

HOUSE BILL REPORT

ESB 6261

*As Reported By House Committee on:
Judiciary*

Title: An act relating to the well-being of children.

Brief Description: Changing defenses to prosecutions for sexual exploitation of children.

Sponsor(s): Senators Roach, Stratton, L. Smith, Murray, Cantu, Jesernig, Hayner, Thorsness, Amondson and Erwin.

Brief History:

Reported by House Committee on:
Judiciary, February 28, 1992, DPA.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Belcher and R. Meyers.

Staff: Pat Shelledy (786-7149).

Background:

The chapter on sexual exploitation of children prohibits a number of activities concerning minors. Minors are defined as persons under age 18. Certain provisions prohibit dealing in depictions of minors engaged in sexually explicit conduct; other provisions involve attempting to get a minor to engage in sexually explicit conduct that will be photographed or viewed as part of a live performance; another statute prohibits communicating with a minor for immoral purposes. The specific statutes are as follows:

- RCW 9.68A.040 prohibits sexual exploitation of a minor by compelling, encouraging, or if a parent, permitting, the minor to engage in sexually explicit conduct knowing

that the conduct will be part of a live performance or will be photographed.

- RCW 9.68A.050 prohibits developing, duplicating, publishing, etc., or possessing with intent to develop, etc., any visual or printed matter that depicts a minor engaged in the act of sexually explicit conduct.

- RCW 9.68A.060 prohibits bringing into this state for sale or distribution, visual or printed matter that depicts a minor engaged in sexually explicit conduct.

- RCW 9.68A.070 prohibits possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

- RCW 9.68A.080 requires a film processor who develops film that the processor believes contains depictions of minors engaged in sexually explicit conduct to report the case to law enforcement.

- RCW 9.68A.090 prohibits communicating with a minor for immoral purposes.

DEFENSES:

The chapter does not apply to individual case treatment in a recognized medical facility or individual case treatment by a psychiatrist or psychologist licensed under Title 18 RCW.

In a prosecution under RCW 9.68A.050, .060, .070, or .080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. However, it is a defense if the defendant can prove by a preponderance of the evidence that at the time of the offense the defendant was "not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor."

In a prosecution under RCW 9.68A.040, .050, .060, or .090, it is also not a defense that the defendant did not know the alleged victim's age. However, it is a defense if the defendant can prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the alleged victim was at least 18 years old based on declarations by the alleged victim.

The different defenses set forth above contemplate that when the crime involves "pictures" of the child, that the person will not have direct contact with the child. The other defenses apply to crimes in which the defendant is dealing directly with the child (except RCW 9.68A.050 and .060).

Summary of Amended Bill:

The act applies to individual case treatment. It is an affirmative defense in prosecutions of cases involving depictions of minors that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW.

If the crime involves sexual exploitation of the minor or communicating with a minor for immoral purposes, the defendant may not rely on the alleged victim's declarations or the victim's apparent age as a defense. Instead, the defendant must make a reasonable bona fide effort to ascertain the true age of the minor by requiring production of identification.

Amended Bill Compared to Engrossed Bill: The Senate version is amended: (1) to restore the exemption under the statute for lawful conduct between spouses; and (2) to delete the requirement of establishing a defense that the defendant asked for identification when the case involves pictures and does not involve direct contact with a minor.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Witnesses: None.