

SENATE BILL 5166

State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson and Conner.

Read first time January 22, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to the exploitation of minors by sexual conduct and
2 materials; amending RCW 9.68A.110; adding new sections to chapter 9.68
3 RCW; repealing RCW 9.68.050, 9.68.060, 9.68.070, 9.68.080, 9.68.090,
4 9.68.100, 9.68.110, 9.68.120, 9.68.130, 9.68A.140, 9.68A.150, and
5 9.68A.160; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** As used in sections 1 through 4 of this
8 act, the following terms have the meanings indicated unless the context
9 clearly requires otherwise:

10 (1) "Minor" means any person under the age of eighteen years.

11 (2) "Harmful to minors" means any matter or live performance:

12 (a) Which the average adult person, applying contemporary community
13 standards, would find, when considered as a whole, appeals to the
14 prurient interest of minors; and

1 (b) Which explicitly depicts or describes, by prevailing standards
2 in the adult community with respect to what is suitable for minors,
3 patently offensive representations or descriptions of:

4 (i) Ultimate sexual acts, normal or perverted, actual or simulated;
5 or

6 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory
7 functions, lewd exhibition of the genitals or genital area, sexually
8 explicit conduct, sexual excitement, or sexually explicit nudity; or

9 (iii) Violent or destructive sexual acts, including but not limited
10 to human or animal mutilation, dismemberment, rape, or torture; and

11 (c) Which, when considered as a whole, and in the context in which
12 it is used, lacks serious literary, artistic, political, or scientific
13 value for minors.

14 (3) "Sexually explicit conduct" means physical contact with a
15 person's clothed or unclothed genitals, pubic area, buttocks, perineum,
16 or, if such person be a female, breast.

17 (4) "Sexual excitement" means the condition of human male or female
18 genitals when in a state of sexual stimulation or arousal; or the
19 depiction of covered male genitals in a discernibly turgid state.

20 (5) "Sexually explicit nudity" means the showing of the human male
21 or female genitals, pubic area, buttocks, or perineum with less than a
22 full opaque covering; or the showing of the female breast with less
23 than a full opaque covering of any portion thereof below the top of the
24 nipple.

25 (6) "Matter" means a motion picture film, a publication, a sexual
26 device, or any combination thereof.

27 (7) "Motion picture film" means any:

28 (a) Film or plate negative;

29 (b) Film or plate positive;

30 (c) Film designed to be projected on a screen for exhibition;

1 (d) Film, glass slides, or transparencies, either in negative or
2 positive form, designed for exhibition by projection on a screen;

3 (e) Videotape; or

4 (f) Any other medium used to electronically transmit or reproduce
5 images on a screen.

6 (8) "Publication" means any book, magazine, article, pamphlet,
7 writing, printing, illustration, picture, sound recording, or coin-
8 operated machine.

9 (9) "Sexual device" means any artificial human penis, vagina, or
10 anus, or other device primarily designed, promoted, or marketed to
11 physically stimulate or manipulate the human genitals, pubic area,
12 perineum, or anal area, including dildoes, penisators, vibrators,
13 vibrillators, penis rings and erection enlargement or prolonging
14 creams, jellies, or other such chemicals or preparations.

15 (10) "Live performance" means any play, show, skit, dance, or other
16 exhibition performed or presented to or before an audience of one or
17 more, in person or by electronic transmission, with or without
18 consideration.

19 (11) "Person" means any individual, partnership, firm, association,
20 corporation, or other legal entity.

21 (12) "Knowledge of its character" means that the person knows or is
22 aware, or has reason to know, that the matter or performance contains,
23 depicts, or describes any of the activity or conduct which may be found
24 to be patently offensive under subsection (2)(b) of this section,
25 regardless of whether such person has actual or specific knowledge of
26 its precise contents or that the matter or performance is "harmful to
27 minors" under subsection (2) of this section. Such knowledge may be
28 proved by direct or circumstantial evidence, or both.

1 NEW SECTION. **Sec. 2.** No person shall recklessly and with
2 knowledge of its character:

3 (1) Display matter which is harmful to minors, as defined in
4 section 1(2) of this act, in such a way that minors, as part of the
5 invited general public, will be exposed to view such matter; however,
6 a person shall be deemed not to have displayed matter harmful to minors
7 if the matter is kept behind devices commonly known as blinder racks so
8 that the lower two-thirds of the matter is not exposed to view;

9 (2) Sell, furnish, present, distribute, allow to view or hear, or
10 otherwise disseminate to a minor, with or without consideration, any
11 matter which is harmful to minors as defined in section 1(2) of this
12 act; or

13 (3) Present to a minor or participate in presenting to a minor,
14 with or without consideration, any live performance which is harmful to
15 minors as defined in section 1(2) of this act.

