

SHB 1742 - S AMD 570
By Senator Padden

NOT ADOPTED 04/10/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 responsible teen communications act.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40
6 RCW to read as follows:

7 (1) The legislature finds that exchange of intimate images by
8 minors is increasingly common, and that such actions may lead to harm
9 and long-term consequences. The legislature intends to develop age-
10 appropriate prevention and interventions to prevent harm and to hold
11 accountable youth who harm others through exchange of intimate
12 images.

13 (2) The Washington coalition of sexual assault programs, in
14 consultation with the office of the superintendent of public
15 instruction, the Washington association for the treatment of sexual
16 abusers, the department of children, youth, and families, the
17 department of social and health services, the juvenile court
18 administrators, the Washington association of prosecuting attorneys,
19 representatives from public defense, youth representatives, and other
20 relevant stakeholders, shall convene a work group to make
21 recommendations to the legislature regarding age-appropriate
22 prevention and intervention strategies to address potential harms
23 caused by exchange of intimate images by minors.

24 (3) By December 1, 2019, the work group shall make a report to
25 the legislature identifying education, prevention, and other
26 responses to the harms that may be associated with exchange of
27 intimate images by minors.

28 **Sec. 3.** RCW 9.68A.050 and 2017 c 126 s 3 are each amended to
29 read as follows:

1 (1) (a) A person eighteen years of age or older commits the crime
2 of dealing in depictions of a minor engaged in sexually explicit
3 conduct in the first degree when he or she:

4 (i) Knowingly develops, duplicates, publishes, prints,
5 disseminates, exchanges, finances, attempts to finance, or sells a
6 visual or printed matter that depicts a minor engaged in an act of
7 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
8 (e); or

9 (ii) Possesses with intent to develop, duplicate, publish, print,
10 disseminate, exchange, or sell any visual or printed matter that
11 depicts a minor engaged in an act of sexually explicit conduct as
12 defined in RCW 9.68A.011(4) (a) through (e).

13 (b) Dealing in depictions of a minor engaged in sexually explicit
14 conduct in the first degree is a class B felony punishable under
15 chapter 9A.20 RCW.

16 (c) For the purposes of determining the unit of prosecution under
17 this subsection, each depiction or image of visual or printed matter
18 constitutes a separate offense.

19 (2) (a) A person eighteen years of age or older commits the crime
20 of dealing in depictions of a minor engaged in sexually explicit
21 conduct in the second degree when he or she:

22 (i) Knowingly develops, duplicates, publishes, prints,
23 disseminates, exchanges, finances, attempts to finance, or sells any
24 visual or printed matter that depicts a minor engaged in an act of
25 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g);
26 or

27 (ii) Possesses with intent to develop, duplicate, publish, print,
28 disseminate, exchange, or sell any visual or printed matter that
29 depicts a minor engaged in an act of sexually explicit conduct as
30 defined in RCW 9.68A.011(4) (f) or (g).

31 (b) Dealing in depictions of a minor engaged in sexually explicit
32 conduct in the second degree is a class B felony punishable under
33 chapter 9A.20 RCW.

34 (c) For the purposes of determining the unit of prosecution under
35 this subsection, each incident of dealing in one or more depictions
36 or images of visual or printed matter constitutes a separate offense.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.68A
38 RCW to read as follows:

1 (1) (a) (i) A person under the age of eighteen commits the crime of
2 a minor dealing in depictions of another minor thirteen years of age
3 or older engaged in sexually explicit conduct in the first degree
4 when he or she knowingly distributes, publishes, transfers,
5 disseminates, or exchanges a visual or printed matter that depicts
6 another minor thirteen years of age or older engaged in an act of
7 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
8 (e).

9 (ii) Minor dealing in depictions of another minor thirteen years
10 of age or older engaged in sexually explicit conduct in the first
11 degree is a class B felony punishable under chapter 9A.20 RCW.

12 (b) (i) A person under the age of eighteen commits the crime of a
13 minor dealing in depictions of another minor thirteen years of age or
14 older engaged in sexually explicit conduct in the second degree when
15 he or she knowingly distributes, publishes, transfers, disseminates,
16 or exchanges a visual or printed matter that depicts another minor
17 thirteen years of age or older engaged in an act of sexually explicit
18 conduct as defined in RCW 9.68A.011(4) (f) or (g).

