
**Public Safety & Emergency
Preparedness Committee**

HB 2566

Brief Description: Creating the crime of viewing depictions of minors engaged in sexually explicit conduct.

Sponsors: Representatives O'Brien, Pearson, Hudgins, Kretz, Dunn, McDonald and Warnick; by request of Attorney General.

Brief Summary of Bill

- Creates the crime of Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.

Hearing Date: 1/24/08

Staff: Jim Morishima (786-7191).

Background:

A person is guilty of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct if he or she 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 to the offense 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 he or she should reasonably have known that the person depicted was a minor.
- At the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.
- At the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist.

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.

Summary of Bill:

The new crime of Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct is created. A person commits this offense if he or she knowingly views over the Internet any visual depiction or copy thereof of a minor engaged in sexually explicit conduct. Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct 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 consider the title, text, and content of the visual depiction, as well as the Internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, the number of depictions of minor 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, in determining whether a person knowingly viewed the material.

In a prosecution for Viewing 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 to the offense that the defendant did not know the age of the child depicted in the visual or printed matter. The following affirmative defenses, however, are available to the defendant:

- The defendant promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof, reported the matter to a law enforcement agency and afforded that agency access to each visual depiction.
- At the time of the offense, the defendant was in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.
- The defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.
- The defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist.

Appropriation: None.

Fiscal Note: Available.

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