

1 H.875

2 Introduced by Representatives Harvey of Castleton, Coffin of Cavendish,

3 Goslant of Northfield, Howard of Rutland City, Labor of

4 Morgan, Malay of Pittsford, Morgan, M. of Milton, Nielsen of

5 Brandon, North of Ferrisburgh, Pinsonault of Dorset, Powers of

6 Waterford, Pritchard of Pawlet, Tagliavia of Corinth, and

7 Winter of Ludlow

8 Referred to Committee on

9 Date:

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

11 Statement of purpose of bill as introduced: This bill proposes to amend the

12 statutes that criminalize the possession and promotion of child sexual abuse

13 materials to include visual or print medium images that are computer generated

14 if such images are indistinguishable from an actual child engaged in the

15 conduct.

16 An act relating to the possession and promotion of child sexual abuse

17 materials to include computer-generated images

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

19 Sec. 1. 13 V.S.A. § 2821 is amended to read:

20 § 2821. DEFINITIONS

1           As used in this chapter:

2           (1) "Child" means any person under 16 years of age.

3           (2) "Sexual conduct" means any of the following:

4           (A) any conduct involving contact between the penis and the vulva,

5           the penis and the penis, the penis and the anus, the mouth and the penis, the

6           mouth and the anus, the vulva and the vulva, or the mouth and the vulva;

7           (B) any intrusion, however slight, by any part of a person's body or

8           any object into the genital or anal opening of another with the intent of

9           arousing, appealing to, or gratifying the lust, passions, or sexual desire of any

10           person;

11           (C) any intentional touching, not through the clothing, of the genitals,

12           anus, or breasts of another with the intent of arousing, appealing to, or

13           gratifying the lust, passions, or sexual desire of any person;

14           (D) masturbation;

15           (E) bestiality;

16           (F) sadomasochistic abuse for sexual purposes; or

17           (G) any simulation of the conduct described in subdivisions (2)(A)–

18           (F) of this section subdivision (2).

1 (3) "Performance" means:

5 (4) "Sexual performance" means any performance or any part of a  
6 performance that includes sexual conduct by, with, or on a child.

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

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

14 (7)(A) "Simulation" means the explicit depiction of any conduct  
15 described in subdivisions (2)(A)–(F) of this section that:

16 (i) involves a child as defined in subdivision (1) of this section;

17 (ii) creates the appearance of such conduct; and

18 (iii) exhibits naked genitals, buttocks, or breasts below the top of

19 the areola.

20 (B) "Simulation" does not include paintings, drawings, or nonvisual  
21 or written descriptions of sexual conduct.

1 (C) “Simulation” applies only to conduct.

17 Sec. 2. 13 V.S.A. § 2824 is amended to read:

18 § 2824. PROMOTING A RECORDING OF SEXUAL CONDUCT

19 (a)(1) No person may, with knowledge of the character and conte  
20 promote any photograph, film, or visual recording of sexual conduct

1                   (A) by, with, or on a child, or of a lewd exhibition of a child's  
2                   genitals or anus; or

3                   (B) that is indistinguishable from the image of a child engaging in  
4                   sexual conduct, including a visual or print medium that is computer generated.

5                   (2) This subsection does not apply to:

6                   (A) paintings, drawings, or to nonvisual or written descriptions of  
7                   sexual conduct;

8                   (B) a visual or print medium possessed, controlled, or intentionally  
9                   viewed as part of a law enforcement investigation; or

10                   (C) an interactive computer service as defined in 47 U.S.C. § 230 for:

11                   (i) content provided by another party; and

12                   (ii) a computer-generated visual or print medium depicting

13                   sexually explicit conduct involving a child when the visual or print medium is  
14                   generated as part of adversarial testing conducted in good faith to prevent,  
15                   detect, or mitigate the risk of artificial intelligence systems generating a visual  
16                   or print medium depicting sexually explicit conduct involving a child.

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

19                   (1) that the recording was promoted for a bona fide medical,  
20                   psychological, social work, legislative, judicial, or law enforcement purpose,  
21                   by or to a physician, psychologist, social worker, legislator, judge, prosecutor,

1 law enforcement officer, or other person having such a bona fide interest in the  
2 subject matter;

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

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

10 (c) The exemption in subdivision (a)(2)(C) of this section does not include  
11 a person who engages in adversarial testing for personal or exploitative  
12 purposes or for purposes unrelated to legitimate artificial intelligence safety  
13 testing.

14 Sec. 3. 13 V.S.A. § 2827 is amended to read:

15 § 2827. POSSESSION OF CHILD SEXUAL ABUSE MATERIAL

16 (a) No person shall, with knowledge of the character and content, possess  
17 or knowingly access with intent to view any photograph, film, or visual  
18 depiction, including any depiction that is stored electronically, of sexual  
19 conduct:

20 (1) by, with, or on a child or of a clearly lewd exhibition of a child's  
21 genitals or anus; or

1                   (2) that is indistinguishable from the image of a child engaging in sexual  
2                   conduct, including a visual or print medium that is computer generated.

3                   (b) This section 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; or

15                  (4) an interactive computer service as defined in 47 U.S.C. § 230 for:

16                  (A) content provided by another party; and  
17                  (B) a computer-generated visual or print medium depicting sexually  
18                  explicit conduct involving a child when the visual or print medium is generated  
19                  as part of adversarial testing conducted in good faith to prevent, detect, or  
20                  mitigate the risk of artificial intelligence systems generating a visual or print  
21                  medium depicting sexually explicit conduct involving a child.

9 Sec. 4. EFFECTIVE DATE