

HOUSE BILL REPORT

SHB 1742

As Passed House:
March 4, 2019

Title: An act relating to juvenile offenses that involve depictions of minors.

Brief Description: Concerning juvenile offenses that involve depictions of minors.

Sponsors: House Committee on Human Services & Early Learning (originally sponsored by Representatives Frame, Eslick, Senn, Griffey, Kilduff, Corry, Appleton, Sells, Walen, Wylie, Doglio, Stanford, Robinson, Macri and Davis).

Brief History:

Committee Activity:

Human Services & Early Learning: 2/1/19, 2/8/19 [DPS].

Floor Activity:

Passed House: 3/4/19, 57-39.

Brief Summary of Substitute Bill

- Exempts minors from certain crimes relating to depictions of other minors age 13 and older.
- Creates a new offense of Minor Dealing in Depictions of Another Minor Age 13 or Older Engaged in Sexual Conduct.
- Requires that a prosecutor divert an individual's first offense of Minor Dealing in Depictions of Another Minor age 13 or Older Engaged in Sexual Conduct and Minor Selling Depictions of Himself or Herself Engaged in Sexually Explicit Conduct.

HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Eslick, Assistant Ranking Minority Member; Corry, Goodman, Kilduff, Lovick and Ortiz-Self.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives McCaslin, Assistant Ranking Minority Member; Klippert.

Minority Report: Without recommendation. Signed by 1 member: Representative Dent, Ranking Minority Member.

Staff: Luke Wickham (786-7146).

Background:

Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct in the first degree or second degree when he or she knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in sexually explicit conduct. The crime is also committed when a person possesses the visual or printed matter with the intent to develop, duplicate, publish, print, disseminate, exchange, or sell it.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level VII offense, and the second degree offense is a class C felony and level V offense.

A minor is defined as any person under age 18.

Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct in the first or second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and a level VII offense, and the second degree offense is a class C felony and level V offense.

Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct. For the purposes of determining the unit of prosecution, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level VI offense, and the second degree offense is a class C felony and level IV offense.

Sexually Explicit Conduct.

Sexually explicit conduct is defined as actual or simulated:

- sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- penetration of the vagina or rectum by any object;
- masturbation;
- sadomasochistic abuse;
- defecation or urination for the purpose of sexual stimulation of the viewer;
- depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer; and
- touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast for the purpose of sexual stimulation of the viewer.

Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level IV offense, and the second degree offense is a class C unranked felony offense.

Juvenile Sentencing and Diversion.

Juvenile court dispositions are subject to statutory sentencing guidelines.

Local sanctions is the least serious category for juvenile sentencing purposes. Local sanctions include:

- a range of up to 30 days in confinement;
- up to 12 months of community supervision;
- up to 150 hours of community service; and
- up to a \$500 fine.

Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility. Any confinement imposed that is greater than 30 days is served through commitment at a juvenile rehabilitation facility.

A juvenile diversion is a contract between a juvenile accused of an offense and a diversion unit where the juvenile agrees to certain conditions in lieu of prosecution. Diversion agreements may include community restitution not to exceed 150 hours, restitution, up to 10 hours of counseling and/or up to 20 hours of educational or informational sessions, requirements to remain during certain hours at home, school, or work, and requirements not to have contact with victims or witnesses. If a youth does not complete the diversion agreement, a prosecutor may file a criminal complaint.

Summary of Substitute Bill:

Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct.

Juveniles are exempted from the dealing in depictions of minors engaged in sexually explicit conduct offense, and new offenses are created that are specific to minors dealing in depictions of another minor.

A new offense, Minor Dealing in Depictions of Another Minor age 13 or Older Engaged in Sexual Conduct is committed when a minor knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor age 13 or older engaged in an act of sexually explicit conduct. The offense is categorized as either a simple or gross misdemeanor offense based on the type of conduct depicted. This offense is not considered a sex offense for purposes of sex offender registration.

