

SENATE BILL REPORT

SB 5183

As of February 24, 2009

Title: An act relating to viewing sexually explicit depictions of minors on the internet.

Brief Description: Addressing the viewing of sexually explicit depictions of minors on the internet.

Sponsors: Senators Hobbs, Stevens, McAuliffe, Brandland, Hargrove, Carrell, Pflug, Hewitt, Parlette, Swecker, Shin, Benton, Roach, Haugen and Holmquist; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 2/25/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Brandon Roché (786-7405)

Background: A person is guilty of possession of depictions of a minor engaged in sexually explicit conduct if that person knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct. Possession of depictions of a minor engaged in sexually explicit conduct is a class B felony with a seriousness level of VI.

In a prosecution for possession of depictions of a minor engaged in sexually explicit conduct, the state is not required to prove the identity of the victim. It is not a defense that the defendant did not know the age of the minor depicted in the visual or printed matter. The following affirmative defenses, however, are available to a defendant:

- At the time of the offense, the defendant was not in possession of any facts on the basis of which that defendant should reasonably have known that the person depicted was a minor.
- That the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.
- That the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist.

Summary of Bill: The crime of possession of depictions of a minor engaged in sexually explicit conduct is expanded to include a second degree. A person commits this offense in the second degree if that person intentionally views over the internet any visual depiction or

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copy thereof of a minor engaged in sexually explicit conduct. Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is an unranked class C felony.

In a prosecution for viewing depictions of a minor engaged in sexually explicit conduct, the trier of fact must find a pattern of viewing the material. This is established by consideration of:

- the title, text, and content of the visual depiction;
- the internet history, search terms, thumbnail images, and downloading activity of the accused;
- expert computer forensic testimony;
- the number of depictions of minors engaged in sexually explicit conduct;
- the defendant's access to and control over the electronic device and its contents upon which the depictions were found; and
- any other relevant evidence.

An affirmative defense is added to include a person specifically authorized to assist a law enforcement officer in conducting an official investigation of a sex-related crime against a minor.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Section 4 of this act takes effect on August 1, 2009. The remaining sections take effect 90 days after adjournment of the session in which the bill is passed.