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SENATE BILL 127

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

STUART INGLE

AN ACT

RELATING TO SEXUALLY ORIENTED MATERIAL HARMFUL TO MINORS;  
INCLUDING COMPUTER COMMUNICATIONS; CREATING CRIMES; PROVIDING  
PENALTIES.

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

Section 1. Section 30-37-1 NMSA 1978 (being Laws 1973,  
Chapter 257, Section 1) is amended to read:

"30-37-1. DEFINITIONS. -- As used in [~~this act~~] Chapter  
30, Article 37 NMSA 1978:

A. "minor" means any unmarried person who has not  
reached his eighteenth birthday;

B. "nudity" means the showing of the male or  
female genitals, pubic area or buttocks with less than a full  
opaque covering or the depiction of covered male genitals in a  
discernibly turgid state;

Underscored material = new  
[bracketed material] = delete

1 C. "sexual conduct" means acts of masturbation,  
2 homosexuality, sodomy, sexual intercourse or physical contact  
3 with a person's clothed or unclothed genitals, pubic area,  
4 buttocks or, if [~~such~~] the person [~~be~~] is female, breast;

5 D. "sexual excitement" means the condition of  
6 human male or female genitals when in a state of sexual  
7 stimulation or arousal;

8 E. "sado-masochistic abuse" means flagellation or  
9 torture by or upon a person clad in undergarments, a mask or  
10 bizarre costume or the condition of being fettered, bound or  
11 otherwise physically restrained;

12 F. "harmful to minors" means that quality of any  
13 description of representation, in whatever form, of nudity,  
14 sexual conduct, sexual excitement or sado-masochistic abuse,  
15 when it:

16 (1) predominantly appeals to the prurient,  
17 shameful or morbid interest of minors; [~~and~~]

18 (2) is patently offensive to prevailing  
19 standards in the adult community as a whole with respect to  
20 what is suitable material for minors; and

21 [~~(3) is utterly without redeeming social~~  
22 ~~importance for minors; and~~]

23 (3) considered as a whole, lacks serious  
24 literacy, artistic, political and scientific value for minors;

25 G. "knowingly" means having general knowledge of,

Underscored material = new  
[bracketed material] = delete

1 or reason to know, or a belief or reasonable ground for belief  
2 which warrants further inspection or inquiry or both, of:

3 (1) the character and content of any material  
4 described herein, which is reasonably susceptible of  
5 examination by the defendant; or

6 (2) the age of the minor;

7 H. "access software" means enabling tools that do  
8 not create or provide the content of the communication but  
9 allow a user to do any of the following:

10 (1) filter, screen, allow or disallow  
11 content;

12 (2) pick, choose, analyze or digest content;

13 or

14 (3) transmit, receive, display, forward,  
15 cache, search, subset, organize, reorganize or translate  
16 content; and

17 I. "lure" means to importune, invite or induce a  
18 minor to engage in sexual intercourse, deviant sexual  
19 intercourse or sexual contact or to engage in a sexual  
20 performance, obscene sexual performance or sexual conduct. "

21 Section 2. A new section of Chapter 30, Article 37 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] DISSEMINATING INDECENT MATERIAL TO A  
24 MINOR BY COMPUTER. --

25 A. It is unlawful for a person to disseminate

Underscored material = new  
[bracketed material] = delete

1 indecent material to a minor by computer when, knowing the  
2 character and content of the communication that in whole or in  
3 part depicts actual or simulated nudity, sexual conduct or  
4 sado-masochistic abuse, and that is harmful to minors, he  
5 intentionally uses a computer communication system, which  
6 allows the input, output, examination or transfer of computer  
7 data or computer programs from one computer to another, to  
8 initiate or engage in such communication with a minor.

9 Disseminating indecent material to a minor by computer is a  
10 misdemeanor.

11 B. It is unlawful to lure a minor by means of a  
12 computer communication as described in Subsection A of this  
13 section. Luring a minor is a fourth degree felony.

