

SENATE BILL REPORT

SB 6397

As of January 25, 2010

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 Kline, Pflug, Oemig, McDermott, Eide, Kauffman, Shin and McAuliffe.

Brief History:

Committee Activity: Judiciary: 1/22/10.

SENATE COMMITTEE ON JUDICIARY

Staff: Karen Campbell (786-7448)

Background: Washington criminal law currently contains three felony prohibitions concerning depictions of a minor engaged in sexually explicit conduct. It is a Class C felony to knowingly deal in depictions of a minor engaged in sexually explicit conduct under RCW 9.68A.050. It is a Class C felony to knowingly send or bring into the state depictions of a minor engaged in sexually explicit conduct for sale or distribution under RCW 9.68A.060. Finally, it is a Class B felony to knowingly possess depictions of a minor engaged in sexually explicit conduct under RCW 9.68A.070.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The act clarifies that each depiction or image possessed constitutes a separate offense for all three of these crimes. This was in response to a Washington State Supreme Court decision, *State v. Sutherby*, 165 Wn. 2d 870 (2009) where the court found that the unit of prosecution for knowingly possessing depictions of a minor engaged in sexually explicit conduct was one count per possession of child pornography without regard to the number of images possessed or the number of minors depicted in the images possessed.

A new criminal offense is created prohibiting Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct. A person commits this crime by intentionally viewing over the internet any visual depiction or copy thereof of a minor engaged in sexually explicit conduct. This crime is a Class B felony and a sex offense.

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.

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.

Each separate Internet session of viewing the prohibited material, over the Internet constitutes a separate offense. Internet session is defined as "a period of time during which an internet user, using a specific internet protocol address visits, or is logged into an internet site for a sequential and uninterrupted period of time."

In a prosecution under either RCW 9.68A.050, 060, or 070, it is a defense that the person was specifically authorized, in writing, to assist a law enforcement officer and acted at the direction of the law enforcement officer while conducting an official investigation of a sex related crime against a minor.

Appropriation: None.

Fiscal Note: Requested on January 15, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill will protect children who are victims of sexual abuse. Sex offenders who view but do not download child pornography on the Internet are going unpunished and the victims uncounted for. Not only will being able to prosecute this crime serve to hold sex offenders accountable for their actions, but it will also help the public understand the severity of this offense and the resulting damage to children.

Persons Testifying: PRO: Lana Weinmann, Washington State Attorney General; Lisa Johnson, King County Prosecuting Attorney.