

1 S.19

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Crimes; possession of child pornography; access with intent to view

6 Statement of purpose: This bill proposes to include intentionally accessing
7 child pornography through the Internet within the prohibition against
8 possession of child pornography. The bill also proposes to amend one of the
9 defenses available to a possession of child pornography charge to provide that
10 the defense is available only if a person possesses fewer than three depictions
11 of child pornography and takes prompt and reasonable steps to destroy the
12 depictions without permitting any other person other than a law enforcement
13 agency to have access to them.

14 An act relating to prohibiting intentionally accessing child pornography
15 through the Internet

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 ~~Sec. 1. 13 V.S.A. § 2827 is amended to read:~~

18 § 2827. POSSESSION OF CHILD PORNOGRAPHY

19 (a) No person shall, with knowledge of the character and content, possess
20 or access with intent to view any photograph, film, or visual depiction,

1 ~~including any depiction which is stored electronically, of sexual conduct by a~~
2 ~~child or of a clearly lewd exhibition of a child's genitals or anus.~~

3 (b) This section does not apply:

4 (1) If the depiction was possessed for a bona fide medical,
5 psychological, social work, legislative, judicial, or law enforcement purpose,
6 by a physician, psychologist, social worker, legislator, judge, prosecutor, law
7 enforcement officer, or other person having such a bona fide interest in the
8 subject matter;

9 (2) if the person was a bona fide school, museum, or public library, or
10 was a person acting in the course of employment as an employee or official of
11 such an organization or of a retail outlet affiliated with and serving the
12 educational or intended purpose of that school, museum, or library;

13 (3) to paintings, drawings, or nonvisual or written descriptions of sexual
14 conduct.

15 (c) In any prosecution arising under this section, the defendant may raise
16 any of the following affirmative defenses, which shall be proven by a
17 preponderance of the evidence:

18 (1) ~~that~~ That the defendant in good faith had a reasonable basis to
19 conclude that the child in fact had attained the age of 16 when the depiction
20 was made;

1 ~~(2) that That the defendant possessed fewer than three depictions of~~
2 ~~child pornography; and promptly and in good faith, and without affording any~~
3 ~~person other than a law enforcement agency to access any of the depictions or~~
4 ~~any copy of the depictions;~~

5 ~~(A) took reasonable steps, whether successful or not, to destroy or~~
6 ~~eliminate the ~~depiction~~ depictions; or~~

7 ~~(B) reported the matter to a law enforcement agency and afforded~~
8 ~~the agency access to the depictions.~~

9 Sec. 2. EFFECTIVE DATE

10 ~~This act shall take effect on passage~~

Sec. 1. 13 V.S.A. § 2827 is amended to read:

§ 2827. POSSESSION OF CHILD PORNOGRAPHY

(a) No person shall, with knowledge of the character and content, knowingly possess with intent to view or access with intent to view any photograph, film, or visual depiction, including any depiction which is stored electronically, of sexual conduct by a child or of a clearly lewd exhibition of a child's genitals or anus.

** * **

(c) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses, which shall be proven by a preponderance of the evidence:

(1) ~~that~~ That the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the depiction was made;

(2) ~~that~~ That the defendant possessed or accessed depictions of child pornography and promptly and in good faith;

(A) took reasonable steps, whether successful or not, to destroy or eliminate the ~~depiction~~ depictions; or

(B) reported the matter to a law enforcement agency and afforded the agency access to the depictions.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.