16 NEW SECTION. **Sec. 3.** In any prosecution for violation of
17 section 2 of this act, it shall be an affirmative defense that:

18 (1) The matter or performance involved was displayed or otherwise
19 disseminated to a minor by the minor's parent or legal guardian, for
20 bona fide purposes;

21 (2) The matter or performance involved was displayed or otherwise
22 disseminated to a minor with the written permission of the minor's
23 parent or legal guardian, for bona fide purposes; or

24 (3) The person made a reasonable bona fide attempt to ascertain the
25 true age of the minor by requiring production of a driver's license,
26 marriage license, birth certificate, or other governmental or
27 educational identification card or paper and not relying solely on the
28 oral allegations or apparent age of the minor.

1 NEW SECTION. **Sec. 4.** Any person who is convicted of violating
2 any provision of section 2 of this act is guilty of a gross
3 misdemeanor. Each day that any violation of section 2 of this act
4 occurs or continues shall constitute a separate offense and shall be
5 punishable as a separate violation. Every act, thing, or transaction
6 prohibited by section 2 of this act shall constitute a separate offense
7 as to each item, issue, or title involved and shall be punishable as
8 such. For the purpose of this section, multiple copies of the same
9 identical title, monthly issue, volume, and number issue, or other such
10 identical material shall constitute a single offense.

11 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each
12 repealed:

- 13 (1) RCW 9.68.050 and 1969 ex.s. c 256 s 13;
- 14 (2) RCW 9.68.060 and 1969 ex.s. c 256 s 14;
- 15 (3) RCW 9.68.070 and 1969 ex.s. c 256 s 15;
- 16 (4) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 17 (5) RCW 9.68.090 and 1969 ex.s. c 256 s 17;
- 18 (6) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 19 (7) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 20 (8) RCW 9.68.120 and 1969 ex.s. c 256 s 20; and
- 21 (9) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1.

22 **Sec. 6.** RCW 9.68A.110 and 1989 c 32 s 9 are each amended to read
23 as follows:

- 24 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
25 the defendant was involved in activities of law enforcement and
26 prosecution agencies in the investigation and prosecution of criminal
27 offenses. Law enforcement and prosecution agencies shall not employ
28 minors to aid in the investigation of a violation of RCW 9.68A.090 or

1 9.68A.100. (~~(This chapter does not apply to individual case treatment~~
2 ~~in a recognized medical facility or individual case treatment by a~~
3 ~~psychiatrist or psychologist licensed under Title 18 RCW, or to lawful~~
4 ~~conduct between spouses.))~~

5 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or
6 9.68A.080, it is not a defense that the defendant did not know the age
7 of the child depicted in the visual or printed matter: PROVIDED, That
8 it is a defense, which the defendant must prove by a preponderance of
9 the evidence, that at the time of the offense the defendant (~~(was not~~
10 ~~in possession of any facts on the basis of which he or she should~~
11 ~~reasonably have known that the person depicted was a minor)) made a
12 reasonable bona fide attempt to ascertain the true age of the minor by
13 requiring production of a driver's license, marriage license, birth
14 certificate, or other governmental or educational identification card
15 or paper and did not rely solely on the oral allegations or apparent
16 age of the minor.~~

17 (3) In a prosecution under RCW 9.68A.040(~~(, 9.68A.050, 9.68A.060,)~~)
18 or 9.68A.090, it is not a defense that the defendant did not know the
19 alleged victim's age: PROVIDED, That it is a defense, which the
20 defendant must prove by a preponderance of the evidence, that at the
21 time of the offense, the defendant (~~(reasonably believed the alleged~~
22 ~~victim to be at least eighteen years of age based on declarations by~~
23 ~~the alleged victim)) made a reasonable bona fide attempt to ascertain
24 the true age of the minor by requiring production of a driver's
25 license, marriage license, birth certificate, or other governmental or
26 educational identification card or paper and did not rely solely on the
27 oral allegations or apparent age of the minor.~~

28 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
29 it shall be an affirmative defense that the defendant was a law
30 enforcement officer in the process of conducting an official

1 investigation of a sex-related crime against a minor, or that the
2 defendant was providing individual case treatment as a recognized
3 medical facility or as a psychiatrist or psychologist licensed under
4 Title 18 RCW.

5 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
6 the state is not required to establish the identity of the alleged
7 victim.

8 NEW SECTION. Sec. 7. The following acts or parts of acts are each
9 repealed:

- 10 (1) RCW 9.68A.140 and 1987 c 396 s 1;
11 (2) RCW 9.68A.150 and 1987 c 396 s 2; and
12 (3) RCW 9.68A.160 and 1987 c 396 s 3.

13 NEW SECTION. Sec. 8. If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. Sec. 9. Sections 1 through 4 of this act are
18 each added to chapter 9.68 RCW.