19 (ii) Minor dealing in depictions of another minor thirteen years
20 of age or older engaged in sexually explicit conduct in the second
21 degree is a gross misdemeanor.

22 (2) (a) A person under age eighteen commits the crime of minor
23 dealing in depictions of another minor twelve years of age or younger
24 engaged in sexually explicit conduct in the first degree when he or
25 she:

26 (i) Knowingly develops, duplicates, publishes, prints,
27 disseminates, exchanges, finances, attempts to finance, or sells a
28 visual or printed matter that depicts another minor twelve years of
29 age or younger engaged in an act of sexually explicit conduct as
30 defined in RCW 9.68A.011(4) (a) through (e); or

31 (ii) Possesses with intent to develop, duplicate, publish, print,
32 disseminate, exchange, or sell any visual or printed matter that
33 depicts another minor twelve years of age or younger engaged in an
34 act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
35 through (e).

36 (b) Minor dealing in depictions of another minor twelve years of
37 age or younger engaged in sexually explicit conduct in the first
38 degree is a class B felony punishable under chapter 9A.20 RCW.

39 (3) (a) A person under age eighteen commits the crime of minor
40 dealing in depictions of another minor twelve years of age or younger

1 engaged in sexually explicit conduct in the second degree when he or
2 she:

3 (i) Knowingly develops, duplicates, publishes, prints,
4 disseminates, exchanges, finances, attempts to finance, or sells any
5 visual or printed matter that depicts another minor twelve years of
6 age or younger engaged in an act of sexually explicit conduct as
7 defined in RCW 9.68A.011(4) (f) or (g); or

8 (ii) Possesses with intent to develop, duplicate, publish, print,
9 disseminate, exchange, or sell any visual or printed matter that
10 depicts another minor twelve years of age or younger engaged in an
11 act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f)
12 or (g).

13 (b) Minor dealing in depictions of a minor twelve years of age or
14 younger engaged in sexually explicit conduct in the second degree is
15 a class B felony punishable under chapter 9A.20 RCW.

16 (4) (a) Any person under the age of eighteen commits the crime of
17 minor financing or selling depictions of another minor engaged in
18 sexually explicit conduct when he or she finances, attempts to
19 finance, or sells a visual or printed matter that depicts a minor
20 engaged in an act of sexually explicit conduct as defined in RCW
21 9.68A.011(4) (a) through (g).

22 (b) Minor financing or selling depictions of another minor
23 engaged in sexually explicit conduct is a class B felony punishable
24 under chapter 9A.20 RCW.

25 (5) (a) A person under the age of eighteen commits the crime of
26 minor selling depictions of himself or herself engaged in sexually
27 explicit conduct when he or she sells a visual or printed matter that
28 depicts himself or herself engaged in an act of sexually explicit
29 conduct as defined in RCW 9.68A.011(4) (a) through (g).

30 (b) Minor selling depictions of himself or herself engaged in
31 sexually explicit conduct is a misdemeanor.

32 (6) This section does not apply to a person under eighteen years
33 of age who finances, attempts to finance, develops, duplicates,
34 publishes, prints, disseminates, exchanges, or possesses a visual or
35 printed matter that depicts himself or herself engaged in an act of
36 sexually explicit conduct as defined in RCW 9.68A.011(4).

37 (7) For the purposes of determining the unit of prosecution under
38 this section, each depiction or image of visual or printed matter
39 constitutes a separate offense.

1 **Sec. 5.** RCW 9.68A.060 and 2017 c 126 s 4 are each amended to
2 read as follows:

3 (1) (a) A person commits the crime of sending or bringing into the
4 state depictions of a minor engaged in sexually explicit conduct in
5 the first degree when he or she knowingly sends or causes to be sent,
6 or brings or causes to be brought, into this state for sale or
7 distribution, a visual or printed matter that depicts a minor engaged
8 in sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
9 through (e).

10 (b) Sending or bringing into the state depictions of a minor
11 engaged in sexually explicit conduct in the first degree is a class B
12 felony punishable under chapter 9A.20 RCW.

13 (c) For the purposes of determining the unit of prosecution under
14 this subsection, each depiction or image of visual or printed matter
15 constitutes a separate offense.

