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## Human Services & Early Learning Committee

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### HB 1742

**Brief Description:** Concerning juvenile offenses that involve depictions of minors.

**Sponsors:** Representatives Frame, Eslick, Senn, Griffey, Kilduff, Corry, Appleton, Sells, Walen, Wylie, Doglio, Stanford, Robinson, Macri and Davis.

#### Brief Summary of Bill

- Minors are exempted from certain crimes relating to depictions of other minors age 13 and older.
- Creates a new offense of Minor Dealing in Depictions of Another Minor age 13 or Older Engaged in Sexual Conduct.
- Requires that a prosecutor divert an individuals first offense of Minor Dealing in Depictions of Another Minor age 13 or Older Engaged in Sexual Conduct.

**Hearing Date:** 2/1/19

**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.

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*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.*

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.*

Sexually explicit conduct is defined 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; and
- touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast 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 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 Bill:**

*Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct.*

Juveniles are exempted from the dealing in depictions of minors engaged in sexually explicit conduct offense, and new offenses are created that are specific to minors dealing in depictions of another minor.

A new offense, Minor Dealing in Depictions of Another Minor age 13 or Older Engaged in Sexual Conduct is committed when a minor knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor age 13 or older engaged in an act of sexually explicit conduct. The offense is categorized as either a simple or gross misdemeanor offense based on the type of conduct depicted. This offense is not considered a sex offense for purposes of sex offender registration.

A new offense, Minor Dealing in Depictions of Another Minor age 12 or Younger Engaged in Sexually Explicit Conduct is committed when a minor knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, sells, or possesses with intent to develop, publish, print, disseminate, exchange, or sell a visual or printed matter that depicts another minor age 12 or younger engaged in an act of sexually explicit conduct. This offense is categorized as a class B felony and is considered a sex offense for purposes of sex offender registration.

A new offense, Minor Financing or Selling Depictions of Another Minor Engaged in Sexually Explicit Conduct is committed when a minor finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct. This offense is categorized as a class B felony and is considered a sex offense for purposes of sex offender registration.

Minors are exempted from these offenses when the visual or printed matter is of himself or herself.

*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 age 13 or older engaged in sexually explicit conduct is exempt from the crime of Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

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

A minor who possesses visual or printed matter depicting any minor age 13 or older engaged in sexually explicit conduct is exempt from the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

*Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.*

A minor who views over the Internet visual or printed matter depicting a minor age 13 or older 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. Persons under age 13 are also exempted from this offense if the visual or printed matter depicts himself or herself.

*Diversion.*

Prosecutors shall divert an offenders first offense for a distribution, transfer, dissemination, or exchange of sexually explicit images of other minors age 13 or older.

*Image Forfeiture.*

A minor who possesses any depiction of any other minor engaged in an act of sexually explicit conduct or which constitutes an intimate image forfeits any right to continued possession of that depiction and any court shall order forfeiture of that depiction.

*Exchange of Intimate Images by Minors Work Group.*

The Washington Coalition of Sexual Assault Programs, in consultation with the Office of the Superintendent of Public Instruction; the Washington Association for the Treatment of Sexual Abusers; the Department of Children, Youth, and Families; the Department of Social and Health Services; the juvenile court administrators; the Washington Association of Prosecuting Attorneys; representatives from the Office of Public Defense; youth representatives; and other relevant stakeholders, must convene a work group to make recommendations to the Legislature by December 1, 2019, regarding age-appropriate prevention and intervention strategies to address potential harms caused by exchange of intimate images by minors.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2019.

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