
**Public Safety & Emergency Preparedness
Committee**

HB 2424

Brief Description: Protecting children from sexual exploitation and abuse.

Sponsors: Representatives O'Brien, Pearson, Hurst, Takko, Herrera, Chandler, Ross, Rodne, Dammeier, Condotta, Shea, Klippert, Smith, Walsh and Parker; by request of Attorney General.

Brief Summary of Bill

- Clarifies that the unit of prosecution for dealing in, sending or bringing into the state, or possessing a depiction of a minor engaged in sexually explicit conduct is per item of visual or printed matter.
- Modifies the definition of "possession" to include intentionally viewing on the Internet a visual depiction of a minor engaged in sexually explicit conduct.
- Creates an affirmative defense for individuals assisting a law enforcement investigation of a sex-related crime against a minor.

Hearing Date: 1/12/10

Staff: Alexa Silver (786-7190).

Background:

Crimes Related to the Depiction of a Minor Engaged in Sexually Explicit Conduct.

A person is guilty of *dealing in* depictions of a minor engaged in sexually explicit conduct if he or she: (a) knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells "any visual or printed matter" depicting a minor engaged in sexually explicit conduct, or (b) possesses such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell such matter. Violation of this statute is a class C felony with a seriousness level of VII.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person is guilty of *sending or bringing into the state* depictions of a minor engaged in sexually explicit conduct if he or she knowingly sends or brings into the state for sale or distribution "any visual or printed matter" depicting a minor engaged in sexually explicit conduct. Violation of this statute is a class C felony with a seriousness level of VII.

A person is guilty of *possession* of depictions of a minor engaged in sexually explicit conduct if he or she knowingly possesses "visual or printed matter" depicting a minor engaged in sexually explicit conduct. Violation of this statute is a class B felony with a seriousness level of VI.

"Visual or printed matter" means "any photograph or other material" containing a reproduction of a photograph. "Sexually explicit conduct" includes the exhibition of the unclothed genitals, pubic, or rectal areas of a minor or the breasts of a female minor, for the purpose of the viewer's sexual stimulation.

Unit of Prosecution for Depictions of a Minor Engaged in Sexually Explicit Conduct.

In *State v. Sutherby*, the defendant was charged with 10 counts of possession of depictions of a minor engaged in sexually explicit conduct. At sentencing, the defendant argued that he should be sentenced for only one count of possession.

The Washington State Supreme Court (Court) agreed, holding that the proper unit of prosecution is per possession, rather than per image or per minor depicted. The Court held that the Legislature had proscribed the conduct of possessing child pornography. It noted that "visual or printed matter" is defined as "any photograph or other material" and interpreted "any" to include "every" and "all" based on the dictionary definition and previous court cases.

Affirmative Defense.

In a prosecution for dealing in, sending or bringing into the state, or possessing depictions of a minor engaged in sexually explicit conduct, it is an affirmative defense that the defendant is a law enforcement officer conducting an official investigation of a sex-related crime against a minor.

Summary of Bill:

Crimes Related to the Depiction of a Minor Engaged in Sexually Explicit Conduct.

For purposes of crimes related to the depiction of a minor engaged in sexually explicit conduct, "possession" is defined to include intentionally viewing on the Internet a visual depiction of a minor engaged in sexually explicit conduct. To "intentionally view" requires a pattern of viewing such visual depictions. To determine whether there is a pattern, the court must consider the following, along with any other relevant evidence: the title, text, and content of the visual depiction; internet history; search terms; thumbnail pictures; downloading activity; expert computer forensic testimony; the number of depictions; the defendant's access to and control over the electronic device upon which the depictions were found; and the contents of the electronic device upon which the depictions were found.

"Sexually explicit conduct" is defined to include depiction, rather than exhibition, of the unclothed genitals, pubic, or rectal areas of a minor or the breasts of a female minor, for the purpose of the viewer's sexual stimulation. The minor need not have known that he or she was participating in the depiction.

Unit of Prosecution for Depictions of a Minor Engaged in Sexually Explicit Conduct.

The Legislature intends that each individual item of "visual or printed matter" is a separate violation for the purpose of determining the unit of prosecution. It is a class C felony to deal in or send or bring into the state "a visual or printed matter" depicting a minor engaged in sexually explicit conduct. It is a class B felony to possess "a visual or printed matter" depicting a minor engaged in sexually explicit conduct. "Visual or printed matter" is defined as "a photograph or other material."

Affirmative Defense.

It is an affirmative defense in a prosecution for a crime related to the depiction of a minor engaged in sexually explicit conduct that the defendant had written authorization to assist a law enforcement officer in an investigation of a sex-related crime against a minor and was acting at the direction of a law enforcement officer.

Appropriation: None.

Fiscal Note: Requested on January 5, 2010.

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