16 (2) (a) Except as provided in subsections (3) and (4) of this
17 section, a person commits the crime of sending or bringing into the
18 state depictions of a minor engaged in sexually explicit conduct in
19 the second degree when he or she knowingly sends or causes to be
20 sent, or brings or causes to be brought, into this state for sale or
21 distribution, any visual or printed matter that depicts a minor
22 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)
23 (f) or (g).

24 (b) Sending or bringing into the state depictions of a minor
25 engaged in sexually explicit conduct in the second degree is a class
26 B felony punishable under chapter 9A.20 RCW.

27 (c) For the purposes of determining the unit of prosecution under
28 this subsection, each incident of sending or bringing into the state
29 one or more depictions or images of visual or printed matter
30 constitutes a separate offense.

31 (3) This section does not apply to a minor who knowingly sends or
32 causes to be sent, or brings or causes to be brought, into this state
33 for distribution, visual or printed matter depicting any minor
34 thirteen years of age or older engaged in sexually explicit conduct
35 as defined in RCW 9.68A.011(4) (f) or (g).

36 (4) This section does not apply to a person under thirteen years
37 of age who knowingly sends or causes to be sent, or brings or causes
38 to be brought, into this state for distribution, visual or printed
39 matter depicting himself or herself engaged in sexually explicit
40 conduct.

1 **Sec. 6.** RCW 9.68A.070 and 2017 c 126 s 2 are each amended to
2 read as follows:

3 (1) (a) A person commits the crime of possession of depictions of
4 a minor engaged in sexually explicit conduct in the first degree when
5 he or she knowingly possesses a visual or printed matter depicting a
6 minor engaged in sexually explicit conduct as defined in RCW
7 9.68A.011(4) (a) through (e).

8 (b) Possession of depictions of a minor engaged in sexually
9 explicit conduct in the first degree is a class B felony punishable
10 under chapter 9A.20 RCW.

11 (c) For the purposes of determining the unit of prosecution under
12 this subsection, each depiction or image of visual or printed matter
13 constitutes a separate offense.

14 (2) (a) Except as provided in subsections (3) and (4) of this
15 section, a person commits the crime of possession of depictions of a
16 minor engaged in sexually explicit conduct in the second degree when
17 he or she knowingly possesses any visual or printed matter depicting
18 a minor engaged in sexually explicit conduct as defined in RCW
19 9.68A.011(4) (f) or (g).

20 (b) Possession of depictions of a minor engaged in sexually
21 explicit conduct in the second degree is a class B felony punishable
22 under chapter 9A.20 RCW.

23 (c) For the purposes of determining the unit of prosecution under
24 this subsection, each incident of possession of one or more
25 depictions or images of visual or printed matter constitutes a
26 separate offense.

27 (3) This section does not apply to a minor's possession of visual
28 or printed matter depicting any minor thirteen years of age or older
29 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)
30 (f) or (g).

31 (4) This section does not apply to a person under thirteen years
32 of age in possession of visual or printed matter depicting himself or
33 herself engaged in sexually explicit conduct.

34 **Sec. 7.** RCW 9.68A.075 and 2010 c 227 s 7 are each amended to
35 read as follows:

36 (1) A person who intentionally views over the internet visual or
37 printed matter depicting a minor engaged in sexually explicit conduct
38 as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing

1 depictions of a minor engaged in sexually explicit conduct in the
2 first degree, a class B felony punishable under chapter 9A.20 RCW.

3 (2) Except as provided in subsections (5) and (6) of this
4 section, a person who intentionally views over the internet visual or
5 printed matter depicting a minor engaged in sexually explicit conduct
6 as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing
7 depictions of a minor engaged in sexually explicit conduct in the
8 second degree, a class C felony punishable under chapter 9A.20 RCW.

9 (3) For the purposes of determining whether a person
10 intentionally viewed over the internet a visual or printed matter
11 depicting a minor engaged in sexually explicit conduct in subsection
12 (1) or (2) of this section, the trier of fact shall consider the
13 title, text, and content of the visual or printed matter, as well as
14 the internet history, search terms, thumbnail images, downloading
15 activity, expert computer forensic testimony, number of visual or
16 printed matter depicting minors engaged in sexually explicit conduct,
17 defendant's access to and control over the electronic device and its
18 contents upon which the visual or printed matter was found, or any
19 other relevant evidence. The state must prove beyond a reasonable
20 doubt that the viewing was initiated by the user of the computer
21 where the viewing occurred.

