

HOUSE BILL REPORT

SHB 1587

As Passed House

March 12, 1997

Title: An act relating to sexual exploitation of minors.

Brief Description: Penalizing parental voyeurism.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Lantz, McDonald, Cody, Skinner, Mason, H. Sommers, Ogden, Sheahan, Bush, Blalock, Dickerson, Conway, O'Brien, Linville, Keiser, Costa, Kessler, Kenney, Regala and Cooper).

Brief History:

Committee Activity:

Law & Justice: 2/12/97, 2/18/97 [DPS].

Floor Activity:

Passed House: 3/12/97, 96-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Staff: Edie Adams (786-7180).

Background: A person is guilty of sexual exploitation of a minor, a class B felony, if the person

- compels a minor to engage in sexually explicit conduct knowing that it will be photographed or part of a live performance;
- aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance; or

- is the parent, guardian, or custodian of the minor and permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

"Sexually explicit conduct" is defined to include, among other things, "exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of the sexual stimulation of the viewer."

Although prior case law implies that the statute applies to a person who surreptitiously photographs a nude minor, several recent court of appeals cases have interpreted the sexual exploitation statute to not apply to voyeurism or the surreptitious photography of a nude child unless other factors are present.

In *State v. Chester*, the court, in a divided opinion, overturned the conviction of a man who filmed his stepdaughter's nude body by concealing a video camera beneath her bed. One judge found that the crime of sexual exploitation requires the perpetrator to take some direct action to induce a minor to engage in sexually explicit conduct, such as "posing" the child. Another judge found that the initiator of the child's exhibition, whether the initiator is the child, the perpetrator, or another person, must have as a purpose of the exhibition that it be for the sexual stimulation of the viewer. The third judge dissented from the decision of the court, finding that the crime does apply to voyeurism or surreptitious photography if the perpetrator has the purpose of his or her sexual stimulation or another's sexual stimulation.

The *Chester* decision was subsequently reaffirmed in *State v. Grannis*, where the court held that an exhibition is not "sexually explicit conduct" if the sexual stimulation of the viewer is not the purpose of the person who initiates the exhibition.

In *State v. Myers*, the court upheld the conviction of a man who videotaped his daughter while she was taking a bath. The court based its holding on the fact that the father had "posed" his child by coaxing her to move into certain positions.

As interpreted by the court, the crime of sexual exploitation of a minor does not apply to a situation where a person surreptitiously views or photographs a nude or partially nude minor. Although this type of behavior might lead to civil liability for the tort of "intrusion" on a person's privacy, there is no crime that covers this behavior.

Summary of Bill: The crime of sexual exploitation of a minor is amended to provide a new circumstance under which a parent, guardian, or custodian of a minor commits the crime.

A parent, guardian, or custodian of a minor is guilty of sexual exploitation of the minor if the parent, guardian, or custodian, for the purpose of the sexual stimulation

of the viewer, observes or photographs the minor while the minor is engaged in sexually explicit conduct, whether the viewer is the parent, guardian, custodian, or another person.

A new crime of "surreptitious sexual exploitation of a minor" is created and classified as a class C felony. A person is guilty of surreptitious sexual exploitation of a minor if, with the purpose of arousing or gratifying the sexual desire of any person, the person views, photographs, or films a minor who is nude or partially nude, without the minor's knowledge or consent, and if the minor is in a place where the minor would have a reasonable expectation of privacy.

Definitions are provided for "full or partial nudity," "photographs," "films," and "views." A place where a person would have a reasonable expectation of privacy is defined as a place where the person would believe that he or she could disrobe without being photographed or filmed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill is needed to fill a hole in the current law concerning sexual exploitation of a minor. This hole was created by court interpretation of the statute requiring that the parent has to take affirmative action in order to be guilty of the crime. This should not be required if the parent is viewing or photographing a child for sexual stimulation purposes.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; John Neeb, Pierce County Prosecuting Attorney's Office (pro, with amendment); Joe Wheeler, Grays Harbor Prosecuting Attorney's Office (pro, with amendment); and Deborah Ruggles, Washington Coalition of Sexual Assault Programs (pro).