unrelated to the sale of a commercially available legal product;

16 (B) used for purely prurient purposes; and

17 (C) has no serious literary, artistic, political, or scientific value.

18 (2) Imprisoned not more than three years or fined not more than
19 \$5,000.00, or both, if the violation involved a clearly lewd exhibition of a
20 child's genitals or anus, other than a depiction of sexual conduct by a child;

1 ~~shall be imprisoned not more than two years or fined not more than \$5,000.00,~~
2 ~~or both;.~~

3 (3) Imprisoned not more than five years or fined not more than
4 \$10,000.00, or both, if the violation involved sexual conduct by a child,~~shall~~
5 ~~be imprisoned not more than five years or fined not more than \$10,000.00, or~~
6 ~~both.~~

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

10 (e)(1) ~~A~~ Except as provided in subdivisions (2) and (3) of this subsection, a
11 person who violates section 2828 of this title shall be imprisoned not more
12 than five years or fined not more than \$10,000.00, or both.

13 (2) A person who violates section 2828 of this title shall be imprisoned
14 not more than 10 years or fined not more than \$50,000.00, or both, if the
15 violation involved the person physically traveling to meet a child under
16 16 years of age or another person believed by the person to be a child under
17 16 years of age.

18 (3) For a second or subsequent violation of section 2828 of this title, a
19 person shall be imprisoned not more than 10 years or fined not more than
20 \$50,000.00, or both.

1 § 2826. EVIDENCE OF AGE

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

7 (1) inferences drawn by the trier of fact from inspection of a document
8 that depicts sexual conduct;

9 (2) testimony as to the apparent age of the person by a witness to sexual
10 conduct; or

11 (3) expert medical testimony based upon the appearance of the person
12 depicted in a recording of sexual conduct.

13 § 2827. POSSESSION OF CHILD ~~PORNOGRAPHY~~ SEXUAL ABUSE

14 MATERIAL

15 (a) No person shall, with knowledge of the character and content, possess
16 or knowingly access with intent to view any photograph, film, or visual
17 depiction, including any depiction ~~which~~ that is stored electronically, of sexual
18 conduct by, with, or on a child or of a clearly lewd exhibition of a child's
19 genitals or anus, or any visual portrayal of a child who is nude or partially
20 clothed, if the visual portrayal is:

21 (1) unrelated to the sale of a commercially available legal product;

1 (2) used for purely prurient purposes, and

2 (3) has no serious literary, artistic, political, or scientific value.

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

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

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

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

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

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

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

3 § 2828. LURING A CHILD

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

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

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

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2020.