

1 HOUSE BILL NO. 317

2 INTRODUCED BY E. HILL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CYBERBULLYING; PROVIDING
5 THAT THE OFFENSE OF CYBERBULLYING IS A MISDEMEANOR; PROVIDING PENALTIES; AMENDING
6 SECTION 45-8-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
7 DATE."

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

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11 NEW SECTION. **Section 1. Cyberbullying.** (1) A person commits the offense of cyberbullying if the
12 person purposefully or knowingly:

13 (a) with the purpose to terrify, intimidate, threaten, harass, or torment a minor as defined in 45-8-205:

14 (i) builds a fictitious profile or internet website;

15 (ii) poses as a minor in an internet chat room, electronic mail message, instant message, or other
16 electronic communication as defined in 45-8-213;

17 (iii) follows a minor online or into an internet chat room; or

18 (iv) posts or encourages others to post on the internet private, personal, or sexual information pertaining
19 to a minor;

20 (b) with the purpose to terrify, intimidate, threaten, harass, or torment a minor or a minor's parent or
21 guardian:

22 (i) posts a real or doctored image of a minor on the internet;

23 (ii) accesses, alters, or erases any computer network, computer data, computer program, or computer
24 software, including breaking into a password-protected account or stealing or otherwise accessing a password;
25 or

26 (iii) uses a computer system for repeated, continuing, or sustained communications, including electronic
27 mail or other transmissions, to a minor;

28 (c) posts on the internet a statement, whether true or false, that intends to provoke or actually provokes
29 a third party to stalk or harass a minor;

30 (d) causes an unauthorized copy to be made or copies and disseminates any data pertaining to a minor

1 in any form, including but not limited to any printed or electronic form of computer data, a computer program, or
2 computer software residing in, communicated by, or produced by a computer or computer network for the purpose
3 of terrifying, intimidating, threatening, harassing, or tormenting a minor;

4 (e) registers a minor for access to a pornographic internet website; or

5 (f) without authorization from the minor or the minor's parent or guardian, registers a minor for access
6 to electronic mailing lists or to receive junk electronic mail and instant messages, resulting in intimidation,
7 harassment, or torment of the minor.

8 (2) A person convicted of the offense of cyberbullying is guilty of a misdemeanor and shall be fined an
9 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

10 (3) As used in this section, the following definitions apply:

11 (a) "Internet chat room" means a computer service allowing two or more users to communicate with each
12 other in real time.

13 (b) "Profile" means:

14 (i) a configuration of user data required by a computer so that the user may access programs or services
15 and perform the user's desired functions on that computer; or

16 (ii) a personal page or section of a page on a website made up of data in text or graphic form that displays
17 significant, unique, or identifying information, including but not limited to listing acquaintances, interests,
18 associations, activities, or personal statements.

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20 **Section 2.** Section 45-8-205, MCA, is amended to read:

21 **"45-8-205. Definitions.** As used in 45-8-205 through 45-8-208 and [section 1], the following definitions
22 apply:

23 (1) "Display or dissemination of obscene material to minors" means that quality of a description,
24 exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when
25 the material or performance, taken as a whole, has the following characteristics:

26 (a) its dominant theme appeals to a minor's prurient interest in sex;

27 (b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently
28 offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

29 (c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the
30 material or performance has serious literary, scientific, artistic, or political value for a significant percentage of

1 normal older minors, the material or performance may not be found to lack such value for the entire class of
2 minors.

3 (2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image,
4 description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated
5 G, PG, PG-13, or R by the motion picture association of America).

6 (3) "Minor" means a person under 18 years of age.

7 (4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

8 (5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape
9 rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape
10 recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience
11 of one or more, with or without consideration.

12 (6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

13 (7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

14 (8) "Sexual conduct" includes:

15 (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is
16 simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate
17 sexual act.

18 (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

19 (c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being
20 fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or
21 bizarre costume.

22 (9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."
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24 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 1].
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27 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.
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29 **NEW SECTION. Section 5. Applicability.** [This act] applies to offenses committed on or after [the
30 effective date of this act].
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