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SENATE BILL 5989

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State of Washington                      62nd Legislature                      2011 2nd Special Session

By Senators Carrell, Kline, Roach, Holmquist Newbry, Regala, Swecker, Morton, Becker, Baumgartner, Schoesler, Delvin, and Chase

Read first time 12/09/11. Referred to Committee on Judiciary.

1            AN ACT Relating to restricting access to evidence in prosecutions  
2 of sexual exploitation of children; amending RCW 9.68A.001; adding a  
3 new section to chapter 9.68A RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 9.68A.001 and 2010 c 227 s 1 are each amended to read  
6 as follows:

7            The legislature finds that the prevention of sexual exploitation  
8 and abuse of children constitutes a government objective of surpassing  
9 importance. The care of children is a sacred trust and should not be  
10 abused by those who seek commercial gain or personal gratification  
11 based on the exploitation of children.

12            The legislature further finds that the protection of children from  
13 sexual exploitation can be accomplished without infringing on a  
14 constitutionally protected activity. The definition of "sexually  
15 explicit conduct" and other operative definitions demarcate a line  
16 between protected and prohibited conduct and should not inhibit  
17 legitimate scientific, medical, or educational activities.

18            The legislature further finds that children engaged in sexual  
19 conduct for financial compensation are frequently the victims of sexual

1 abuse. Approximately eighty to ninety percent of children engaged in  
2 sexual activity for financial compensation have a history of sexual  
3 abuse victimization. It is the intent of the legislature to encourage  
4 these children to engage in prevention and intervention services and to  
5 hold those who pay to engage in the sexual abuse of children  
6 accountable for the trauma they inflict on children.

7 The legislature further finds that due to the changing nature of  
8 technology, offenders are now able to access child pornography in  
9 different ways and in increasing quantities. By amending current  
10 statutes governing depictions of a minor engaged in sexually explicit  
11 conduct, it is the intent of the legislature to ensure that intentional  
12 viewing of and dealing in child pornography over the internet is  
13 subject to a criminal penalty without limiting the scope of existing  
14 prohibitions on the possession of or dealing in child pornography,  
15 including the possession of electronic depictions of a minor engaged in  
16 sexually explicit conduct. It is also the intent of the legislature to  
17 clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the  
18 unit of prosecution for the statutes governing possession of and  
19 dealing in depictions of a minor engaged in sexually explicit conduct.  
20 It is the intent of the legislature that the first degree offenses  
21 under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or  
22 image unit of prosecution, while the second degree offenses under RCW  
23 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of  
24 prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009).  
25 Furthermore, it is the intent of the legislature to set a different  
26 unit of prosecution for the new offense of viewing of depictions of a  
27 minor engaged in sexually explicit conduct such that each separate  
28 session of intentionally viewing over the internet of visual depictions  
29 or images of a minor engaged in sexually explicit conduct constitutes  
30 a separate offense.

31 In response to *State v. Boyd*, 158 P.3d 54 (2007) it is further the  
32 intent of the legislature to place reasonable limitations on the  
33 possession and viewing of evidence by a pro se defendant or the defense  
34 in a case prosecuted under this chapter consistent with the United  
35 States Constitution and the Washington state Constitution to avoid  
36 dissemination of such material and potential revictimization of the  
37 children exploited in these crimes.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 9.68A RCW  
2 to read as follows:

3        (1) In any criminal proceeding, any property or material that  
4 constitutes visual or printed matter that depicts a minor engaged in  
5 sexually explicit conduct shall remain in the care, custody, and  
6 control of either the law enforcement agency seizing the material or  
7 the court.

8        (2)(a) Notwithstanding superior court criminal rule (CrR) 4.7, a  
9 court shall deny, in any criminal proceeding, any request by the  
10 defendant to copy, photograph, duplicate, or otherwise reproduce any  
11 property or material that constitutes visual or printed matter that  
12 depicts a minor engaged in sexually explicit conduct, so long as the  
13 law enforcement agency seizing the material makes the property or  
14 material reasonably available to the defendant.

15        (b) For the purposes of (a) of this subsection, property or  
16 material shall be deemed to be reasonably available to the defendant if  
17 the government provides ample opportunity for inspection, viewing, and  
18 examination at a law enforcement agency facility of the property or  
19 material by the defendant, his or her attorney, and any individual the  
20 defendant may seek to qualify to furnish expert testimony at trial.

21        NEW SECTION.    **Sec. 3.**    This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes effect  
24 immediately.

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