

HOUSE BILL NO. 562  
INTRODUCED BY J. RICE, HERRON

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	ADDITIONAL SPONSOR ADDED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

APRIL 12, 1993

REPORTED CORRECTLY ENROLLED.

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 13, 1993

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 14, 1993

DELIVERED TO GOVERNOR.

APRIL 19, 1993

RETURNED FROM GOVERNOR WITH  
RECOMMENDED AMENDMENTS.

APRIL 22, 1993

SECOND READING, GOVERNOR'S RECOM-  
MENDED AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S RECOM-  
MENDED AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 24, 1993

SECOND READING, GOVERNOR'S RECOM-  
MENDED AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S RECOM-  
MENDED AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 24, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 562  
 2 INTRODUCED BY J. Rice

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF  
 5 THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT  
 6 POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING  
 7 SECTION 45-5-625, MCA."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 45-5-625, MCA, is amended to read:

11 "45-5-625. Sexual abuse of children. (1) A person  
 12 commits the offense of sexual abuse of children if he the  
 13 person knowingly:

14 (a) employs, uses, or permits the employment or use of  
 15 a child in an exhibition of sexual contact conduct, actual  
 16 or simulated;

17 (b) photographs, films, videotapes, develops or  
 18 duplicates the photographs, films, or videotapes, or records  
 19 a child engaging in sexual contact conduct, actual or  
 20 simulated;

21 (c) persuades, entices, counsels, or procures a child  
 22 to engage in sexual contact conduct, actual or simulated,  
 23 for use as designated in subsection (1)(a), (1)(b), or  
 24 (1)(d);

25 (d) processes, develops, prints, publishes, transports,

1 distributes, sells, possesses, receives, purchases, with  
 2 intent--to-sell; exhibits, or advertises material--consisting  
 3 of--or--including--a--photograph,---photographic---negative,  
 4 undeveloped--film,---videotape,---or---recording--representing--a  
 5 child--engaging--in--sexual--contact any visual or print medium  
 6 in which minors are engaged in sexual conduct, actual or  
 7 simulated; or

8 (e) possesses material referred to in subsection  
 9 (1)(d); or

10 ~~(e)~~(f) finances any of the activities described in  
 11 subsections (1)(a) through (1)(d), knowing that the activity  
 12 is of the nature described in those subsections.

13 (2) (a) Except as provided in subsections (2)(b) and  
 14 (2)(c), a person convicted of the offense of sexual abuse of  
 15 children shall be fined not to exceed \$10,000 or be  
 16 imprisoned in the state prison for any term not to exceed 20  
 17 years, or both.

18 (b) If the victim is under 16 years of age, a person  
 19 convicted of the offense of sexual abuse of children shall  
 20 be fined not to exceed \$10,000 or be imprisoned in the state  
 21 prison for any term not to exceed 50 years, or both.

22 (c) A person convicted of the offense of sexual abuse  
 23 of children for the possession of material, as provided in  
 24 subsection (1)(e), shall be fined not to exceed \$500 or be  
 25 imprisoned in the county jail for a term not to exceed 6

1 months, or both.

2 ~~{3}--For the purposes of this section, "child" means any~~  
3 ~~person less than 16 years old."~~

4 NEW SECTION. Section 2. Definitions. As used in  
5 45-5-625, the following definitions apply:

6 (1) "Sexual conduct" means actual or simulated:

7 (a) sexual intercourse, whether between persons of the  
8 same or opposite sex;

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

11 (c) bestiality;

12 (d) masturbation;

13 (e) sadomasochistic abuse;

14 (f) lewd exhibition of the genitals or pubic or rectal  
15 area of any person; or

16 (g) defecation or urination for the purpose of the  
17 sexual stimulation of the viewer.

18 (2) "Simulated" means any depicting of the genitals or  
19 pubic or rectal area that gives the appearance of sexual  
20 conduct or incipient sexual conduct.