22 (4) For the purposes of this section, each separate internet
23 session of intentionally viewing over the internet visual or printed
24 matter depicting a minor engaged in sexually explicit conduct
25 constitutes a separate offense.

26 (5) This section does not apply to a minor who intentionally
27 views over the internet visual or printed matter depicting a minor
28 thirteen years of age or older engaged in sexually explicit conduct
29 as defined in RCW 9.68A.011(4) (f) or (g).

30 (6) This section does not apply to a person under thirteen years
31 of age who intentionally views over the internet visual or printed
32 matter depicting himself or herself engaged in sexually explicit
33 conduct.

34 **Sec. 8.** RCW 13.40.070 and 2018 c 82 s 1 are each amended to read
35 as follows:

36 (1) Complaints referred to the juvenile court alleging the
37 commission of an offense shall be referred directly to the
38 prosecutor. The prosecutor, upon receipt of a complaint, shall screen
39 the complaint to determine whether:

1 (a) The alleged facts bring the case within the jurisdiction of
2 the court; and

3 (b) On a basis of available evidence there is probable cause to
4 believe that the juvenile did commit the offense.

5 (2) If the identical alleged acts constitute an offense under
6 both the law of this state and an ordinance of any city or county of
7 this state, state law shall govern the prosecutor's screening and
8 charging decision for both filed and diverted cases.

9 (3) If the requirements of subsection (1)(a) and (b) of this
10 section are met, the prosecutor shall either file an information in
11 juvenile court or divert the case, as set forth in subsections (5),
12 (6), and (8) of this section. If the prosecutor finds that the
13 requirements of subsection (1)(a) and (b) of this section are not
14 met, the prosecutor shall maintain a record, for one year, of such
15 decision and the reasons therefor. In lieu of filing an information
16 or diverting an offense a prosecutor may file a motion to modify
17 community supervision where such offense constitutes a violation of
18 community supervision.

19 (4) An information shall be a plain, concise, and definite
20 written statement of the essential facts constituting the offense
21 charged. It shall be signed by the prosecuting attorney and conform
22 to chapter 10.37 RCW.

23 (5) The prosecutor shall file an information with the juvenile
24 court if (a) an alleged offender is accused of an offense that is
25 defined as a sex offense or violent offense under RCW 9.94A.030,
26 other than assault in the second degree or robbery in the second
27 degree; or (b) an alleged offender has been referred by a diversion
28 unit for prosecution or desires prosecution instead of diversion.

29 (6) Where a case is legally sufficient the prosecutor shall
30 divert the case if the alleged offense is a misdemeanor or gross
31 misdemeanor or violation and the alleged offense is the offender's
32 first offense or violation. If the alleged offender is charged with a
33 related offense that may be filed under subsections (5) and (8) of
34 this section, a case under this subsection may also be filed.

35 (7) Where a case is legally sufficient to charge an alleged
36 offender with:

37 (a) Either prostitution or prostitution loitering and the alleged
38 offense is the offender's first prostitution or prostitution
39 loitering offense, the prosecutor shall divert the case; ((~~or~~))

1 (b) Voyeurism in the second degree, the offender is under
2 seventeen years of age, and the alleged offense is the offender's
3 first voyeurism in the second degree offense, the prosecutor shall
4 divert the case, unless the offender has received two diversions for
5 any offense in the previous two years;

6 (c) A minor selling depictions of himself or herself engaged in
7 sexually explicit conduct under section 4(5) of this act and the
8 alleged offense is the offender's first violation of section 4(5) of
9 this act, the prosecutor shall divert the case;

10 (d) A distribution, transfer, dissemination, or exchange of
11 sexually explicit images of other minors thirteen years of age or
12 older offense as provided in section 4(1) of this act and the alleged
13 offense is the offender's first violation of section 4(1) of this
14 act, the prosecutor shall divert the case;

15 (e) A minor who knowingly sends or causes to be sent, or brings
16 or causes to be brought, into this state for distribution, visual or
17 printed matter depicting any minor thirteen years of age or older
18 engaged in sexually explicit conduct under RCW 9.68A.060(1) and the
19 alleged offense is the offender's first violation of RCW
20 9.68A.060(1), the prosecutor shall divert the case;

