

SENATE BILL REPORT

SHB 1742

As Passed Senate, April 10, 2019

Title: An act relating to juvenile offenses that involve depictions of minors.

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

Sponsors: House Committee on Human Services & Early Learning (originally sponsored by Representatives Frame, Eslick, Senn, Griffey, Kilduff, Corry, Appleton, Sells, Walen, Wylie, Doglio, Stanford, Robinson, Macri and Davis).

Brief History: Passed House: 3/04/19, 57-39.

Committee Activity: Law & Justice: 3/19/19, 3/28/19 [DP, DNP].

Floor Activity:

Passed Senate: 4/10/19, 25-19.

Brief Summary of Bill

- Excludes minors from crimes involving dealing in depictions of a minor engaged in sexually explicit conduct and creates a new class of crimes that apply exclusively to minors.
- Limits the criminal culpability of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct to a gross misdemeanor.
- Exempts a minor from criminal culpability for dealing in depictions of themselves engaged in sexually explicit conduct unless the minor sells the depiction.
- Requires a prosecutor to divert certain offenses involving dealing in depictions of a minor if it is a juvenile's first violation of such an offense.
- Establishes a workgroup to make recommendations addressing potential harms caused by the exchange of intimate images by minors.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

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.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy.

Staff: Shani Bauer (786-7468)

Background: Dealing in Depictions of a Minor. A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct when they:

- knowingly develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or
- possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct.

Sexually explicit conduct is defined to include various acts as follows:

1. 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.
2. Penetration of the vagina or rectum by any object.
3. Masturbation.
4. Sadomasochistic abuse.
5. Defecation or urination for the purpose of sexual stimulation of the viewer.
6. 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.
7. Touching a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when the sexually explicit conduct generally includes a sex act as described in (1) through (5) above. The person commits the crime in the second degree when the sexually explicit conduct includes depictions of the minor's genitals or touching of the minor's genitals as described in (6) or (7) above. Both crimes are class B felonies.

There are several other crimes involving depictions of a minor engaged in sexually explicit conduct. All of the listed crimes include two degrees, depending on the type of sexually explicit conduct depicted similar to the crime of dealing in depictions of minors. All of the crimes are classified as class B felonies and include:

- 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.

Juvenile Diversion. Under certain circumstances where a juvenile is alleged to have committed an offense, the prosecutor is required to divert the case rather than file a complaint. Those circumstances include when the juvenile is alleged to have committed a misdemeanor or gross misdemeanor, and it is their first violation and when the juvenile is

alleged to have committed prostitution and the alleged offense is the offender's first prostitution offense.

A case is diverted when the juvenile enters into an agreement, which may include, among other things, a requirement that the juvenile attend counseling, educational, or informational sessions at a community agency. A diversion agreement may be between a juvenile and a probation counselor, community accountability board, youth court under the supervision of the juvenile court, or other entity.

Summary of Bill: Crimes Amended to Exclude Certain Minors. The current crime of dealing in depictions of a minor engaged in sexually explicit conduct only applies to a person eighteen years of age or older who commits the crime.

The following Class B felonies do not apply to a minor sending or bringing, possessing, or viewing depictions of another minor thirteen years of age or older or a minor under the age of thirteen with depictions of themselves:

- sending or bringing into the state depictions of 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.

New Crimes Created for Minors Dealing in Depictions of a Minor. *Depictions of a minor thirteen years or older.* A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct when they knowingly distribute, publish, transfer, disseminate, or exchange a visual or printed matter that depicts another minor thirteen years of age or older engaged in an act of sexually explicit conduct.

The person commits the crime of dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the first degree when the sexually explicit conduct includes a sex act as described previously in (1) through (5) of the definition of sexually explicit conduct and is a gross misdemeanor. The person commits the crime in the second degree when the sexually explicit conduct includes depictions of the minor's genitals or touching of the minor's genitals as described previously in (6) or (7) of the definition and is a misdemeanor.

Depictions of a minor twelve years or younger. A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor twelve years of age or younger engaged in sexually explicit conduct when they knowingly develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell a visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct; or possesses with intent to develop, duplicate, publish, print, disseminate, exchange, finance, attempt to finance, or sell a visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct.

The person commits the crime in the first degree when the sexually explicit conduct includes a sex act as described previously in (1) through (5) of the definition and is a class B felony. The person commits the crime in the second degree when the sexually explicit conduct

includes depictions of the minor's genitals or touching of the minor's genitals as described previously in (6) or (7) of the definition and is also a class B felony.