A new offense, Minor Dealing in Depictions of Another Minor Age 12 or Younger Engaged in Sexually Explicit Conduct, is committed when a minor knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, sells, or possesses with intent to develop, publish, print, disseminate, exchange, or sell a visual or printed matter that depicts another minor age 12 or younger engaged in an act of sexually explicit conduct. This offense is categorized as a class B felony and is considered a sex offense for purposes of sex offender registration.

A new offense, Minor Financing or Selling Depictions of Another Minor Engaged in Sexually Explicit Conduct is committed when a minor finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct. This offense is categorized as a class B felony and is considered a sex offense for purposes of sex offender registration.

Minors are exempted from these offenses when the visual or printed matter is of himself or herself, except if selling an image of himself or herself. A minor selling a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct is a misdemeanor offense and a prosecutor must divert a minor's first offense.

Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct.

A minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting any minor age 13 or older engaged in sexually explicit conduct is exempt from the crime of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct.

A minor who possesses visual or printed matter depicting any minor age 13 or older engaged in sexually explicit conduct is exempt from the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.

A minor who views over the Internet visual or printed matter depicting a minor age 13 or older engaged in sexually explicit conduct is exempt from the crime of Intentionally Viewing over the Internet Visual or Printed Matter Depicting a Minor Engaged in Sexually Explicit

Conduct. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

Diversion.

Prosecutors shall divert an offender's first offense for a distribution, transfer, dissemination, or exchange of sexually explicit images of other minors age 13 or older.

Image Forfeiture.

A minor who possesses any depiction of any other minor engaged in an act of sexually explicit conduct or which constitutes an intimate image forfeits any right to continued possession of that depiction and any court shall order forfeiture of that depiction.

Exchange of Intimate Images by Minors Work Group.

The Washington Coalition of Sexual Assault Programs, in consultation with the Office of the Superintendent of Public Instruction; the Washington Association for the Treatment of Sexual Abusers; the Department of Children, Youth, and Families; the Department of Social and Health Services; the juvenile court administrators; the Washington Association of Prosecuting Attorneys; representatives from the Office of Public Defense; youth representatives; and other relevant stakeholders, must convene a work group to make recommendations to the Legislature by December 1, 2019, regarding age-appropriate prevention and intervention strategies to address potential harms caused by exchange of intimate images by minors.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Predecessors in the Legislature could not have imagined that children would have computers in their hands at all times. This bill does not affect harassment, extortion, or other offenses that juveniles may commit when dealing with these pictures. It is not appropriate for juveniles to be guilty of a felony sex offense for sending these pictures. This is a very significant issue. The prevalence of cell phones and technology create major issues for juveniles at a time when they are still maturing. Families are afraid to come forward to law enforcement about this issue because possession of one of these pictures is a felony sex offense. Grown men and women should be prosecuted to the full extent of the law for child pornography, but juveniles who have these pictures should be treated differently. This bill does not say that this behavior is fine, it says juveniles should be treated differently than adults dealing in child pornography. An offense like this for a juvenile can result in children being forced to change schools and lose their friends. This can also impact a person's prospect for employment and housing later in life. Children are reticent to tell their parents, trusted adults, teachers, counselors, and others about sexually explicit depictions of minors because of the threat of harsh penalties. This bill will help families respond better to these issues. Taking risks is developmentally appropriate for young people. As technology has

evolved, this normal behavior has become extremely problematic. Seventy to 80 percent of adults say they have sent these kinds of messages; however, kids don't understand the consequences of this behavior. Proactive education and prevention are the solution to this problem.

(Opposed) None.

Persons Testifying: Representative Frame, prime sponsor; Mike Edwards, Washington State Internet Crimes Against Children Task Force; Vanessa Hernandez, American Civil Liberties Union of Washington; Sharonda Amamilo, Thurston County Public Defense; Jimmy Hung, King County Prosecutor's Office; Dierk Meierbachtol, Office of Superintendent of Public Instruction; and Jo Langford.

Persons Signed In To Testify But Not Testifying: Carey Morris, Washington State Coalition Against Domestic Violence; and Nancy Sapiro, Justice for Girls Coalition.