14 C. In a prosecution for disseminating indecent  
15 material to a minor by computer, it is a defense that the  
16 defendant has:

17 (1) in good faith taken reasonable, effective  
18 and appropriate actions under the circumstances to restrict or  
19 prevent access by minors to indecent materials on computer,  
20 including any method that is feasible with available  
21 technology;

22 (2) restricted access to indecent materials  
23 by requiring the use of a verified credit card, debit account,  
24 adult access code or adult personal identification number; or

25 (3) in good faith established a mechanism

Underscored material = new  
[bracketed material] = delete

1 such as labeling, segregation or other means that enables the  
2 indecent material to be automatically blocked or screened by  
3 software or other capability reasonably available to persons  
4 who wish to effect such blocking or screening and the  
5 defendant has not otherwise solicited a minor not subject to  
6 such screening or blocking capabilities to access the indecent  
7 material or to circumvent the screening or blocking.

8 D. In a prosecution for disseminating indecent  
9 material to a minor by computer, a person shall not be held to  
10 have violated the provisions of this section solely for  
11 providing access or connection to or from a facility, system  
12 or network not under the person's control, including  
13 transmission, downloading, intermediate storage, access  
14 software or other related capabilities that are incidental to  
15 providing access or connection and that do not include the  
16 creation of the content of the communication.

17 E. The limitations provided by Subsection D of  
18 this section shall not be applicable to a person who is a  
19 conspirator with an entity actively involved in the creation  
20 or knowing dissemination of indecent material by computer or  
21 who knowingly advertises the availability of indecent material  
22 by computer. The limitations provided by Subsection D of this  
23 section shall not be applicable to a person who provides  
24 access or connection to a facility, system or network that  
25 disseminates indecent material by computer that is owned or

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controlled by him

F. No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer, having knowledge of such conduct, authorizes or ratifies the conduct or recklessly disregards the conduct. "

Section 3. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3  
4  
5

6 January 28, 1998  
7

8 Mr. President:  
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred  
11

12 SENATE BILL 127  
13

14 has had it under consideration and finds same to be GERMANE,  
15 pursuant to Senate Executive Message No. 20, and thence referred to  
16 the PUBLIC AFFAIRS COMMITTEE.  
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18  
19 Respectfully submitted,  
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25 \_\_\_\_\_  
Manny M. Aragon, Chairman

Underscored material = new  
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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

S0127CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
4  
5 February 7, 1998

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7 Mr. President:

8  
9 Your SENATE PUBLIC AFFAIRS COMMITTEE, to whom has been  
10 referred

11  
12 SENATE BILL 127

13  
14 has had it under consideration and reports same with recommendation  
15 that it DO NOT PASS, but that

16  
17 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

18 SENATE BILL 127

19  
20  
21 DO PASS, and thence referred to the JUDICIARY COMMITTEE.

22  
23 Respectfully submitted,

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Underscored material = new  
[bracketed material] = delete

Shannon Robinson, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Garcia, Smith, Vernon

Absent: None

S0127PA1

Underscored material = new  
[bracketed material] = delete

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 127

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO SEXUALLY ORIENTED MATERIAL HARMFUL TO MINORS;  
INCLUDING COMPUTER COMMUNICATIONS; CREATING CRIMES; PROVIDING  
PENALTIES.

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

Section 1. A new section of Chapter 30, Article 37 NMSA  
1978 is enacted to read:

"NEW MATERIAL] DISSEMINATION OF MATERIAL THAT IS HARMFUL  
TO A MINOR BY COMPUTER--CHILD LURING. --

A. Dissemination of material that is harmful to a  
minor by computer consists of the use of a computer  
communications system that allows the input, output,  
examination or transfer of computer data or computer programs  
from one computer to another, to knowingly and intentionally  
initiate or engage in communication with a person under

1 eight years of age when such communication in whole or in  
2 part depicts actual or simulated nudity, sexual intercourse or  
3 any other sexual conduct. Whoever commits dissemination of  
4 material that is harmful to a minor by computer is guilty of a  
5 misdemeanor.

