

charged with the responsibility of drafting or developing policies and procedures to implement this statute.

Passed the Senate March 1, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

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CHAPTER 32

[Substitute House Bill No. 1658]

SEXUAL EXPLOITATION OF CHILDREN

AN ACT Relating to sexual exploitation of children; amending RCW 9.68A.011, 9.68A.040, 9.68A.050, 9.68A.060, 9.68A.070, 9.68A.080, 9.68A.090, 9.68A.100, and 9.68A.110; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 262, Laws of 1984 and RCW 9.68A.011 are each amended to read as follows:

Unless the context clearly indicates otherwise, the definitions in this section apply throughout ~~((the [this]))~~ this chapter.

(1) To "photograph" means to make a print, negative, slide, motion picture, or videotape. A "photograph" means any tangible item produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "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(~~(, for the purpose of sexual stimulation of the viewer));~~);

(d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition 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;

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

(4) "Minor" means any person under eighteen years of age.

(5) "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.

Sec. 2. Section 3, chapter 262, Laws of 1984 and RCW 9.68A.040 are each amended to read as follows:

(1) A person is guilty of sexual exploitation of a minor if the person:

(a) 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;

(b) 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

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is((:

~~(a)) a class B felony punishable under chapter 9A.20 RCW ((if the minor exploited is less than sixteen years old at the time of the offense; and~~

~~(b) A class C felony punishable under chapter 9A.20 RCW if the minor exploited is at least sixteen years old but less than eighteen years old at the time of the offense)).~~

Sec. 3. Section 4, chapter 262, Laws of 1984 and RCW 9.68A.050 are each amended to read as follows:

A person who:

(1) 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; or

(2) 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

is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((3) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 4. Section 5, chapter 262, Laws of 1984 and RCW 9.68A.060 are each amended to read as follows:

~~((1))~~ A person who 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 is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 5. Section 6, chapter 262, Laws of 1984 and RCW 9.68A.070 are each amended to read as follows:

~~((1))~~ A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a gross misdemeanor.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 6. Section 7, chapter 262, Laws of 1984 and RCW 9.68A.080 are each amended to read as follows:

((+)) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 7. Section 8, chapter 262, Laws of 1984 as amended by section 2, chapter 319, Laws of 1986 and RCW 9.68A.090 are each amended to read as follows:

((+)) 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 or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 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 punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under eighteen years of age.))~~

Sec. 8. Section 9, chapter 262, Laws of 1984 and RCW 9.68A.100 are each amended to read as follows:

((+)) A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under eighteen years of age.))~~

Sec. 9. Section 10, chapter 262, Laws of 1984 as amended by section 3, chapter 319, Laws of 1986 and RCW 9.68A.110 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. This chapter does not apply to individual case treatment in a recognized medical facility or individual case treatment by a psychiatrist or psychologist licensed under Title 18 RCW, or to lawful conduct between spouses.

(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: PROVIDED, That 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.050, 9.68A.060, or 9.68A.090, ((or 9.68A.100;)) it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least eighteen years of age based on declarations by the alleged victim.

~~(4) ((In a prosecution under RCW 9.68A.050 or 9.68A.060, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least sixteen years of age based on declarations by the alleged victim))~~ In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, it shall be an affirmative defense that the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.

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

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 18, 1989.

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CHAPTER 33

[House Bill No. 1170]

TESTAMENTARY POWERS OF APPOINTMENT

AN ACT Relating to powers of appointment; and amending RCW 11.95.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 36, chapter 30, Laws of 1985 and RCW 11.95.060 are each amended to read as follows:

(1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may