

SENATE BILL REPORT

SB 6301

As Reported By Senate Committee On:
Judiciary, February 4, 2008

Title: An act relating to preventing conduct that is intended to provide a person the information necessary to commit a pedophilic act.

Brief Description: Preventing conduct that is intended to provide a person the information necessary to commit a pedophilic act.

Sponsors: Senators Oemig, Marr, Kauffman and Rasmussen.

Brief History:

Committee Activity: Judiciary: 1/23/08, 2/04/08 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6301 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, McDermott, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: Article II, Section 5, of the Washington State Constitution states that "every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." In Webster's new collegiate dictionary, "publish" is defined as "to make generally known" or "to place before the public."

In the 2006 case of *State of Washington v. Ronald Joseph Luther*, the Washington Supreme Court concluded that a statute that criminalized possession of depictions of minor engaged in sexually explicit conduct was constitutional because it contained a "knowingly" scienter requirement and did not sweep within the First Amendment's protected speech. The court emphasized that the critical focus was on defendant's criminal intent and not on the fact that no minors were actually subjected to sexual exploitation or abuse.

In another 2006 Washington case, *First Global Communs., Inc. v. Bond*, it was noted that the U.S. Supreme Court has held that "the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy . . . of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The court observed that speech that aids or abets criminal activity can be prohibited.

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.

During the summer of 2007, pictures of young girls were posted on a website called Seattle-Tacoma-Everett Girl Love. The website was the creation of a Washington state man who, according to newspaper articles and interviews, was a self-described pedophile. Allegedly, the intent of the website was to promote the acceptance of pedophiles and to direct other pedophiles to events and places where children tended to gather. One of the websites was voluntarily taken down in response to community pressure and one website was taken down by the man's internet service provider.

Summary of Bill (Recommended Substitute): It is a gross misdemeanor for a person to knowingly publish information, including via the internet, relating to the location of children, or a place where children regularly gather, for the purpose of arousing or gratifying the sexual desire of any person. Publication of the specific time and location in which a particular child may be found is included.

Upon conviction, the court may order the removal of any information relating to the location of a child and the destruction or removal of any photograph, motion picture film, digital image, videotape, or any other recording of any image made by the person and posted on the internet. The court may also order the internet service provider to permanently remove any web page containing such information. "Child" is defined as under thirteen years of age. It is not a defense to prosecution that the information contains a disclaimer of intention to incite a sexual offense against a minor if it is clear from the overall character of the communication that its purpose is to promote the commission of a sexual offense against a minor. It is a defense to a charge against an internet service provider or social networking site that the internet service provider or social networking site did not have actual knowledge that the information at issue was being published.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): The original bill exempted internet service providers from the gross misdemeanor crime created in the bill. The exemption is removed and a defense is added for internet service providers or social networking sites that are charged with a gross misdemeanor under the bill. It is a defense to a charge against an internet service provider or social networking site that the internet service provider or social networking site did not have actual knowledge that the information at issue was being published.

Appropriation: None.

Fiscal Note: Requested on January 21, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Recommended Substitute: PRO: People who publish the kind of information described in this bill are targeting children. It is akin to terrorism. That kind of behavior should not be tolerated.

Persons Testifying: PRO: Senator Oemig, prime sponsor.