

HOUSE BILL REPORT

2SSB 6172

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to increasing penalties for the crimes of possession of depictions of a minor engaged in sexually explicit conduct.

Brief Description: Increasing penalties for specified sex offenses.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators McAuliffe, Hargrove, Thibaudeau, Shin, Weinstein, Rockefeller, Keiser, Regala, Eide, Rasmussen and Benton).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/17/06, 2/23/06 [DPA].

**Brief Summary of Second Substitute Bill
(As Amended by House Committee)**

- Increases the penalty for Voyeurism and Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct.
- Increases the penalty for Communicating with a Minor for Immoral Purposes when the communication is made via an electronic communication.
- Designates Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct as a sex offense.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Staff: Jim Morishima (786-7191).

Background:

I. Voyeurism

A person is guilty of Voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

- another person without the other person's knowledge and consent while the other person is in a place where he or she would have a reasonable expectation of privacy; or
- the intimate areas of another person without the other person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

Voyeurism is an unranked class C felony.

II. Communicating with a Minor for Immoral Purposes

A person is guilty of Communicating with a Minor for Immoral Purposes if he or she communicates with a minor, or someone the person believes is a minor, for immoral purposes. Communicating with a Minor for Immoral Purposes is a gross misdemeanor, unless the person has a previous conviction for a sex offense, in which case the crime is a class C felony with a seriousness level of III.

III. Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct

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. The crime is an unranked class C felony.

IV. Sex Offenses

Several offenses are currently designated "sex offenses" for purposes of criminal sentencing. There are several consequences of an offense being a sex offense including:

- ineligibility for 50 percent earned release credits for prison-bound offenders (the offender will be eligible for 10 percent or 33 percent depending on the sex offense involved);
- mandatory terms of community custody for prison-bound offenders;
- mandatory supervision by the Department of Corrections in the community;
- triple scoring of prior sex offenses when computing the sentence for a new sex offense;
- ineligibility for the Drug Offender Sentencing Alternative and the First-Time Offender Waiver; and
- registration (note that the definition of "sex offense" for purposes of the registration statute is broader than the definition for purposes of sentencing).

Summary of Amended Bill:

I. Voyeurism

The penalty for Voyeurism is increased by ranking the offense at seriousness level II.

II. Communicating with a Minor for Immoral Purposes

It is felony Communicating with a Minor for Immoral Purposes (as opposed to a gross misdemeanor) if the perpetrator makes the communication through the sending of an electronic communication.

III. Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct

The penalty for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct is increased by making the offense a class B felony and ranking the offense at seriousness level VI.

IV. Sex Offenses

Possession of Depictions of Minor Engaged in Sexually Explicit Conduct is designated a sex offense.

Amended Bill Compared to Second Substitute Bill:

The amended bill makes a technical correction by removing duplicative language regarding eligibility for the Special Sex Offender Sentencing Alternative.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill has passed, except for section 6, which, because of prior double amendments, takes effect on July 1, 2006. However, section 2 relating to increasing the penalties for Voyeurism and Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, is null and void unless funded in the budget.

Testimony For: This bill is preventative. Voyeurism, Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, and Communicating with a Minor for Immoral Purposes, are precursors to more serious sex offenses. These are therefore serious crimes that must be treated seriously.

Testimony Against: People who commit these crimes are not all the same. Some go on to commit more serious offenses and some do not. People possess child pornography for reasons that have nothing to do with a propensity to commit subsequent sex offenses. The current law allows flexibility in how these offenders are sentenced. This bill removes that flexibility. This bill will also lead to disproportionate sentences.

Persons Testifying: (In support) Senator McAuliffe, prime sponsor; and Todd Bowers, Office of the Attorney General.

(Opposed) David Marshall, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.