

HOUSE BILL REPORT

SSB 6566

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to juvenile offenses.

Brief Description: Concerning juvenile offenses.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Dhingra, Chase, Cleveland, Darneille, Saldaña and Kuderer).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/16/18, 2/20/18, 2/23/18 [DPA].

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

- Exempts minors from the crimes of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct, Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, and Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct under certain circumstances when the depictions are of a minor over the age of 12.
- Exempts minors from the crime of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct when the minor knowingly distributes, transfers, disseminates, or exchanges a visual or printed matter that depicts themselves engaged in an act of sexually explicit conduct.
- Specifies that any minor who knowingly distributes, transfers, disseminates, or exchanges a visual or printed matter that depicts any other minor over the age of 12 engaged in a an act of sexually explicit conduct shall be guilty of a misdemeanor or gross misdemeanor depending on the type of conduct depicted.
- Requires that a juvenile's first offense for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 be diverted and that the juvenile diversion unit conduct an assessment of factors and behaviors that led to the alleged offense and develop a treatment plan that addresses those factors.

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.

- Specifies that a minor who possesses any depiction of any other minor engaged in an act of sexually explicit conduct or any image of any other minor which constitutes an intimate image shall be deemed to forfeit any right to continued possession of the depiction or image and may be ordered by a court to forfeit the depiction or image.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Kagi, Chair; Senn, Vice Chair; Dent, Ranking Minority Member; Eslick, Frame, Goodman, Griffey, Kilduff, Lovick, Muri and Ortiz-Self.

Minority Report: Do not pass. Signed by 2 members: Representatives McCaslin, Assistant Ranking Minority Member; Klippert.

Staff: Luke Wickham (786-7146).

Background:

Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct in the first degree or second degree when he or she knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in sexually explicit conduct. The crime is also committed when a person possesses the visual or printed matter with the intent to develop, duplicate, publish, print, disseminate, exchange, or sell it.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level VII offense, and the second degree offense is a class C felony and level V offense.

A minor is defined as any person under age 18.

Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct in the first or second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and a level VII offense, and the second degree offense is a class C felony and level V offense.

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

A person commits the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct. For the purposes of determining the unit of prosecution, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level VI offense, and the second degree offense is a class C felony and level IV offense.

Sexually explicit conduct is defined in statute as actual or simulated:

- 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;
- penetration of the vagina or rectum by any object;
- masturbation;
- sadomasochistic abuse;
- defecation or urination for the purpose of sexual stimulation of the viewer;
- 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. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and
- touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.

A person commits the crime of Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct.

The degree of the offense depends on the type of conduct depicted. The first degree offense is a class B felony and level IV offense, and the second degree offense is a class C unranked felony offense.

Juvenile Sentencing and Diversion.

Juvenile court dispositions are subject to statutory sentencing guidelines.

Local sanctions is the least serious category for juvenile sentencing purposes. Local sanctions include:

- a range of up to 30 days in confinement;
- up to 12 months of community supervision;
- up to 150 hours of community service; and
- up to a \$500 fine.

Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility. Any confinement imposed that is greater than 30 days is served through commitment at a Department of Social and Health Services juvenile rehabilitation facility.

A juvenile diversion is a contract between a juvenile accused of an offense and a diversion unit where the juvenile agrees to certain conditions in lieu of prosecution. Diversion agreements may include community restitution not to exceed 150 hours, restitution, up to 10 hours of counseling and/or up to 20 hours of educational or informational sessions, requirements to remain during certain hours at home, school, or work, and requirements not to have contact with victims or witnesses. If a youth does not complete the diversion agreement, a prosecutor may file a criminal complaint.

Summary of Amended Bill:

Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct.

Minors are exempted from the crime of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she:

- knowingly develops, duplicates, publishes, or prints a visual or printed matter that depicts any minor over the age of 12 engaged in an act of sexually explicit conduct;
- possesses any depiction of any minor over the age of 12 engaged in an act of sexually explicit conduct with the intent to develop, duplicate, publish, print, disseminate, or exchange such depiction; or
- knowingly distributes, transfers, disseminates, or exchanges a visual or printed matter that depicts themselves engaged in an act of sexually explicit conduct.

Any minor who knowingly distributes, transfers, disseminates, or exchanges a visual or printed matter that depicts certain unclothed depictions for the purpose of sexual stimulation of the viewer of any other minor over the age of 12 shall be guilty of a simple misdemeanor.

