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SENATE BILL 6373

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State of Washington

60th Legislature

2008 Regular Session

By Senators Eide, Stevens, Shin, and Sheldon; by request of Attorney General

Read first time 01/16/08. Referred to Committee on Human Services & Corrections.

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.

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