

SENATE BILL REPORT

SB 5094

As of January 16, 2025

Title: An act relating to sexually explicit depictions of minors.

Brief Description: Concerning sexually explicit depictions of minors.

Sponsors: Senators Dhingra, Wagoner, Holy, Salomon, Wellman, Trudeau, Cleveland, Bateman, Wilson, C., Chapman, Nobles, Orwall and Valdez.

Brief History:

Committee Activity: Law & Justice: 1/16/25.

Brief Summary of Bill

- Eliminates the requirement that a minor must be identifiable for certain offenses involving fabricated depictions of minors engaged in sexually explicit conduct.
- Increases the statute of limitations for certain offenses involving depictions of a minor engaged in sexually explicit conduct.
- Expands the crime of sexual exploitation of a minor.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Depictions of a Minor Engaged in Sexually Explicit Conduct. Under state law, a person may be charged with a range of criminal offenses if the person deals in, sends or brings into the state, possesses, or views a depiction of a minor engaged in sexually explicit conduct. These offenses generally regulate applicable visual or printed matter and internet sessions where a user views such matter. Visual or printed matter includes fabricated depictions of an identifiable minor.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Different offenses or penalties may apply depending on the ages of the perpetrator and the depicted minor.

Statute of Limitations for Offenses Involving Depictions of a Minor Engaged in Sexually Explicit Conduct. A statute of limitations provides an authorized period of time for initiating a prosecution after a crime is committed. Once the applicable statute of limitations has expired, a prosecutor is barred from bringing charges against the alleged perpetrator. Statutes of limitation vary according to the crime.

Felony offenses related to dealing in, sending or bringing into the state, possessing, and viewing depictions or fabricated depictions of a minor engaged in sexually explicit conduct are considered sex offenses and must be prosecuted within three years of the commission of the crime.

In a prosecution for a sex offense, the applicable statute of limitations begins to run from whichever of the following dates is later:

- the date the crime was committed; or
- four years from the date the identity of the suspect is conclusively established by DNA testing or by photograph.

Sexual Exploitation of a Minor. A person commits the offense of sexual exploitation of a minor if the person:

- compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
- aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
- permits a minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance, when the person is a parent, legal guardian, or person with custody or control of the minor.

Sexual exploitation of a minor is a class B felony.

Summary of Bill: Minors do not need to be identifiable for purposes of criminal liability for offenses related to fabricated depictions of minors engaged in sexually explicit conduct.

The statute of limitations is increased from three years to ten years for offenses related to dealing in, sending or bringing into the state, possessing, and viewing depictions of a minor engaged in sexually explicit conduct.

The crime of sexual exploitation of a minor is expanded to include instances where a person knowingly causes an unconscious or unaware minor to be photographed or part of a live performance which depicts the minor engaged in sexually explicit conduct.

Appropriation: None.

Fiscal Note: Requested on January 6, 2024.

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: While this bill gets to components on identifiable images and digital manipulations in order to avoid prosecution, it is also different. There has been a huge volume increase on the internet of child sexual abuse material (CSAM) due to the exponential growth in capabilities of AI. These images may result in increased sexual interest in children and may lower the boundaries for offenders to commit other child offenses. CSAM images can be filtered or distorted to avoid detection by law enforcement. Current law requires the state to prove that the child is real, which is becoming impossible. Defendants can claim that the child is not real or that the defendant did not know the child was real. This bill ensures that no predator can hide behind technicalities. Fabricated depictions of minors engaged in sexual exploitation is not a victimless crime. There is no reason to make a policy distinction between identifiable or nonidentifiable minors engaged in sex acts. This bill closes a loophole whereby a person cannot be prosecuted for creating sexual depictions if a child is asleep or drugged. Extending the statute of limitations is paramount to protecting children. Only a number of cases go on to be prosecuted because it can take years to crack into an individual device once it has been seized.

CON: Removing the requirement that a minor be identifiable, and the lack of inclusion of the obscenity standard, makes the bill unconstitutional under the U.S. Supreme Court's ruling in *Ashcroft v. Free Speech Coalition*. The government cannot prohibit legal speech merely because it has a tendency to persuade viewers to engage in illegal activity. Shifting focus and priority away from supporting specific identified victims of abuse and the legal complications undermines what HB 1999 was meant to do. The recommendations of the Sex Offender Policy Board should be followed for depiction offenses. There should be a delineation between people who are dealing in depictions or bringing the depictions into the state versus mere possession, or the statute of limitations should start at the time that law enforcement has access to devices. A community-based supervision and treatment alternative should be created for first-time child pornography offenders convicted of depiction-only offenses without a history of sexual offending. Individuals whose behavior is limited to viewing, possessing, duplicating, disseminating, or exchanging illegal internet depictions are very low risk of committing a hands-on offense. Incarceration is a very costly response especially for individuals who are low risk to public safety.

OTHER: Most companies have dedicated teams that monitor websites to identify potential CSAM. Federal law requires such companies that identify potential CSAM to provide that

information to the National Center for Missing and Exploited Children. When development teams create new AI software programs, they pressure test the program and must also report any creation of CSAM per federal requirements. Amendments are requested to ensure that companies would not be found liable for continuing their efforts to scour their websites for CSAM and to hold harmless development teams from doing pressure tests on new AI software programs. Discussions about how AI systems are designed should be focused on rather than how people are using AI systems.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Laura Harmon; Morgan Irwin, Association of Washington Business; James McMahan, WA Assoc Sheriffs & Police Chiefs; Paula Sardinias, WBBA (WA Build Black Alliance).

CON: Ramona Brandes, Washington Defender Association/Washington Association of Criminal Defense Lawyers; Lisa Trifiletti; Joanne Smieja, WA Voices; Keri-Anne Jetzer, WA State Sentencing Guidelines Commission.

OTHER: Rose Feliciano, TechNet; emi koyama, Coalition for Rights & Safety.

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