
SUBSTITUTE SENATE BILL 6373

State of Washington

60th Legislature

2008 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Eide, Stevens, Shin, and Sheldon; by request of Attorney General)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to creating the crime of viewing depictions of
2 minors engaged in sexually explicit conduct; amending RCW 9.68A.110;
3 adding a new section to chapter 9.68A RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.68A RCW
6 to read as follows:

7 (1) A person who knowingly views over the internet any visual
8 depiction or copy thereof of a minor engaged in sexually explicit
9 conduct for the purpose of sexual gratification of the person is guilty
10 of a class C felony.

11 (2) In a prosecution under this section, the trier of fact shall
12 consider the title, text, and content of the visual depiction, as well
13 as the internet history, search terms, thumbnail images, downloading
14 activity, expert computer forensic testimony, the number of depictions
15 of minors engaged in sexually explicit conduct, the defendant's access
16 to and control over the electronic device and its contents upon which
17 the depictions were found, and any other relevant evidence, in
18 determining whether a person knowingly viewed the material for the
19 purpose of sexual gratification of the person.

1 **Sec. 2.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read
2 as follows:

3 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
4 the defendant was involved in activities of law enforcement and
5 prosecution agencies in the investigation and prosecution of criminal
6 offenses. Law enforcement and prosecution agencies shall not employ
7 minors to aid in the investigation of a violation of RCW 9.68A.090 or
8 9.68A.100. This chapter does not apply to lawful conduct between
9 spouses.

10 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
11 (~~(9.68A.080)~~) 9.68A.080, or section 1 of this act, it is not a defense that
12 the defendant did not know the age of the child depicted in the visual
13 or printed matter: PROVIDED, That it is a defense, which the defendant
14 must prove by a preponderance of the evidence, that at the time of the
15 offense the defendant was not in possession of any facts on the basis
16 of which he or she should reasonably have known that the person
17 depicted was a minor.

18 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or
19 9.68A.102, it is not a defense that the defendant did not know the
20 alleged victim's age: PROVIDED, That it is a defense, which the
21 defendant must prove by a preponderance of the evidence, that at the
22 time of the offense, the defendant made a reasonable bona fide attempt
23 to ascertain the true age of the minor by requiring production of a
24 driver's license, marriage license, birth certificate, or other
25 governmental or educational identification card or paper and did not
26 rely solely on the oral allegations or apparent age of the minor.

27 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, (~~(9.68A.070)~~)
28 9.68A.070, or section 1 of this act, it shall be an affirmative defense
29 that the defendant was a law enforcement officer in the process of
30 conducting an official investigation of a sex-related crime against a
31 minor, or that the defendant was providing individual case treatment as
32 a recognized medical facility or as a psychiatrist or psychologist
33 licensed under Title 18 RCW.

34 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, (~~(9.68A.070)~~)
35 9.68A.070, or section 1 of this act, the state is not required to
36 establish the identity of the alleged victim.

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