

Washington

RCW 9.68A.001

Legislative finding.

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

[1984 c 262 § 1.]

RCW 9.68A.011

Definitions.

Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible 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;

(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.

[2002 c 70 § 1; 1989 c 32 § 1; 1984 c 262 § 2.]

RCW 9.68.030

Indecent articles, etc.

Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor.

[1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

RCW 9.68A.040

Sexual exploitation of a minor -- Elements of crime -- Penalty.

(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 class B felony punishable under chapter 9A.20 RCW.

[1989 c 32 § 2; 1984 c 262 § 3.]

RCW 9.68A.050

Dealing in depictions of minor engaged in sexually explicit conduct.

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.

[1989 c 32 § 3; 1984 c 262 § 4.]

RCW 9.68A.060

Sending, bringing into state depictions of minor engaged in sexually explicit conduct.

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.

[1989 c 32 § 4; 1984 c 262 § 5.]

RCW 9.68A.070

Possession of depictions of minor engaged in sexually explicit conduct.

A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a class C felony.

[1990 c 155 § 1; 1989 c 32 § 5; 1984 c 262 § 6.]

NOTES: Effective date -- 1990 c 155 §§ 1 and 2: "Sections 1 and 2 of this act shall be effective July 1, 1990." [1990 c 155 § 3.]

RCW 9.68A.080

Reporting of depictions of minor engaged in sexually explicit conduct -- Civil immunity.

(1) 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) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report.

[2002 c 70 § 2; 1989 c 32 § 6; 1984 c 262 § 7.]

RCW 9.68A.090

Communication with minor for immoral purposes -- Penalties.

(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the 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.

[2003 c 53 § 42; 2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

NOTES:

Reviser's note: This section was amended by 2003 c 26 § 1 and by 2003 c 53 § 42, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

RCW 9.68A.100

Patronizing juvenile prostitute.

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. In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of patronizing a juvenile prostitute is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

[1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

NOTES:

Findings -- Intent -- 1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

RCW 9.68A.105

Additional fee assessment.

(1)(a) In addition to penalties set forth in RCW 9.68A.100, a person who is either convicted or given a deferred sentence or a deferred prosecution as a result of an arrest for violating RCW 9.68A.100 or a comparable county or municipal ordinance shall be assessed a two hundred fifty dollar fee.

(b) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100 or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.

[1995 c 353 § 12.]

RCW 9.68A.110

Certain defenses barred, permitted.

(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 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 or 9.68A.090, 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 made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) 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, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW.

(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.

[1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

NOTES: Severability -- 1992 c 178: "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." [1992 c 178 § 2.]

RCW 9.68A.120

Seizure and forfeiture of property.

The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of

seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the public safety and education account established under RCW 43.08.250 and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

[1999 c 143 § 8; 1984 c 262 § 11.]

RCW 9.68A.130

Recovery of costs of suit by minor.

A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees.

[1984 c 262 § 12.]

RCW 9.68A.150

Allowing minor on premises of live erotic performance--Definitions -- Penalty.

(1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material.

(2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.

(3) For the purposes of this section:

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

(b) "Erotic materials" means live performance:

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

(ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

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

(c) "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.

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

[2003 c 53 § 43; 1987 c 396 § 2.]

NOTES: Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Severability -- 1987 c 396: "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." [1987 c 396 § 4.]

RCW 9.68A.910

Severability -- 1984 c 262.

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.

[1984 c 262 § 15.]

RCW 9.68A.911

Severability -- 1989 c 32.

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.

[1989 c 32 § 10.]

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