

SENATE BILL REPORT

SB 5572

As of January 18, 2022

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: Senators Wilson, C., Dhingra, Conway, Honeyford, Hunt, Randall and Wagoner.

Brief History:

Committee Activity: Law & Justice: 1/18/22.

Brief Summary of Bill

- Adds an element to the crime of sexual exploitation of a minor.
- Designates the crimes of minor dealing in depictions of another minor 12 years of age or younger engaged in sexually explicit conduct in the first degree, minor dealing in depictions of another minor 12 years of age or younger engaged in sexually explicit conduct in the second degree, and minor financing or selling depictions of another minor engaged in sexually explicit conduct on the sentencing grid.
- Adds an element to the crime of minor selling depictions of themselves engaged in sexually explicit conduct.
- Adds an element to the exemption from liability of minors possessing depictions of themselves engaged in an act of sexually explicit conduct.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

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.

Background: The Washington State Internet Crimes Against Children Task Force (Task Force) is one of 61 such task forces in the United States funded by the United States Department of Justice. The Task Force is made up of local, state, and federal law enforcement agencies working to identify, arrest, and convict those individuals who victimize children by way of the Internet. Crimes investigated by the unit include the following: communication with a minor for immoral purposes, sexual exploitation of a minor, possession of depictions of minors engaged in sexually explicit conduct, and dealing in depictions of minors engaged in sexually explicit conduct.

Sexual Exploitation of a Minor. A person is guilty of sexual exploitation of a minor if the person:

- compels a minor by threat or force to engage in sexually explicit conduct, knowing 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 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 the conduct will be photographed or part of a live performance.

Sexual exploitation of a minor is a class B felony.

Depictions of a Minor 12 Years or Younger. A person under the age of 18 commits the crime of a minor dealing in depictions of another minor 12 years of age or younger engaged in sexually explicit conduct when they knowingly:

- develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell a visual or printed matter that depicts another minor 12 years of age or younger engaged in an act of sexually explicit conduct; or
- possess with intent to develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell a visual or printed matter that depicts another minor 12 years of age or younger engaged in an act of sexually explicit conduct.

"Sexually explicit conduct" is defined to include various acts as follows:

1. 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;
2. penetration of the vagina or rectum by any object;
3. masturbation;
4. sadomasochistic abuse;
5. defecation or urination for the purpose of sexual stimulation of the viewer;
6. 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
7. touching a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

The person commits the crime in the first degree when the sexually explicit conduct includes a sex act as described in (1) through (5) of the definition and is a class B felony. The person commits the crime in the second degree when the sexually explicit conduct includes depictions of the minor's genitals or touching the minor's genitals as described in (6) or (7) of the definition and is also a class B felony.

Financing or Selling Depictions of Another Minor. A person under the age of 18 commits the crime of a minor financing or selling depictions of another minor engaged in sexually explicit conduct when they finance, attempt to finance, or sell a visual or printed matter that depicts a minor engaged in any act of sexually explicit conduct. A minor financing or selling depictions of another minor engaged in sexually explicit conduct is a class B felony.

Sentencing Reform Act. When a person is convicted of a ranked felony, the Sentencing Reform Act applies and determines a specific sentence range within the statutory maximum. Sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity of the offense and the convicted person's offender score.

Minor Selling Depictions of Themselves. A person under the age of 18 commits the crime of a minor selling depictions of themselves engaged in sexually explicit conduct when they sell visual or printed matter that depicts themselves engaged in any act of sexually explicit conduct. Minor selling depictions of themselves engaged in sexually explicit conduct is a misdemeanor.

Minor Possessing Depictions of Themselves. The above prohibitions do not apply to a person under the age of 18 who finances, attempts to finance, develops, duplicates, publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts themselves engaged in an act of sexually explicit conduct.

Summary of Bill: The crime of sexual exploitation of a minor includes persons who knowingly cause 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.

The crime of minor dealing in depictions of another minor 12 years of age or younger engaged in sexually explicit conduct in the first degree is designated as seriousness level VII on the felony sentencing grid.

The crime of minor dealing in depictions of another minor 12 years of age or younger engaged in sexually explicit conduct in the second degree is designated as seriousness level V on the felony sentencing grid.

The crime of minor financing or selling depictions of another minor engaged in sexually

explicit conduct is designated as a seriousness level V offense on the felony sentencing grid.

An element is added to the crime of minor selling depictions of themselves engaged in sexually explicit conduct that visual or printed matter does not include any depiction of another minor engaged in an act of sexually explicit conduct.

An element is added to the exemption from liability of minors possessing depictions of themselves engaged in an act of sexually explicit conduct that visual or printed matter does not include any depiction of another minor engaged in an act of sexually explicit conduct.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill closes loopholes in the law that minors must be conscious and aware that they are either being photographed or are part of a live performance in order for a person to be guilty of sexual exploitation of a minor. This bill also enhances law enforcement's ability to investigate and properly charge individuals who are using common and emerging technologies to victimize minors. The bill also puts in guard rails related to minors who take pictures of themselves that include other minors. Finally, the bill attempts to categorize previously unranked felonies on the felony sentencing grid.

Persons Testifying: PRO: Senator Claire Wilson, Prime Sponsor; Brandon James, Seattle Police Department; Russell Brown, WA Association of Prosecuting Attorneys; Deanna Nollette, Seattle Police Department.

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