6 B. Child luring consists of a person knowingly and  
7 intentionally inducing a child under sixteen years of age, by  
8 means of computer, to engage in sexual intercourse, sexual  
9 conduct or in a sexual or obscene performance, or to engage in  
10 any other sexual conduct when the perpetrator is at least  
11 three years older than the child. Whoever commits child  
12 luring is guilty of a fourth degree felony.

13 C. In a prosecution for dissemination of material  
14 that is harmful to a minor by computer, it is a defense that  
15 the defendant has:

16 (1) in good faith taken reasonable, effective  
17 and appropriate actions under the circumstances to restrict or  
18 prevent access by minors to indecent materials on computer,  
19 including any method that is feasible with available  
20 technology;

21 (2) restricted access to indecent materials by  
22 requiring the use of a verified credit card, debit account,  
23 adult access code or adult personal identification number; or

24 (3) in good faith established a mechanism such  
25 as labeling, segregation or other means that enables the

1 indecent material to be automatically blocked or screened by  
2 software or other capability reasonably available to persons who  
3 wish to effect such blocking or screening and the defendant has  
4 not otherwise solicited a minor not subject to such screening or  
5 blocking capabilities to access the indecent material or to  
6 circumvent the screening or blocking.

7 D. In a prosecution for dissemination of material that  
8 is harmful to a minor by computer, a person shall not be held to  
9 have violated the provisions of this section solely for providing  
10 access or connection to or from a facility, system or network not  
11 under the person's control, including transmission, downloading,  
12 intermediate storage, access software or other related  
13 capabilities that are incidental to providing access or  
14 connection and that do not include the creation of the content of  
15 the communication.

16 E. The limitations provided by Subsection D of this  
17 section shall not be applicable to a person who is a conspirator  
18 with an entity actively involved in the creation or knowing  
19 dissemination of indecent material by computer or who knowingly  
20 advertises the availability of indecent material by computer.  
21 The limitations provided by Subsection D of this section shall  
22 not be applicable to a person who provides access or connection  
23 to a facility, system or network that disseminates indecent  
24 material by computer that is owned or controlled by him.

25 F. No employer shall be held liable for the actions of

. 123143. 1

1 an employee or agent unless the employee's or agent's conduct is  
2 within the scope of his employment or agency and the employer,  
3 having knowledge of such conduct, authorizes or ratifies the  
4 conduct or recklessly disregards the conduct. "

5 Section 2. EFFECTIVE DATE. --The effective date of the  
6 provisions of this act is July 1, 1998.

Underscored material = new  
[bracketed material] = delete

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 127

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO SEXUALLY ORIENTED MATERIAL HARMFUL TO MINORS;  
INCLUDING COMPUTER COMMUNICATIONS; CREATING CRIMES; PROVIDING  
PENALTIES.

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

Section 1. A new section of Chapter 30, Article 37 NMSA  
1978 is enacted to read:

"NEW MATERIAL DISSEMINATION OF MATERIAL THAT IS HARMFUL  
TO A MINOR BY COMPUTER--CHILD LURING. --

A. Dissemination of material that is harmful to a  
minor by computer consists of the use of a computer  
communications system that allows the input, output,  
examination or transfer of computer data or computer programs  
from one computer to another, to knowingly and intentionally  
initiate or engage in communication with a person under

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1 eight years of age when such communication in whole or in  
2 part depicts actual or simulated nudity, sexual intercourse or  
3 any other sexual conduct. Whoever commits dissemination of  
4 material that is harmful to a minor by computer is guilty of a  
5 misdemeanor.

