

House BILL NO. 161

INTRODUCED BY

*Curly's Benedict Brainerd Denny ORR*  
*Scott Hoff* *Lee-Katol* *Reggy Annett* *Johanna*

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR SIMULATED SEXUAL CONDUCT; 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 the person knowingly:

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

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

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in which children are engaged in sexual conduct, actual or simulated; ~~or~~

(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; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(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.



*HB 161*  
INTRODUCED BILL



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0161, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill increasing the penalty for sexual abuse of children by possessing any visual or print medium in which children are engaged in actual or simulated sexual conduct.

ASSUMPTIONS:

1. A total of two (2) offenders had been admitted to Montana State Prison upon conviction of 45-5-625, MCA, for the time period FY85 through FY94.
2. The Department of Corrections and Human Services (DCHS) has no means to estimate the impact of the proposed amendments of this bill.

FISCAL IMPACT:

Impossible to determine fiscal impact of this bill. DCHS estimates this bill will have a minimal impact on DCHS.

Dave Lewis 1-16-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

Aubyn Curtiss  
AUBYN CURTISS, PRIMARY SPONSOR      DATE

Fiscal Note for HB0161, as introduced

HB 161

HOUSE BILL NO. 161

INTRODUCED BY CURTISS, BENEDICT, BRAINARD, DENNY, ORR, SOFT, HERRON, KOTTEL, ARNOTT,  
ESTRADA, CRISMORE, SHEA, HARPER, WYATT, MCCULLOCH, CAREY, LARSON, HURDLE,  
HAGENER; REAM, GALVIN, SCHWINDEN, TUSS, HARRINGTON, COCCHIARELLA, SQUIRES, HEAVY  
RUNNER, SWANSON, RANEY, KEENAN, BOHARSKI, BERGMAN, MOLNAR, TASH

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN  
BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR  
SIMULATED SEXUAL CONDUCT; EXPANDING THE DEFINITION OF THE OFFENSE; AND AMENDING  
~~SECTION~~ SECTIONS 45-5-620 AND 45-5-625, MCA."

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

SECTION 1. SECTION 45-5-620, MCA, IS AMENDED TO READ:

"**45-5-620. 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, breasts, pubic or rectal area, or other intimate parts 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:

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

1           (b) any disc, diskette, or other physical media that allows an image to be displayed on a computer  
 2 or other video screen and any image transmitted to a computer or other video screen by telephone line,  
 3 cable, satellite transmission, or other method."

4

5           **Section 2.** Section 45-5-625, MCA, is amended to read:

6           **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of  
 7 children if the person ~~knowingly~~:

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

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

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

14           (d) ~~knowingly~~ processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~  
 15 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual  
 16 conduct, actual or simulated;

17           (e) ~~knowingly~~ possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in  
 18 which children are engaged in sexual conduct, actual or simulated; ~~or~~

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

21           (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
 22 conduct, actual or simulated.

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

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

29           (c) A person convicted of the offense of sexual abuse of children for the possession of material,  
 30 as provided in subsection (1)(e), shall be fined not to exceed ~~\$500~~ \$10,000 or be imprisoned in the ~~county~~

1 ~~jail~~ state prison for a term not to exceed ~~6 months~~ 10 years, or both.

2 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print  
3 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed  
4 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment  
5 course or program conducted or approved by the department of corrections and human services."

6

-END-

## 1 HOUSE BILL NO. 161

2 INTRODUCED BY CURTISS, BENEDICT, BRAINARD, DENNY, ORR, SOFT, HERRON, KOTTEL, ARNOTT,  
3 ESTRADA, CRISMORE, SHEA, HARPER, WYATT, MCCULLOCH, CAREY, LARSON, HURDLE,  
4 HAGENER, REAM, GALVIN, SCHWINDEN, TUSS, HARRINGTON, COCCHIARELLA, SQUIRES, HEAVY  
5 RUNNER, SWANSON, RANEY, KEENAN, BOHARSKI, BERGMAN, MOLNAR, TASH  
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN  
8 BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR  
9 SIMULATED SEXUAL CONDUCT; EXPANDING THE DEFINITION OF THE OFFENSE; AND AMENDING  
10 SECTION SECTIONS 45-5-620 AND 45-5-625, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 SECTION 1. SECTION 45-5-620, MCA, IS AMENDED TO READ:

