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**SUBSTITUTE HOUSE BILL 1742**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Human Services & Early Learning (originally sponsored by Representatives Frame, Eslick, Senn, Griffey, Kilduff, Corry, Appleton, Sells, Walen, Wylie, Doglio, Stanford, Robinson, Macri, and Davis)

1 AN ACT Relating to juvenile offenses that involve depictions of  
2 minors; amending RCW 9.68A.050, 9.68A.060, 9.68A.070, 9.68A.075, and  
3 13.40.070; adding a new section to chapter 13.40 RCW; adding new  
4 sections to chapter 9.68A RCW; adding a new section to chapter 9A.86  
5 RCW; creating a new section; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
8 responsible teen communications act.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40  
10 RCW to read as follows:

11 (1) The legislature finds that exchange of intimate images by  
12 minors is increasingly common, and that such actions may lead to harm  
13 and long-term consequences. The legislature intends to develop age-  
14 appropriate prevention and interventions to prevent harm and to hold  
15 accountable youth who harm others through exchange of intimate  
16 images.

17 (2) The Washington coalition of sexual assault programs, in  
18 consultation with the office of the superintendent of public  
19 instruction, the Washington association for the treatment of sexual  
20 abusers, the department of children, youth, and families, the

1 department of social and health services, the juvenile court  
2 administrators, the Washington association of prosecuting attorneys,  
3 representatives from public defense, youth representatives, and other  
4 relevant stakeholders, shall convene a work group to make  
5 recommendations to the legislature regarding age-appropriate  
6 prevention and intervention strategies to address potential harms  
7 caused by exchange of intimate images by minors.

8 (3) By December 1, 2019, the work group shall make a report to  
9 the legislature identifying education, prevention, and other  
10 responses to the harms that may be associated with exchange of  
11 intimate images by minors.

12 **Sec. 3.** RCW 9.68A.050 and 2017 c 126 s 3 are each amended to  
13 read as follows:

14 (1)(a) A person eighteen years of age or older commits the crime  
15 of dealing in depictions of a minor engaged in sexually explicit  
16 conduct in the first degree when he or she:

17 (i) Knowingly develops, duplicates, publishes, prints,  
18 disseminates, exchanges, finances, attempts to finance, or sells a  
19 visual or printed matter that depicts a minor engaged in an act of  
20 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
21 (e); or

22 (ii) Possesses with intent to develop, duplicate, publish, print,  
23 disseminate, exchange, or sell any visual or printed matter that  
24 depicts a minor engaged in an act of sexually explicit conduct as  
25 defined in RCW 9.68A.011(4) (a) through (e).

26 (b) Dealing in depictions of a minor engaged in sexually explicit  
27 conduct in the first degree is a class B felony punishable under  
28 chapter 9A.20 RCW.

29 (c) For the purposes of determining the unit of prosecution under  
30 this subsection, each depiction or image of visual or printed matter  
31 constitutes a separate offense.

32 (2)(a) A person eighteen years of age or older commits the crime  
33 of dealing in depictions of a minor engaged in sexually explicit  
34 conduct in the second degree when he or she:

35 (i) Knowingly develops, duplicates, publishes, prints,  
36 disseminates, exchanges, finances, attempts to finance, or sells any  
37 visual or printed matter that depicts a minor engaged in an act of  
38 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g);  
39 or

1 (ii) Possesses with intent to develop, duplicate, publish, print,  
2 disseminate, exchange, or sell any visual or printed matter that  
3 depicts a minor engaged in an act of sexually explicit conduct as  
4 defined in RCW 9.68A.011(4) (f) or (g).

5 (b) Dealing in depictions of a minor engaged in sexually explicit  
6 conduct in the second degree is a class B felony punishable under  
7 chapter 9A.20 RCW.

8 (c) For the purposes of determining the unit of prosecution under  
9 this subsection, each incident of dealing in one or more depictions  
10 or images of visual or printed matter constitutes a separate offense.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.68A  
12 RCW to read as follows:

13 (1) (a) (i) A person under the age of eighteen commits the crime of  
14 a minor dealing in depictions of another minor thirteen years of age  
15 or older engaged in sexually explicit conduct in the first degree  
16 when he or she knowingly distributes, publishes, transfers,  
17 disseminates, or exchanges a visual or printed matter that depicts  
18 another minor thirteen years of age or older engaged in an act of  
19 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
20 (e).

21 (ii) Minor dealing in depictions of another minor thirteen years  
22 of age or older engaged in sexually explicit conduct in the first  
23 degree is a gross misdemeanor.

24 (b) (i) A person under the age of eighteen commits the crime of a  
25 minor dealing in depictions of another minor thirteen years of age or  
26 older engaged in sexually explicit conduct in the second degree when  
27 he or she knowingly distributes, publishes, transfers, disseminates,  
28 or exchanges a visual or printed matter that depicts another minor  
29 thirteen years of age or older engaged in an act of sexually explicit  
30 conduct as defined in RCW 9.68A.011(4) (f) or (g).