Any minor who knowingly distributes, transfers, disseminates, or exchanges a visual or printed matter that depicts certain sexual intercourse, penetration of the vagina or rectum by any object, masturbation, sadomasochistic abuse, defecation or urination for the purpose of sexual stimulation of the view of any other minor over the age of 12 shall be guilty of a simple misdemeanor.

Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct.

A minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting any minor over the age of 12 engaged in sexually explicit conduct is exempted from the crime of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct.

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

A minor who possesses visual or printed matter depicting any minor over the age of 12 engaged in sexually explicit conduct is exempt from the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct.

Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.

A minor who views over the Internet visual or printed matter depicting a minor over the age of 12 engaged in sexually explicit conduct is exempt from the crime of Intentionally Viewing

over the Internet Visual or Printed Matter Depicting a Minor Engaged in Sexually Explicit Conduct.

Diversion.

A juvenile's first offense for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 must be diverted. Juvenile diversion units entering into a diversion with a youth for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 must: (a) conduct an assessment of factors and behaviors that led to the alleged offense; and (b) develop a treatment plan that addresses those factors.

Sex Offense.

The juvenile offense for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 is not considered a sex offense.

Forfeiture of Depictions or Images.

A minor who possesses any depiction of any other minor engaged in an act of sexually explicit conduct shall be deemed to forfeit any right to continued possession of the depiction and shall be ordered by a court to forfeit the depiction to the custody of law enforcement.

A minor who possesses any image of any other minor which constitutes an intimate image shall be deemed to forfeit any right to possess the image shall be ordered by a court to forfeit the image to the custody of law enforcement.

Amended Bill Compared to Substitute Bill:

The amended bill narrows the simple misdemeanor offense for minors who knowingly distribute, transfer, disseminate, or exchange a visual or printed matter that depicts any other minor over the age of 12 engaged in an act of sexually explicit conduct depending on the type of conduct that is depicted.

The amended bill creates a gross misdemeanor offense for minors who knowingly distribute, transfer, disseminate, or exchange a visual or printed matter that depicts any other minor over the age of 12 engaged in an act of sexually explicit conduct for different types of conduct depicted than the simple misdemeanor offense.

The amended bill restores current law, allowing a juvenile to receive no more than three diversions.

The amended bill requires that juvenile diversion units entering into a diversion with a youth for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 to: (a) conduct an assessment of factors and behaviors that led to the alleged offense; and (b) develop a treatment plan that addresses those factors.

The amended bill specifies that courts shall, instead of may, order the forfeiture of intimate images of minors or depictions of any other minor in an act of sexually explicit conduct in the possession of another minor.

The amended bill specifies that intimate images of other minors shall be forfeited to the custody of law enforcement.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2018.

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

Staff Summary of Public Testimony:

(In support) This bill inserts a consideration of an individual's age in criminal law. Minors who send a picture of themselves to others are culpable of a felony sex offense under current law. This bill does not modify cyberstalking or other harassment offenses. If a person sends a picture in a malicious or harassing way, other crimes can be charged to address that issue. Teenagers are currently culpable for felony child pornography sex offenses when sending certain pictures of themselves or other children. Both the sender and the receiver can be guilty of these offenses. Children who are charged with these offenses sometimes have to leave their home due to the requirement to register as a sex offender. These individuals should not be culpable of felony sex offenses. The same services are available to juveniles adjudicated of misdemeanors as those adjudicated of felony sex offenses. Interventions with youth on these issues are effective. Kids are stupid and should be guided regarding the appropriate use of technology. The lives of teenagers have been sexualized in a way that older generations cannot conceive. Educational materials must be developed to help youth in this area. This bill reconciles the original intent of child pornography laws with technological advances. Twenty percent or more of adolescents engage in this kind of behavior. Many states have removed minors from being prosecuted under sexting laws. Under current law, any distribution of intimate or sexual images in a malicious way exposes individuals to additional culpability. This bill is about changing the label of child pornographer to other more appropriate labels. For example, Disclosure of Intimate Images is a current gross misdemeanor offense that can increase to a felony after a second offense. The challenge of educators, parents, and law enforcement regarding technology education is a big one. Addressing this challenge using the court system is inappropriate. Students are often unwilling to report the exchange of these images based on fear of the severe consequences. The adults need to figure out a better way to keep kids safe.

(Opposed) None.

Persons Testifying: Senator Dhingra, prime sponsor; Bradley Drury; Brad Meryhew, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Elisabeth Smith, American Civil Liberties Union of Washington; Tom McBride, Washington Association of Prosecuting Attorneys; and Cade Walker, Office of the Superintendent of Public Instruction.

Persons Signed In To Testify But Not Testifying: None.