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**SENATE BILL 5105**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senator Orwall

AN ACT Relating to offenses involving fabricated depictions of minors; amending RCW 9.68A.050, 9.68A.053, 9.68A.060, 9.68A.070, 9.68A.075, and 9.68A.110; reenacting and amending RCW 9.68A.011; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that rapid advancements in artificial intelligence and other digital tools have enabled users to easily create or alter images in a realistic manner, resulting in the widespread proliferation of fabricated depictions that are virtually indistinguishable from authentic images.

The legislature further finds that images of child sexual abuse have been reported in training datasets for artificial intelligence image generation, and that artificial intelligence and other digital tools are increasingly capable of generating realistic images of minors engaging in sexually explicit conduct.

The legislature further finds that artificial intelligence and other digital tools have introduced significant barriers to the detection and prosecution of crimes involving depictions of minors engaging in sexually explicit conduct, including by contributing to the increased volume of child sexual abuse material available online, facilitating the alteration of real images of child sexual abuse to evade conventional detection methods, and subverting conventional digital detection tools such as hash match identification.

The legislature further finds that even where a fabricated depiction of a minor engaging in sexually explicit conduct does not depict an identifiable victim, exposure to such material may nonetheless desensitize the creator and viewers to the sexual exploitation and abuse of minors, distort perceptions of healthy sexuality and relationships, and increase the likelihood of future victimization.

The legislature further finds that it has a legitimate and compelling interest in preventing the sexual exploitation and abuse of children, and that even fabricated depictions of such conduct are patently offensive and may be regulated without infringing on constitutionally protected activity.

Therefore, the legislature intends to expand Washington's existing prohibitions against fabricated depictions of minors engaged in sexually explicit conduct to include circumstances where the depicted minor is not identifiable.

**Sec.**  RCW 9.68A.011 and 2024 c 88 s 1 are each reenacted and amended to read as follows:

Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Digitization" means creating or altering any visual or printed matter to depict ((~~an identifiable~~)) a minor in a realistic manner utilizing images of another person or computer-generated images, regardless of whether such creation or alteration is accomplished manually or through an automated process. "Digitization" includes, but is not limited to, creation or alteration of any visual or printed matter by using artificial intelligence.

(2) "Fabricated ((~~depiction of an identifiable minor" and "fabricated depiction" mean~~)) depiction" means any visual or printed matter that ((~~depicts~~)) was created or altered by digitization to depict a minor ((~~who is identifiable from the matter itself or from information displayed with or otherwise connected to the matter, and that was created or altered by digitization to depict the minor~~)) engaging in sexually explicit conduct ((~~in which the minor did not actually engage~~)), and that is obscene.

(3) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(5) "Minor" means any person under ((~~eighteen~~)) 18 years of age.

(6) "Obscene" shall have and include all those meanings which are assigned to it under the common law.

(7) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

((~~(7)~~)) (8) "Sexually explicit conduct" means actual or simulated:

(a) 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;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse;

(e) Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) 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 ((~~(7)~~)) (8)(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

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

((~~(8)~~)) (9) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph. "Visual or printed matter" includes, but is not limited to, any such photograph or other material that constitutes a fabricated depiction ((~~of an identifiable minor~~)).

**Sec.**  RCW 9.68A.050 and 2019 c 128 s 3 are each amended to read as follows:

(1)(a) A person ((~~eighteen~~)) 18 years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

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

(ii) 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 as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (e).

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

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

(2)(a) A person ((~~eighteen~~)) 18 years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

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

(ii) 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 as defined in RCW 9.68A.011((~~(4)~~)) (8) (f) or (g).

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

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

**Sec.**  RCW 9.68A.053 and 2019 c 128 s 4 are each amended to read as follows:

(1)(a)(i) A person under the age of ((~~eighteen~~)) 18 commits the crime of a minor dealing in depictions of another minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct in the first degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor ((~~thirteen~~)) 13 years of age or older engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (e).

(ii) Minor dealing in depictions of another minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct in the first degree is a gross misdemeanor.

(b)(i) A person under the age of ((~~eighteen~~)) 18 commits the crime of a minor dealing in depictions of another minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct in the second degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor ((~~thirteen~~)) 13 years of age or older engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (f) or (g).

(ii) Minor dealing in depictions of another minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct in the second degree is a misdemeanor.

(2)(a) A person under age ((~~eighteen~~)) 18 commits the crime of minor dealing in depictions of another minor ((~~twelve~~)) 12 years of age or younger engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts another minor ((~~twelve~~)) 12 years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (e); or

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

(b) Minor dealing in depictions of another minor ((~~twelve~~)) 12 years of age or younger engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(3)(a) A person under age ((~~eighteen~~)) 18 commits the crime of minor dealing in depictions of another minor ((~~twelve~~)) 12 years of age or younger engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts another minor ((~~twelve~~)) 12 years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (f) or (g); or

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

(b) Minor dealing in depictions of a minor ((~~twelve~~)) 12 years of age or younger engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(4)(a) Any person under the age of ((~~eighteen~~)) 18 commits the crime of minor financing or selling depictions of another minor engaged in sexually explicit conduct when he or she finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (g).

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

(5)(a) A person under the age of ((~~eighteen~~)) 18 commits the crime of minor selling depictions of himself or herself engaged in sexually explicit conduct when he or she sells a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (g).

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

(6) This section does not apply to a person under ((~~eighteen~~)) 18 years of age who finances, attempts to finance, develops, duplicates, publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8).

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

**Sec.**  RCW 9.68A.060 and 2019 c 128 s 5 are each amended to read as follows:

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first 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 as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (e).

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

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

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the 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, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (f) or (g).

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

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

(3) This section does not apply to 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 ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under ((~~thirteen~~)) 13 years of age 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 himself or herself engaged in sexually explicit conduct.

**Sec.**  RCW 9.68A.070 and 2019 c 128 s 6 are each amended to read as follows:

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (a) through (e).

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

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

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011((~~(4)~~)) (8) (f) or (g).

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

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

(3) This section does not apply to a minor's possession of visual or printed matter depicting any minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under ((~~thirteen~~)) 13 years of age in possession of visual or printed matter depicting himself or herself engaged in sexually explicit conduct.

**Sec.**  RCW 9.68A.075 and 2019 c 128 s 7 are each amended to read as follows:

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

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

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

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

(5) This section does not apply to a minor who intentionally views over the internet visual or printed matter depicting a minor ((~~thirteen~~)) 13 years of age or older engaged in sexually explicit conduct.

(6) This section does not apply to a person under ((~~thirteen~~)) 13 years of age who intentionally views over the internet visual or printed matter depicting himself or herself engaged in sexually explicit conduct.

**Sec.**  RCW 9.68A.110 and 2024 c 88 s 3 are each amended to read as follows:

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim ((~~unless the charged offense involves a fabricated depiction~~)).

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(7) In a prosecution under RCW 9.68A.050, 9.68A.053, 9.68A.060, 9.68A.070, or 9.68A.075 where the charged offense involves a fabricated depiction, ((~~it~~)) the state is not required to establish that the minor depicted actually exists. It is not a defense that the defendant lacked knowledge of whether the fabricated depiction had been created or altered by digitization, or that the defendant lacked knowledge of whether the minor depicted actually exists.

(8) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

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