
HOUSE BILL 2566

State of Washington

60th Legislature

2008 Regular Session

By Representatives O'Brien, Pearson, Hudgins, Kretz, Dunn, McDonald, and Warnick; by request of Attorney General

Prefiled 01/09/08. Read first time 01/14/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to creating the crime of viewing depictions of
2 minors engaged in sexually explicit conduct; amending RCW 9.68A.110;
3 adding a new section to chapter 9.68A RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.68A RCW
6 to read as follows:

7 (1) A person who knowingly views over the internet any visual
8 depiction or copy thereof of a minor engaged in sexually explicit
9 conduct is guilty of a class C felony.

10 (2) In a prosecution under this section, the trier of fact shall
11 consider the title, text, and content of the visual depiction, as well
12 as the internet history, search terms, thumbnail images, downloading
13 activity, expert computer forensic testimony, the number of depictions
14 of minors engaged in sexually explicit conduct, the defendant's access
15 to and control over the electronic device and its contents upon which
16 the depictions were found, and any other relevant evidence, in
17 determining whether a person knowingly viewed the material.

18 (3) It shall be an affirmative defense to a charge under this
19 section that the defendant promptly and in good faith, and without

1 retaining or allowing any person, other than a law enforcement agency,
2 to access any visual depiction or copy thereof, reported the matter to
3 a law enforcement agency and afforded that agency access to each such
4 visual depiction.

5 **Sec. 2.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read
6 as follows:

7 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
8 the defendant was involved in activities of law enforcement and
9 prosecution agencies in the investigation and prosecution of criminal
10 offenses. Law enforcement and prosecution agencies shall not employ
11 minors to aid in the investigation of a violation of RCW 9.68A.090 or
12 9.68A.100. This chapter does not apply to lawful conduct between
13 spouses.

14 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
15 (~~(or)~~) 9.68A.080, or section 1 of this act, it is not a defense that
16 the defendant did not know the age of the child depicted in the visual
17 or printed matter: PROVIDED, That it is a defense, which the defendant
18 must prove by a preponderance of the evidence, that at the time of the
19 offense the defendant was not in possession of any facts on the basis
20 of which he or she should reasonably have known that the person
21 depicted was a minor.

22 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or
23 9.68A.102, it is not a defense that the defendant did not know the
24 alleged victim's age: PROVIDED, That it is a defense, which the
25 defendant must prove by a preponderance of the evidence, that at the
26 time of the offense, the defendant made a reasonable bona fide attempt
27 to ascertain the true age of the minor by requiring production of a
28 driver's license, marriage license, birth certificate, or other
29 governmental or educational identification card or paper and did not
30 rely solely on the oral allegations or apparent age of the minor.

31 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, (~~(or)~~)
32 9.68A.070, or section 1 of this act, it shall be an affirmative defense
33 that the defendant was a law enforcement officer in the process of
34 conducting an official investigation of a sex-related crime against a
35 minor, or that the defendant was providing individual case treatment as
36 a recognized medical facility or as a psychiatrist or psychologist
37 licensed under Title 18 RCW.

1 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, (~~or~~)
2 9.68A.070, or section 1 of this act, the state is not required to
3 establish the identity of the alleged victim.

--- END ---