21 (3) "Visual medium" means any film, photograph,  
22 videotape, negative, slide, or photographic reproduction  
23 that contains or incorporates in any manner any film,  
24 photograph, videotape, negative, or slide.

25 NEW SECTION. Section 3. Codification instruction.

1 [Section 2] is intended to be codified as an integral part  
2 of Title 45, chapter 5, part 6, and the provisions of Title  
3 45, chapter 5, part 6, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

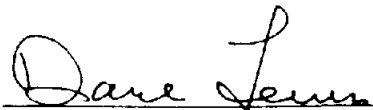
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0562, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act expanding the scope of the crime of sexual abuse of children and providing that possession of certain material is a crime.

ASSUMPTIONS:

1. Two offenders have been incarcerated under Section 45-5-625, MCA, since FY91.
2. Added Average Daily Population (ADP) assumed to be less than 1 per year in Montana State Prison (MSP).
3. Current MSP budget will absorb impact of this act.

FISCAL IMPACT: No identifiable fiscal impact during the 1995 biennium.

 2-13-93

DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2-15-93

JIM RICE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0562, as introduced

HB 572

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 562

INTRODUCED BY J. RICE

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA."

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

**Section 1.** Section 45-5-625, MCA, is amended to read:

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

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

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual contact conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports,

distributes, sells, possesses, ~~receives, purchases~~ WITH INTENT TO SELL, ~~with-intent-to-sell~~, exhibits, or advertises material ~~consisting of or including a~~ photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact any visual or print medium in which minors are engaged in sexual conduct, actual or simulated; or

(e) possesses material referred to in subsection (1)(d); or

~~(e)(f)~~ finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) 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 \$500 or be imprisoned in the county jail for a term not to exceed 6

months, or both.

~~{3}--For-the-purposes-of-this-section,"child"-means-any person-less-than-16-years-old:~~

{3} AN OFFENSE IS NOT COMMITTED UNDER SUBSECTIONS (1)(D) THROUGH (1)(F) IF THE VISUAL OR PRINT MEDIUM IS PROCESSED, DEVELOPED, PRINTED, PUBLISHED, TRANSPORTED, DISTRIBUTED, SOLD, POSSESSED, OR POSSESSED WITH INTENT TO SELL, OR IF SUCH AN ACTIVITY IS FINANCED, AS PART OF A SEX OFFENDER INFORMATION OR TREATMENT COURSE OR PROGRAM CONDUCTED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES."

NEW SECTION. Section 2. Definitions. As used in 45-5-625, the following definitions apply:

(1) "Sexual conduct" means actual or simulated:

(a) sexual intercourse, whether between persons of the same or opposite sex;

(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 or pubic or rectal area of any person; or

(g) defecation or urination for the purpose of the sexual stimulation of the viewer.

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

(3) "Visual medium" means any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide.

NEW SECTION. Section 3. Codification instruction.

[Section 2] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 2].

-End-

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A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA."

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(e) possesses material referred to in subsection (1)(d); or

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(c) 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 \$500 or be imprisoned in the county jail for a term not to exceed 6



1 months, or both.

2 ~~{3}--For-the-purposes-of-this-section--"child"--means-any~~  
3 ~~person-less-than-16-years-old.~~

4 (3) AN OFFENSE IS NOT COMMITTED UNDER SUBSECTIONS  
5 (1)(D) THROUGH (1)(F) IF THE VISUAL OR PRINT MEDIUM IS  
6 PROCESSED, DEVELOPED, PRINTED, PUBLISHED, TRANSPORTED,  
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9 OFFENDER INFORMATION OR TREATMENT COURSE OR PROGRAM  
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11 HUMAN SERVICES."

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16 same or opposite sex;
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18 except when done as part of a recognized medical procedure;
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23 area of any person; or
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10 of Title 45, chapter 5, part 6, and the provisions of Title  
11 45, chapter 5, part 6, apply to [section 2].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 24, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 562 (first reading copy -- blue), respectfully report that House Bill No. 562 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 6.