21 (f) A minor in possession of visual or printed matter depicting
22 any minor thirteen years of age or older engaged in sexually explicit
23 conduct under RCW 9.68A.070(1) and the alleged offense is the
24 offender's first violation of RCW 9.68A.070(1), the prosecutor shall
25 divert the case; or

26 (g) A minor who intentionally views over the internet visual or
27 printed matter depicting a minor thirteen years of age or older
28 engaged in sexually explicit conduct under RCW 9.68A.075(1) and the
29 alleged offense is the offender's first violation of RCW
30 9.68A.075(1), the prosecutor shall divert the case.

31 (8) Where a case is legally sufficient and falls into neither
32 subsection (5) nor (6) of this section, it may be filed or diverted.
33 In deciding whether to file or divert an offense under this section
34 the prosecutor may be guided by the length, seriousness, and recency
35 of the alleged offender's criminal history and the circumstances
36 surrounding the commission of the alleged offense.

37 (9) Whenever a juvenile is placed in custody or, where not placed
38 in custody, referred to a diversion interview, the parent or legal
39 guardian of the juvenile shall be notified as soon as possible
40 concerning the allegation made against the juvenile and the current

1 status of the juvenile. Where a case involves victims of crimes
2 against persons or victims whose property has not been recovered at
3 the time a juvenile is referred to a diversion unit, the victim shall
4 be notified of the referral and informed how to contact the unit.

5 (10) The responsibilities of the prosecutor under subsections (1)
6 through (9) of this section may be performed by a juvenile court
7 probation counselor for any complaint referred to the court alleging
8 the commission of an offense which would not be a felony if committed
9 by an adult, if the prosecutor has given sufficient written notice to
10 the juvenile court that the prosecutor will not review such
11 complaints.

12 (11) The prosecutor, juvenile court probation counselor, or
13 diversion unit may, in exercising their authority under this section
14 or RCW 13.40.080, refer juveniles to community-based programs,
15 restorative justice programs, mediation, or victim offender
16 reconciliation programs. Such mediation or victim offender
17 reconciliation programs shall be voluntary for victims.

18 (12) Prosecutors and juvenile courts are encouraged to engage
19 with and partner with community-based programs to expand, improve,
20 and increase options to divert youth from formal processing in
21 juvenile court. Nothing in this chapter should be read to limit
22 partnership with community-based programs to create diversion
23 opportunities for juveniles.

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.68A
25 RCW to read as follows:

26 A minor who possesses any depiction or depictions of any other
27 minor engaged in an act of sexually explicit conduct as defined in
28 RCW 9.68A.011 forfeits any right to continued possession of the
29 depiction or depictions and any court exercising jurisdiction over
30 such depiction or depictions shall order forfeiture of the depiction
31 or depictions to the custody of law enforcement.

32 NEW SECTION. **Sec. 10.** A new section is added to chapter 9A.86
33 RCW to read as follows:

34 A minor who possesses any image of any other minor which
35 constitutes an intimate image as defined in RCW 9A.86.010 forfeits
36 any right to continued possession of the image and any court
37 exercising jurisdiction over such image shall order forfeiture of the
38 image."

NOT ADOPTED 04/10/2019

1 On page 1, line 2 of the title, after "minors;" strike the
2 remainder of the title and insert "amending RCW 9.68A.050, 9.68A.060,
3 9.68A.070, 9.68A.075, and 13.40.070; adding a new section to chapter
4 13.40 RCW; adding new sections to chapter 9.68A RCW; adding a new
5 section to chapter 9A.86 RCW; creating a new section; and prescribing
6 penalties."

EFFECT: Increases the crime of minor dealing in depictions of another minor 13 years of age or older in the first degree to a class B felony and the crime in the second degree to a gross misdemeanor.

Narrows the exemption allowed for sending or receiving depictions of another minor engaged in sexually explicit conduct to only the conduct defined in RCW 9.68A.011(4) (f) or (g). Similarly narrows the exemption for viewing or possessing depictions of another minor engaged in sexually explicit conduct.

Allows minors to be diverted when they intentionally send, receive, or view depictions of a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

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