6 B. Child luring consists of a person knowingly and  
7 intentionally inducing a child under sixteen years of age, by  
8 means of computer, to engage in sexual intercourse, sexual  
9 conduct or in a sexual or obscene performance, or to engage in  
10 any other sexual conduct when the perpetrator is at least  
11 three years older than the child. Whoever commits child  
12 luring is guilty of a fourth degree felony.

13 C. In a prosecution for dissemination of material  
14 that is harmful to a minor by computer, it is a defense that  
15 the defendant has:

16 (1) in good faith taken reasonable, effective  
17 and appropriate actions under the circumstances to restrict or  
18 prevent access by minors to indecent materials on computer,  
19 including any method that is feasible with available  
20 technology;

21 (2) restricted access to indecent materials by  
22 requiring the use of a verified credit card, debit account,  
23 adult access code or adult personal identification number; or

24 (3) in good faith established a mechanism such  
25 as labeling, segregation or other means that enables the

1 indecent material to be automatically blocked or screened by  
2 software or other capability reasonably available to persons who  
3 wish to effect such blocking or screening and the defendant has  
4 not otherwise solicited a minor not subject to such screening or  
5 blocking capabilities to access the indecent material or to  
6 circumvent the screening or blocking.

7 D. In a prosecution for dissemination of material that  
8 is harmful to a minor by computer, a person shall not be held to  
9 have violated the provisions of this section solely for providing  
10 access or connection to or from a facility, system or network not  
11 under the person's control, including transmission, downloading,  
12 intermediate storage, access software or other related  
13 capabilities that are incidental to providing access or  
14 connection and that do not include the creation of the content of  
15 the communication.

16 E. The limitations provided by Subsection D of this  
17 section shall not be applicable to a person who is a conspirator  
18 with an entity actively involved in the creation or knowing  
19 dissemination of indecent material by computer or who knowingly  
20 advertises the availability of indecent material by computer.  
21 The limitations provided by Subsection D of this section shall  
22 not be applicable to a person who provides access or connection  
23 to a facility, system or network that disseminates indecent  
24 material by computer that is owned or controlled by him.

25 F. No employer shall be held liable for the actions of

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1 an employee or agent unless the employee's or agent's conduct is  
2 within the scope of his employment or agency and the employer,  
3 having knowledge of such conduct, authorizes or ratifies the  
4 conduct or recklessly disregards the conduct. "

5 Section 2. EFFECTIVE DATE. --The effective date of the  
6 provisions of this act is July 1, 1998.

Underscored material = new  
[bracketed material] = delete

6 February 11, 1998

8 Mr. President:

10 Your JUDICIARY COMMITTEE, to whom has been referred

12 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

14 SENATE BILL 127

16 has had it under consideration and reports same with

17 recommendation that it DO PASS, amended as follows:

- 19 1. On page 2, line 9 strike "conduct" and insert in lieu
- 20 thereof "contact".

22 Respectfully submitted,

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SPAC/SB 127

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SJC/SB 127

Page 20

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Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 1 Against

Yes: 5

No: McSorley

Excused: Sanchez, Vernon

Absent: None

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. 123143. 1

Underscored material = new  
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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
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6 February 17, 1998  
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8 Mr. Speaker:  
9

10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to whom  
11 has been referred  
12

13 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
14 SENATE BILL 127, as amended  
15

16 has had it under consideration and reports same with  
17 recommendation that it DO PASS, and thence referred to the  
18 JUDICIARY COMMITTEE.  
19

20 Respectfully submitted,  
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23 \_\_\_\_\_  
24 Gary K. King, Chairman  
25

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

SPAC/SB 127

HCPAC/SB 127

Page 22

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Crook, Sandel

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
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4 February 18, 1998  
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6  
7 Mr. Speaker:  
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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
11 SENATE BILL 127, as amended  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO PASS.  
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16 Respectfully submitted,  
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21 Thomas P. Foy, Chairman  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

SPAC/SB 127

Page 24

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Garcia, King, Larranaga, Mallory, Sanchez

Absent: None

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