

# HOUSE BILL REPORT

## HB 1512

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### As Reported by House Committee On:

Criminal Justice & Corrections

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

**Brief Description:** Including computer images in the definition of "visual or printed matter."

**Sponsors:** Representatives H. Sommers, Ballasiotes, O'Brien, Kagi, Lambert, Dickerson, Lisk, Lovick, Hurst, Delvin, Hankins, Keiser and Dunn.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/7/01, 2/14/01 [DP].

#### Brief Summary of Bill

- Expands the definition of photograph– in the child pornography statutes to include digital images– and tangible or intangible– items.
- Grants civil immunity to persons who report in good faith to law enforcement any visual or printed matter depicting child pornography when processing or developing visual or printed matter or repairing or maintaining computers.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

**Staff:** Trudes Hutcheson (786-7384).

### Background:

It is illegal to: (a) sexually exploit a minor for child pornography; (b) disseminate or otherwise deal in depictions of minors engaged in sexually explicit conduct; or (c) possess visual or printed matter depicting a minor engaged in sexually explicit conduct.

The term visual or printed matter– is defined in statute as any photograph or other material that contains a reproduction of a photograph. Photograph– is defined as any tangible item produced by photographing.–

In a 1999 case, the Washington Court of Appeals, Division I, held that the crime of possessing child pornography includes possessing digital computer images of child pornography. The defendant in that case argued that the statute only applies to tangible items and does not apply to digitized information stored on a computer hard drive. The court rejected that argument, reasoning that the computerized images originated as photographs and, therefore, fall within the meaning of the statute. State v. Rosul, 95 Wn. App. 175 (1999). The defendant appealed, but the state supreme court has denied review of the case.

A person who, in the course of processing or developing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter depicts a minor engaged in sexually explicit conduct must immediately report the incident, or cause a report to be made, to law enforcement. Failing to do so is a gross misdemeanor.

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**Summary of Bill:**

The term photograph– in the child pornography statutes is expanded to include digital images and both tangible and intangible items.

If in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person may report the incident, or cause a report to be made, to law enforcement.

A person making a report in good faith either during the repair or maintenance of a computer or during the processing or developing of visual or printed matter is immune from civil liability resulting from the report.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 5, 2001.

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

**Testimony For:** This bill is a result of work from the Seattle Police Department based on some of their experiences. The purpose of the bill is to make clear that digital images

are covered and to protect good faith reporters from civil liability. Immunity encourages reporting. The internet has resulted in almost all child pornography material being digital. Most cases today do not include actual printed photographs. Defendants don't print out the material because they think they can avoid the law by having the images on the computer. Child pornography is often used to seduce other children and acts as a mechanism for future abuse. We're not asking the Legislature to address whether the child pornography statutes cover images that are created by morphing— images on the computer. The United States Supreme Court is currently considering whether the federal law on that issue is constitutional.

(With concerns) The term reasonable cause— in section 2 that involves computer repair technicians should be changed because that language may be appropriate for persons developing photographs, but not for the computer situations.

**Testimony Against:** None.

**Testified:** (In support) Representative H. Sommers, prime sponsor; Patrick Sainsbury, King County Prosecuting Attorney; Nathan Janes, Seattle Police Department; Bob Higley, Washington Evangelicals for Responsible Government; and Suzanne Brown, Washington Coalition of Sexual Assault Programs.

(With concerns) Gary Gardner, Washington Association of Internet Service Providers.