Financing or selling depictions of another minor. A person under the age of eighteen commits the crime of a minor financing or selling depictions of another minor engaged in sexually explicit conduct when they finance, attempt to finance, or sell a visual or printed matter that depicts a minor engaged in any act of sexually explicit conduct. Minor financing or selling depictions of another minor engaged in sexually explicit conduct is a class B felony.

Minor selling depictions of themselves. A person under the age of eighteen commits the crime of a minor selling depictions of themselves engaged in sexually explicit conduct when they sell visual or printed matter that depicts themselves engaged in any act of sexually explicit conduct. Minor selling depictions of themselves engaged in sexually explicit conduct is a misdemeanor.

Juvenile Diversion. A prosecutor must divert a juvenile case where there is sufficient evidence to charge the alleged offender if it is the offender's first violation of such an offense and the offender has committed:

- minor selling depictions of themselves engaged in sexually explicit conduct; or
- distribution, transfer, dissemination, or exchange of a sexually explicit image of another minor thirteen years of age or older.

A minor who possesses any depiction of a minor engaged in an act of sexually explicit conduct forfeits any right to continued possession of the depiction and a court exercising jurisdiction over the depiction shall order forfeiture of the depiction to the custody of law enforcement.

Workgroup to Address Exchange of Intimate Images by Minors. The Washington Coalition of Sexual Assault Programs (WCSAP) is required to convene a workgroup to make recommendations regarding age-appropriate prevention and intervention strategies to address potential harms caused by the exchange of intimate images by minors. No later than December 1, 2019, the workgroup must submit a report to the Legislature identifying education, prevention, and other responses to the harms associated with the exchange of intimate images by minors. In conducting the workgroup, WCSAP is required to consult with:

- Office of the Superintendent of Public Instruction;
- Washington Association for the Treatment of Sexual Abusers;
- Department of Children, Youth, and Families;
- Department of Social and Health Services;
- Juvenile Court Administrators;
- Washington Association of Prosecuting Attorneys; and
- representatives from public defense, youth, and other relevant stakeholders.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Teenagers use smartphones every day and experience shows that about 20 percent of them are using phones to send sexually explicit pictures of themselves. Many times these are romantic images between two parties, but may get shared more broadly at the point when the relationship ends. Our law is 20 years behind current technology. The current law does not work for law enforcement, schools, parents, or kids. Adults struggle to intervene because they know that any juvenile engaging in this conduct is guilty of a Class B sex offense and would have to register as a sex offender. Juvenile conduct is very different from that of an adult and the statutory response needs to differentiate between the two.

It is important to decriminalize possession because we want juveniles to report behavior and ask for help without getting in trouble. Some of those underlying activities are upsetting and some of the underlying actions are crimes. Youth are still held accountable by this bill and it does not change other laws addressing behavior such as cyberstalking, voyeurism, malicious sharing of images, and harassment.

This legislation takes the right approach in addressing the conduct of teens by seeking more age appropriate sanctions for harm. A person who comes forward because images of themselves are getting shared are they themselves treated as sex offenders. Harsh penalties under current law do not distinguish between adult and juvenile behavior. These penalties are a barrier to kids coming forward. This bill creates open space for kids to come forward and learn about unhealthy behaviors.

This bill shifts the focus and resources away from punishment and the chilling effect that punishment can have on kids reporting conduct and instead focuses on prevention, intervention and education. Groups assigned to the workgroup are looking forward to working on evidence based intervention strategies that can help mitigate this type of conduct.

A young girl was charged with child pornography for sharing a picture of a friend. Even though the charge was eventually overturned, it ruined her high school years. Her grades declined, she was kicked off her sports team, and was not accepted into college. Her parents incurred several thousand dollars in legal fees.

Persons Testifying: PRO: Representative Noel Frame, Prime Sponsor; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Dierk Meierbachtol, Office of Superintendent of Public Instruction; Nancy Sapiro, Justice for Girls Coalition; Vanessa Hernandez, American Civil Liberties Union of Washington; Eric Gonzalez Alfaro, Legislative Director, American Civil Liberties Union of Washington; Todd Dowell, Washington Association of Prosecuting Attorneys; Jimmy Hung, King County Prosecuting Attorney's Office.

Persons Signed In To Testify But Not Testifying: No one.