

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 440

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO CHILD EXPLOITATION; MAKING EACH SEPARATE DEPICTION  
OF A CHILD CHARGEABLE AS AN INDIVIDUAL CRIMINAL OFFENSE;  
REVISING DEFINITIONS IN THE SEXUAL EXPLOITATION OF CHILDREN  
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 30-6A-2 NMSA 1978 (being Laws 1984,  
Chapter 92, Section 2, as amended) is amended to read:

"30-6A-2. DEFINITIONS.--As used in the Sexual  
Exploitation of Children Act:

A. "prohibited sexual act" means:

(1) sexual intercourse, including genital-  
genital, oral-genital, anal-genital or oral-anal, whether  
between persons of the same or opposite sex;

(2) bestiality;

.200178.1

underscored material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1 (3) masturbation;

2 (4) sadomasochistic abuse for the purpose of  
3 sexual stimulation; [~~or~~]

4 (5) lewd and sexually explicit exhibition with  
5 a focus on the genitals or pubic area of any person for the  
6 purpose of sexual stimulation; or

7 (6) a simulation of any of the acts provided  
8 in Paragraphs (1) through (5) of this subsection;

9 B. "visual or print medium" means:

10 (1) any single visual depiction of a  
11 prohibited sexual act in any film, photograph, negative, slide,  
12 computer diskette, videotape, videodisc or any computer or  
13 electronically generated, created or stored imagery; or

14 (2) any single visual depiction of a  
15 prohibited sexual act in any book, magazine or other form of  
16 publication or photographic reproduction containing or  
17 incorporating any film, photograph, negative, slide, computer  
18 diskette, videotape, videodisc or any computer generated,  
19 created or stored or electronically generated imagery;

20 C. "performed publicly" means performed in a place  
21 that is open to or used by the public;

22 D. "manufacture" means the production, processing,  
23 copying by any means, printing, packaging or repackaging of any  
24 visual or print medium depicting any prohibited sexual act [~~or~~  
25 ~~simulation of such an act~~] if one or more of the participants

.200178.1

underscored material = new  
[bracketed material] = delete

1 in that act is a child under eighteen years of age; and

2 E. "obscene" means any material, when the content  
3 if taken as a whole:

4 (1) appeals to a prurient interest in sex, as  
5 determined by the average person applying contemporary  
6 community standards;

7 (2) portrays a prohibited sexual act in a  
8 patently offensive way; and

9 (3) lacks serious literary, artistic,  
10 political or scientific value."

11 SECTION 2. Section 30-6A-3 NMSA 1978 (being Laws 1984,  
12 Chapter 92, Section 3, as amended) is amended to read:

13 "30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

14 A. It is unlawful for a person to intentionally  
15 possess ~~[any]~~ an obscene visual or print medium depicting ~~[any]~~  
16 a prohibited sexual act ~~[or simulation of such an act]~~ if that  
17 person knows or has reason to know that the obscene medium  
18 depicts ~~[any]~~ a prohibited sexual act ~~[or simulation of such~~  
19 ~~act]~~ and if that person knows or has reason to know that one or  
20 more of the participants in that act is a child under eighteen  
21 years of age. A person who violates the provisions of this  
22 subsection is guilty of a fourth degree felony.

23 B. It is unlawful for a person to intentionally  
24 distribute ~~[any]~~ an obscene visual or print medium depicting  
25 ~~[any]~~ a prohibited sexual act ~~[or simulation of such an act]~~ if

.200178.1

underscored material = new  
[bracketed material] = delete

1 that person knows or has reason to know that the obscene medium  
2 depicts ~~[any]~~ a prohibited sexual act ~~[or simulation of such~~  
3 ~~act]~~ and if that person knows or has reason to know that one or  
4 more of the participants in that act is a child under eighteen  
5 years of age. A person who violates the provisions of this  
6 subsection is guilty of a third degree felony.

7 C. It is unlawful for a person to intentionally  
8 cause or permit a child under eighteen years of age to engage  
9 in ~~[any]~~ a prohibited sexual act ~~[or simulation of such an act]~~  
10 if that person knows, has reason to know or intends that the  
11 act may be recorded in ~~[any]~~ an obscene visual or print medium  
12 or performed publicly. A person who violates the provisions of  
13 this subsection is guilty of a third degree felony, unless the  
14 child is under the age of thirteen, in which event the person  
15 is guilty of a second degree felony.

16 D. It is unlawful for a person to intentionally  
17 manufacture ~~[any]~~ an obscene visual or print medium depicting  
18 ~~[any]~~ a prohibited sexual act ~~[or simulation of such an act]~~ if  
19 one or more of the participants in that act is a child under  
20 eighteen years of age. A person who violates the provisions of  
21 this subsection is guilty of a second degree felony.

22 E. It is unlawful for a person to intentionally  
23 manufacture ~~[any]~~ an obscene visual or print medium depicting  
24 ~~[any]~~ a prohibited sexual act ~~[or simulation of such an act]~~ if  
25 that person knows or has reason to know that the obscene medium

.200178.1

underscored material = new  
[bracketed material] = delete

1 depicts a prohibited sexual act [~~or simulation of such an act~~]  
2 and if that person knows or has reason to know that a real  
3 child under eighteen years of age, who is not a participant, is  
4 depicted as a participant in that act. A person who violates  
5 the provisions of this subsection is guilty of a fourth degree  
6 felony.

7 F. It is unlawful for a person to intentionally  
8 distribute [~~any~~] an obscene visual or print medium depicting  
9 [~~any~~] a prohibited sexual act [~~or simulation of such an act~~] if  
10 that person knows or has reason to know that the obscene medium  
11 depicts a prohibited sexual act [~~or simulation of such an act~~]  
12 and if that person knows or has reason to know that a real  
13 child under eighteen years of age, who is not a participant, is  
14 depicted as a participant in that act. A person who violates  
15 the provisions of this subsection is guilty of a third degree  
16 felony.

17 G. The penalties provided for in this section shall  
18 be in addition to those set out in Section 30-9-11 NMSA 1978.

19 H. For the purposes of this section, the  
20 possession, distribution or manufacture of each separate  
21 depiction of a child under eighteen years of age engaged in a  
22 prohibited sexual act contained on an item of visual or print  
23 medium shall be considered a distinct act and shall be charged  
24 as an individual criminal offense pursuant to the relevant  
25 subsection of this section."

.200178.1