

# HOUSE BILL ANALYSIS

## HB 1587

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**Title:** An act relating to sexual exploitation of minors.

**Brief Description:** Penalizing parental voyeurism.

**Sponsors:** Representatives Lantz, McDonald, Cody, Skinner, Mason, H. Sommers, Ogden, Sheahan, Bush, Blalock, Dickerson, Conway, O'Brien, Linville, Keiser, Costa, Kessler, Kenney, Regala and Cooper.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**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 alone.

In *State v. Chester*, 82 Wn. App. 422 (1996), 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 holding was subsequently reaffirmed in State v. Grannis, 84 Wn. App. \_\_ (Jan. 1997), 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, 82 Wn. App. 435 (1996), 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.

**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.

**Fiscal Note:** Not requested.

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

Office of Program Research