

SENATE BILL REPORT

SSB 6566

As Passed Senate, February 10, 2018

Title: An act relating to juvenile offenses.

Brief Description: Concerning juvenile offenses.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Dhingra, Chase, Cleveland, Darneille, Saldaña and Kuderer).

Brief History:

Committee Activity: Human Services & Corrections: 1/30/18, 1/31/18 [DPS].

Floor Activity:

Passed Senate: 2/10/18, 31-16.

Brief Summary of First Substitute Bill

- Provides that crimes relating to depictions of minors engaged in sexually explicit conduct do not apply to minors when the depiction is of a minor over the age of 12.
- Establishes a misdemeanor offense for a minor who distributes, transfers, or disseminates a depiction of a minor other than themselves engaged in sexually explicit conduct.
- Requires the Washington Coalition of Sexual Assault Programs to establish a workgroup relating to the harms caused by the exchange of intimate images by minors and report to the Legislature by November 1, 2018.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6566 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

Staff: Kevin Black (786-7747)

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.

Background: The following criminal offenses are sex offenses and class B felonies:

- dealing in depictions of a minor engaged in sexually explicit conduct in the first or second degree;
- sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first or second degree;
- possession of depictions of a minor engaged in sexually explicit conduct in the first or second degree; and
- intentionally viewing over the Internet visual or printed matter depicting a minor engaged in sexually explicit conduct in the first degree.

The following criminal offense is a sex offense and a class C felony:

- intentionally viewing over the Internet visual or printed matter depicting a minor engaged in sexually explicit conduct in the second degree.

A minor is any person under 18 years of age.

Summary of First Substitute Bill: The following crimes do not apply to a minor when the depictions involve another minor over the age of 12:

- sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first or second degree;
- possession of depictions of a minor engaged in sexually explicit conduct in the first or second degree;
- intentionally viewing over the Internet visual or printed matter depicting a minor engaged in sexually explicit conduct in the first or second degree; or
- dealing in depictions of a minor engaged in sexually explicit conduct in the first or second degree, except as described below.

However, if a minor distributes, transfers, or disseminates a depiction of a minor other than themselves who is over the age of 12 and engaged in sexually explicit conduct, it is a misdemeanor, but not a sex offense.

A prosecutor in juvenile court is required to divert a first time offense involving the misdemeanor described above. Limitations are removed on diverting offenses when a juvenile has three or more diversion agreements, or is accused of a felony and has a criminal history of at least two misdemeanor offenses which are diversions.

The Washington Coalition of Sexual Assault Programs must convene a workgroup in consultation with specified stakeholders to make recommendations to the Legislature regarding age-appropriate prevention and intervention strategies to address potential harms caused by the exchange of intimate images by minors. The workgroup must report to the Legislature by November 1, 2018.

A minor who possesses a depiction of a minor engaged in sexually explicit conduct or any other image of a minor which constitutes an intimate image is deemed to forfeit the right to continued possession of the image and may be ordered to forfeit the right to continued possession of such an image by a court. This provision does not limit the right of the court under other laws to order forfeiture of an intimate image.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill creates better balance between the consequences of criminal behavior, public safety, and personal responsibility. Current law makes no distinction between minors who send images of themselves and minors who send images of others maliciously. Technology has improved some things but opened the door to change and complications. This reconciles the intent of child pornography laws, which were passed to prevent sexual exploitation and abuse, with the reality of modern society. Up to 20 percent or more of children are found in studies to engage in this behavior. We shouldn't punish adolescents for common, developmental behavior, but instead focus on education and prevention of harm. Other states have excluded minors who sext from child pornography laws. My adolescent client who sexted was charged with manufacturing child pornography. The experience was incredibly harmful and stressful for her and her family. This type of experience creates a deep suspicion of the justice system. Adolescence is a dramatic period of brain development, creating adaptive orientation towards risk. Research literature shows that youth exposed to harsh penalties will begin to see themselves as criminal offenders, which works against rehabilitative and societal goals. Exchanging images can lead to cyberbullying, extortion, and sexual grooming, but addressing the challenge through the criminal justice system hasn't worked. With harsh criminal penalties, adults won't know what their kids are doing. The work group will be helpful in generating recommendations. This bill is ten years overdue. This is a good way to not have pictures ruin a kid's life.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Elisabeth Smith, ACLU of Washington; Bradley Drury, citizen; Sarah Walker, University of Washington Public Behavioral Health and Justice Policy; Todd Dowell, Washington Association of Prosecuting Attorneys; Dierk Meierbachtol, Office of Superintendent of Public Instruction.

Persons Signed In To Testify But Not Testifying: No one.