

HOUSE BILL REPORT

SSB 5572

As Reported by House Committee On:
Public Safety

Title: An act relating to implementing the recommendations of the Washington state internet crimes against children task force.

Brief Description: Implementing the recommendations of the Washington state internet crimes against children task force.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wilson, C., Dhingra, Conway, Honeyford, Hunt, Randall and Wagoner).

Brief History:

Committee Activity:

Public Safety: 2/17/22, 2/22/22 [DP].

Brief Summary of Substitute Bill

- Establishes a new means to commit the offense of Sexual Exploitation of a Minor.
- Narrows the applicability of certain lesser penalties and criminal liability exemptions in the Responsible Teen Communications Act.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Orwall, Ramos, Simmons, Thai and Young.

Staff: Kelly Leonard (786-7147).

Background:

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

Different criminal offenses may apply when a person knowingly views or photographs another person without his or her consent or knowledge while he or she is engaging in sexual activity or is otherwise in a place where he or she would have a reasonable expectation of privacy. This includes, for example, Voyeurism in the first degree, which is a class C felony sex offense and a seriousness level II offense, as well as Voyeurism in the second degree, which is a gross misdemeanor.

Depending on the circumstances, separate criminal offenses may apply if a person photographs a minor engaged in sexually explicit conduct or otherwise deals in depictions of a minor engaged in sexually explicit conduct. "Sexually explicit conduct" means actual or simulated sexual intercourse, penetration, masturbation, sadomasochistic abuse, and other acts specified in statute. It also includes the depiction of the genitals or unclothed pubic or rectal areas of any minor or the unclothed breast of a female minor.

Sexual Exploitation of a Minor. A person commits the offense of Sexual Exploitation of a Minor if the person:

- compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
- aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
- being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

Sexual Exploitation of a Minor is a class B felony, a seriousness level IX offense, sex offense, and a "most serious offense," also referred to as strike offense.

Dealing in Depictions of Minors. Separate from the offense of Sexual Exploitation of a Minor, different offenses apply to persons who finance, attempt to finance, develop, duplicate, publish, print, disseminate, exchange, sell, possesses, or view visual or printed matter depicting minors engaged in sexually explicit conduct, also commonly referred to as child pornography. The penalties for the offenses vary, but all are class B or C felony sex offenses with seriousness levels ranging from IV to VII. In 2019 the state enacted the Responsible Teen Communications Act (Act), which exempted minors age 13 or older from these offenses where the depictions involve other minors. Instead, the Act established new offenses for minors who commit similar conduct involving visual or printed matter depicting other minors engaged in sexually explicit conduct. The penalties for a related offense range from gross misdemeanors to unranked class B felony sex offenses.

The Act provides certain specialized exceptions for when a minor deals in depictions of himself or herself engaged in sexually explicit conduct. If a minor finances or sells visual or printed matter depicting a minor engaged in sexually explicit conduct, it is an unranked class B felony. However, when the minor sells similar materials depicting himself or

herself, it is a misdemeanor. More broadly, the Act provides that none of the offenses apply to a minor who finances, attempts to finance, develops, duplicates, publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct. In those circumstances, the Act exempts the minor from criminal liability.

Sentencing. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of an offense generally determines the maximum term of confinement (prison or jail) and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act applies and determines a specific range of confinement within the statutory maximum. Ranges are determined by a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Seriousness levels range from I to XVI, and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence. If an offense does not have a designated seriousness level, also referred to as an "unranked offense," then the maximum sentence is one year. A conviction of a felony sex offense may carry additional consequences, including the requirement to register as a sex offender.

Initiative Measure No. 593, approved by the voters in 1994 (also referred to as the "three strikes law"), requires a sentencing court to impose a sentence of imprisonment without the possibility of release if a person is deemed to be a "persistent offender." A person is a "persistent offender" if he or she is convicted of a "most serious offense," and has at least two prior convictions for "most serious offenses" within a certain period of time. Alternatively, a person may be considered a "persistent offender" if he or she is convicted of certain serious sex offenses on at least two separate occasions.

A "most serious offense," also referred to as "strike offense," includes any class A felony, various class B felonies—which are primarily assault, sex, or kidnapping-related offenses—as well as any felony with a deadly weapon verdict, and any equivalent federal or out-of-state offense. Sexual Exploitation of a Minor is a strike offense.

Summary of Bill:

Sexual Exploitation of a Minor. A new means of committing the offense of Sexual Exploitation of a Minor is established. A person commits the offense if he or she knowingly causes a minor to be photographed or part of a live performance which depicts the minor engaged in sexually explicit conduct where the minor is unconscious or unaware of the photograph or recording.

Dealing in Depictions of Minors and the Responsible Teen Communications Act. The specialized exceptions for a minor dealing in depictions of himself or herself are modified. In order for the lesser misdemeanor penalty relating to a minor selling visual or printed matter depicting himself or herself to apply, the visual or printed matter must not also depict another minor engaged in sexually explicit conduct.

The broader exception from criminal liability is also modified to account for other minors depicted in the visual or printed matter. None of the offenses apply to a minor who finances, attempts to finance, develops, duplicates, publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct, so long as the visual or printed matter does not also depict another minor engaged in sexually explicit conduct.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 19, 2022.

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) This bill closes troubling loopholes in current law. Due to a court decision from 1997, the crime of Sexual Exploitation of a Minor does not apply when a child is not aware he or she is being photographed. The bill addresses this by establishing a new means to commit the offense. Furthermore, the bill clarifies the current liability protection afforded to minors who deal in photographs of themselves. The bill provides that these protections apply only if the photographs do not depict other minors. This will address situations where a minor secretly films themselves engaged in sexual conduct with others.

(Opposed) None.

Persons Testifying: Laura Harmon, Washington State Internet Crimes Against Children Taskforce.

Persons Signed In To Testify But Not Testifying: None.