

HOUSE BILL REPORT

SSB 5346

*As Reported By House Committee on:
Judiciary*

Title: An act relating to communication with a minor for immoral purposes.

Brief Description: Defining the crime of communication with a minor for immoral purposes.

Sponsor(s): By Senate Committee on Law & Justice (originally sponsored by Senator Nelson).

Brief History:

Reported by House Committee on:
Judiciary, February 28, 1992, DPA.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted under this section of a felony sexual offense under Chapter 9.68A, 9A.44, or 9.64A RCW, or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony.

"Communicating with a minor for immoral purposes" is not defined in statute. A substantively similar statute withstood a constitutional attack in State v. Schimmelpfennig, 92 Wn.2d 95 (1979). The court held that the statute meant that the communication must be for purposes of sexual misconduct. At that time, the statute was contained in a chapter that governed prostitution, exposure, and indecent liberties. The court determined that read in context of the entire statutory scheme, the statute was not vague. In that case, the defendant attempted to

lure a 4-year-old child into his van and asked her to engage in sexual conduct with him.

Under its current version, communicating with a minor for immoral purposes is located in the chapter that governs crimes of sexual exploitation of children. The chapter criminalizes: 1) compelling or aiding minors to engage in sexually explicit conduct that will be photographed or part of a live performance; 2) developing, possessing, processing, selling, or distributing visual matter that depicts a minor engaged in an act of sexually explicit conduct; and 3) patronizing a juvenile prostitute.

The Court of Appeals in State v. Danforth, 56 Wn. App. 133 (1989), held that the statute was unconstitutionally vague as it was applied to Danforth, because Danforth was not accused of communicating with the minor to encourage the minor to do anything illegal. Danforth asked a 16 and 17-year-old to engage in group sex. Teenagers 16 and 17 years of age may engage in consensual sexual activity with adults. In dicta, the court arguably suggested that the statute applied only to the offenses contained in the chapter in which it was located.

The court declined to expand the scope of the definition of "immoral purposes" to cover other sexual offenses, stating that such expansion of the statute is a legislative function.

Danforth was a Division One case. Despite Danforth's language, Division One, in State v. Falco, 59 Wn. App. 354 (1990), strongly suggested that communicating with a minor for immoral purposes is not limited to communicating for the purpose of committing a Chapter 9.68A RCW offense. In that case, a 13-year-old boy was charged with attempted statutory rape in the first degree, which was contained in Chapter 9A.44 RCW. The issue was whether communicating with a minor for immoral purposes was a lesser included offense. The court concluded that it was not. However, the court noted: "It is undisputed that the facts of the particular case before us would support a finding that the crime of communicating with a minor for immoral purposes was committed." Falco, at page 357. Falco's decision undermines the conclusion that the court in Danforth intended to limit "immoral purposes" to crimes in Chapter 9.68A RCW. Instead, the court appears to have adopted the definition in Schimmelpfennig, which defined "immoral purposes" to mean sexual misconduct.

Summary of Amended Bill: The act is solely to clarify existing legislative intent regarding current law and is not intended to create new substantive provisions. The statute

that creates the crime of communicating with a minor for immoral purposes is amended to clarify that the statute applies to communicating with a minor for purposes of sexual misconduct as prohibited in several chapters that create crimes concerning sexual misconduct.

Technical cross-references to chapters that create felony sexual offenses are added.

Amended Bill Compared to Substitute Bill: The Senate version is stricken entirely and replaced with the House version. A section is added to clarify that the statute is intended to clarify existing law. Provisions that would have prevented charging juveniles with communicating with a minor for immoral purposes is stricken. Language that was added to the statute that could potentially have resulted in reducing felony crimes involving sexual misconduct to gross misdemeanors is stricken.

Fiscal Note: Not requested.

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

Testimony For: None.

Testimony Against: None.

Witnesses: None.