

HOUSE BILL REPORT

SB 5570

As Reported by House Committee On:
Judiciary

Title: An act relating to communication with a minor for immoral purposes.

Brief Description: Expanding the crime of communicating with a minor for immoral purposes.

Sponsors: Senators Brown, Brandland, Kohl-Welles and Rasmussen; by request of Attorney General.

Brief History:

Committee Activity:

Judiciary: 3/20/03, 3/25/03 [DP].

Brief Summary of Bill

- Amends the crime of communicating with a minor for immoral purposes to include communicating with someone the person believes to be a minor.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor. It becomes a class C felony if the person has been convicted of the offense before or has other felony sex offense convictions. Under case law, "immoral purposes" refers to promoting a child's exposure to and involvement in sexual misconduct.

Law enforcement and prosecution agencies are prohibited from employing minors to aid in their investigations of communicating with a minor for immoral purposes.

A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, the person does any act which is a substantial step toward the commission of the crime. It is not a defense to a prosecution of attempt that the crime would have been factually impossible to complete. For example, in a recent case, the court upheld a conviction for attempted rape of a child of a defendant who made arrangements to have sexual intercourse with a person the defendant believed to be a young girl. The court rejected the defendant's argument that he could never take a substantial step toward completing the crime because the "victim" was really an undercover detective and not a child. The attempt statute focuses on the actor's criminal intent, rather than the impossibility of convicting the defendant of the completed crime. *State v. Townsend*, 147 Wn.2d 666 (2002).

An attempt to commit a crime is a gross misdemeanor when the underlying crime attempted is a class C felony. Attempt to commit a crime is a misdemeanor when the underlying crime attempted is a gross misdemeanor.

Summary of Bill:

The crime of communicating with a minor for immoral purposes can be committed by communicating with someone the person believes to be a minor.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Predators use the internet and chat rooms to meet young people. This bill gives one more tool to law enforcement to get predators in prison sooner. The bill will help protect children before something happens. A predator who is chatting with a fictitious child is also chatting with real children. The Legislature has made certain actions illegal because of the risk of harm even if no harm actually occurred. The Washington Supreme Court has found the statute of communicating with a minor constitutional and not too vague. Because the language is directed to sexual misconduct with a minor, it is not protected by the First Amendment. The court case dealing with virtual child pornography can be distinguished from the bill.

Testimony Against: The bill offends the First Amendment constitutional right to free speech because it focuses on communication. It is not clear where in the stream of communication the crime occurs. The bill is overly broad and will unnecessarily restrict free speech. The bill allows the state to punish a person who is just intending to do

something.

Testified: (In support) Senator Brown, prime sponsor; Elaine Rose, Office of the Attorney General; LeeAnn Shirey, Seattle Police Department; Hugh Birgenheier, Washington Association of Prosecuting Attorneys and Pierce County Prosecutor's Office; and Stacy Shown.

(Opposed) Michael Hanbey, Washington Defender Association and Washington Association of Criminal Defense Lawyers.