Strike: "minors"

Insert: "children"

2. Page 3.

Following: line 11

Insert: "(4) For the purposes of this section, "child" means any person less than 16 years old."

3. Page 3, line 22.

Following: "genitals"

Strike: "or"


Insert: ", breasts,"

4. Page 3, line 23.

Following: "area"

Insert: ", or other intimate parts"

-END-

 Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

SENATE

HB 562  
661228SC.San

## HOUSE BILL NO. 562

INTRODUCED BY J. RICE, HERRON

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(e) possesses material referred to in subsection (1)(d); or

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(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

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1 months, or both.

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9 OFFENDER INFORMATION OR TREATMENT COURSE OR PROGRAM  
10 CONDUCTED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS AND  
11 HUMAN SERVICES.

12 {4} FOR THE PURPOSES OF THIS SECTION, "CHILD" MEANS ANY  
13 PERSON LESS THAN 16 YEARS OLD."

14 NEW SECTION. Section 2. Definitions. As used in  
15 45-5-625, the following definitions apply:

16 (1) "Sexual conduct" means actual or simulated:

17 (a) sexual intercourse, whether between persons of the  
18 same or opposite sex;

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

21 (c) bestiality;

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25 or rectal area, OR OTHER INTIMATE PARTS of any person; or

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2 sexual stimulation of the viewer.

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11 [Section 2] is intended to be codified as an integral part  
12 of Title 45, chapter 5, part 6, and the provisions of Title  
13 45, chapter 5, part 6, apply to [section 2].

-End-

OFFICE OF THE GOVERNOR  
STATE OF MONTANA



MARC RACICOT  
GOVERNOR

STATE CAPITOL  
HELENA, MONTANA 59620-0801

April 19, 1993

The Honorable John Mercer  
Speaker of the House  
State Capitol  
Helena MT 59620

The Honorable Fred Van Valkenburg  
President of the Senate  
State Capitol  
Helena MT 59620

Dear Speaker Mercer and President Van Valkenburg:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return House Bill No. 562, "AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA," with the attached amendment for the following reasons.

House bill 562 expands upon the types of activities that are included in the crime of sexual abuse of children. The bill also provides for a longer prison sentence when the child victim is under 16 years of age. However, this differentiation in sentencing is rendered inoperative by a subsection that defines every child as a person less than 16 years old. Therefore, in order to retain the different levels of sentencing and to make the bill applicable in all cases of sexual abuse of children under the age of 18, I propose that the definition of "child" be struck from the bill. The sponsor, Jim Rice, is in agreement with this change.

Sincerely,

A handwritten signature in cursive script that reads "Marc Racicot".

MARC RACICOT  
Governor

Amendments to House Bill No. 562  
Reference Reading Copy

For the Governor

Prepared by Greg Petesch  
April 6, 1993

1. Page 3, lines 12 and 13.  
Strike: subsection (4) in its entirety

Gov's. Am  
112 512

## HOUSE BILL NO. 562

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(3) AN OFFENSE IS NOT COMMITTED UNDER SUBSECTIONS (1)(D) THROUGH (1)(F) IF THE VISUAL OR PRINT MEDIUM IS PROCESSED, DEVELOPED, PRINTED, PUBLISHED, TRANSPORTED, DISTRIBUTED, SOLD, POSSESSED, OR POSSESSED WITH INTENT TO SELL, OR IF SUCH AN ACTIVITY IS FINANCED, AS PART OF A SEX OFFENDER INFORMATION OR TREATMENT COURSE OR PROGRAM CONDUCTED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES.

~~{4}--FOR THE PURPOSES OF THIS SECTION, "CHILD" MEANS ANY PERSON LESS THAN 16 YEARS OLD.~~

**NEW SECTION. Section 2. Definitions.** As used in 45-5-625, the following definitions apply:

- (1) "Sexual conduct" means actual or simulated:
  - (a) sexual intercourse, whether between persons of the same or opposite sex;
  - (b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
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