15 "45-5-620. Definitions. As used in 45-5-625, the following definitions apply:

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

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

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

20 (c) bestiality;

21 (d) masturbation;

22 (e) sadomasochistic abuse;

23 (f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any  
24 person; or

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

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

28 (3) "Visual medium" means:

29 (a) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or  
30 incorporates in any manner any film, photograph, videotape, negative, or slide; or

1           (b) any disc, diskette, or other physical media that allows an image to be displayed on a computer  
 2 or other video screen and any image transmitted to a computer or other video screen by telephone line,  
 3 cable, satellite transmission, or other method."

4

5           **Section 2.** Section 45-5-625, MCA, is amended to read:

6           "**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of  
 7 children if the person ~~knowingly~~:

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

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

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

14           (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~  
 15 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual  
 16 conduct, actual or simulated;

17           (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in  
 18 which children are engaged in sexual conduct, actual or simulated; ~~or~~

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

21           (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
 22 conduct, actual or simulated.

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

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

29           (c) A person convicted of the offense of sexual abuse of children for the possession of material,  
 30 as provided in subsection (1)(e), shall be fined not to exceed ~~\$500~~ \$10,000 or be imprisoned in the ~~county~~





## 1 HOUSE BILL NO. 161

2 INTRODUCED BY CURTISS, BENEDICT, BRAINARD, DENNY, ORR, SOFT, HERRON, KOTTEL, ARNOTT,  
3 ESTRADA, CRISMORE, SHEA, HARPER, WYATT, MCCULLOCH, CAREY, LARSON, HURDLE,  
4 HAGENER, REAM, GALVIN, SCHWINDEN, TUSS, HARRINGTON, COCCHIARELLA, SQUIRES, HEAVY  
5 RUNNER, SWANSON, RANEY, KEENAN, BOHARSKI, BERGMAN, MOLNAR, TASH  
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN  
8 BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR  
9 SIMULATED SEXUAL CONDUCT; EXPANDING THE DEFINITION OF THE OFFENSE; AND AMENDING  
10 SECTION SECTIONS 45-5-620 AND 45-5-625, MCA."  
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13

14 **SECTION 1. SECTION 45-5-620, MCA, IS AMENDED TO READ:**

15 **"45-5-620. Definitions.** As used in 45-5-625, the following definitions apply:

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

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

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

20 (c) bestiality;

21 (d) masturbation;

22 (e) sadomasochistic abuse;

23 (f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any  
24 person; or

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

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

28 (3) "Visual medium" means:

29 (a) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or  
30 incorporates in any manner any film, photograph, videotape, negative, or slide; or

1           (b) any disc, diskette, or other physical media that allows an image to be displayed on a computer  
 2 or other video screen and any image transmitted to a computer or other video screen by telephone line,  
 3 cable, satellite transmission, or other method."

4  
 5           **Section 2.** Section 45-5-625, MCA, is amended to read:

6           **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of  
 7 children if the person ~~knowingly~~:

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

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

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

14           (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~  
 15 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual  
 16 conduct, actual or simulated;

17           (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in  
 18 which children are engaged in sexual conduct, actual or simulated; ~~or~~

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

21           (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
 22 conduct, actual or simulated.

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

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

29           (c) A person convicted of the offense of sexual abuse of children for the possession of material,  
 30 as provided in subsection (1)(e), shall be fined not to exceed ~~\$500~~ \$10,000 or be imprisoned in the ~~county~~

1 ~~in~~ state prison for a term not to exceed ~~6 months~~ 10 years, or both.

2 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print  
3 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed  
4 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment  
5 course or program conducted or approved by the department of corrections and human services."

6 -END-