31 (ii) Minor dealing in depictions of another minor thirteen years  
32 of age or older engaged in sexually explicit conduct in the second  
33 degree is a misdemeanor.

34 (2) (a) A person under age eighteen commits the crime of minor  
35 dealing in depictions of another minor twelve years of age or younger  
36 engaged in sexually explicit conduct in the first degree when he or  
37 she:

38 (i) Knowingly develops, duplicates, publishes, prints,  
39 disseminates, exchanges, finances, attempts to finance, or sells a

1 visual or printed matter that depicts another minor twelve years of  
2 age or younger engaged in an act of sexually explicit conduct as  
3 defined in RCW 9.68A.011(4) (a) through (e); or

4 (ii) Possesses with intent to develop, duplicate, publish, print,  
5 disseminate, exchange, or sell any visual or printed matter that  
6 depicts another minor twelve years of age or younger engaged in an  
7 act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a)  
8 through (e).

9 (b) Minor dealing in depictions of another minor twelve years of  
10 age or younger engaged in sexually explicit conduct in the first  
11 degree is a class B felony punishable under chapter 9A.20 RCW.

12 (3)(a) A person under age eighteen commits the crime of minor  
13 dealing in depictions of another minor twelve years of age or younger  
14 engaged in sexually explicit conduct in the second degree when he or  
15 she:

16 (i) Knowingly develops, duplicates, publishes, prints,  
17 disseminates, exchanges, finances, attempts to finance, or sells any  
18 visual or printed matter that depicts another minor twelve years of  
19 age or younger engaged in an act of sexually explicit conduct as  
20 defined in RCW 9.68A.011(4) (f) or (g); or

21 (ii) Possesses with intent to develop, duplicate, publish, print,  
22 disseminate, exchange, or sell any visual or printed matter that  
23 depicts another minor twelve years of age or younger engaged in an  
24 act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f)  
25 or (g).

26 (b) Minor dealing in depictions of a minor twelve years of age or  
27 younger engaged in sexually explicit conduct in the second degree is  
28 a class B felony punishable under chapter 9A.20 RCW.

29 (4)(a) Any person under the age of eighteen commits the crime of  
30 minor financing or selling depictions of another minor engaged in  
31 sexually explicit conduct when he or she finances, attempts to  
32 finance, or sells a visual or printed matter that depicts a minor  
33 engaged in an act of sexually explicit conduct as defined in RCW  
34 9.68A.011(4) (a) through (g).

35 (b) Minor financing or selling depictions of another minor  
36 engaged in sexually explicit conduct is a class B felony punishable  
37 under chapter 9A.20 RCW.

38 (5)(a) A person under the age of eighteen commits the crime of  
39 minor selling depictions of himself or herself engaged in sexually  
40 explicit conduct when he or she sells a visual or printed matter that

1 depicts himself or herself engaged in an act of sexually explicit  
2 conduct as defined in RCW 9.68A.011(4) (a) through (g).

3 (b) Minor selling depictions of himself or herself engaged in  
4 sexually explicit conduct is a misdemeanor.

5 (6) This section does not apply to a person under eighteen years  
6 of age who finances, attempts to finance, develops, duplicates,  
7 publishes, prints, disseminates, exchanges, or possesses a visual or  
8 printed matter that depicts himself or herself engaged in an act of  
9 sexually explicit conduct as defined in RCW 9.68A.011(4).

10 (7) For the purposes of determining the unit of prosecution under  
11 this section, each depiction or image of visual or printed matter  
12 constitutes a separate offense.

13 **Sec. 5.** RCW 9.68A.060 and 2017 c 126 s 4 are each amended to  
14 read as follows:

15 (1)(a) Except as provided in subsections (3) and (4) of this  
16 section, a person commits the crime of sending or bringing into the  
17 state depictions of a minor engaged in sexually explicit conduct in  
18 the first degree when he or she knowingly sends or causes to be sent,  
19 or brings or causes to be brought, into this state for sale or  
20 distribution, a visual or printed matter that depicts a minor engaged  
21 in sexually explicit conduct as defined in RCW 9.68A.011(4) (a)  
22 through (e).

23 (b) Sending or bringing into the state depictions of a minor  
24 engaged in sexually explicit conduct in the first degree is a class B  
25 felony punishable under chapter 9A.20 RCW.

26 (c) For the purposes of determining the unit of prosecution under  
27 this subsection, each depiction or image of visual or printed matter  
28 constitutes a separate offense.

29 (2)(a) Except as provided in subsections (3) and (4) of this  
30 section, a person commits the crime of sending or bringing into the  
31 state depictions of a minor engaged in sexually explicit conduct in  
32 the second degree when he or she knowingly sends or causes to be  
33 sent, or brings or causes to be brought, into this state for sale or  
34 distribution, any visual or printed matter that depicts a minor  
35 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)  
36 (f) or (g).

37 (b) Sending or bringing into the state depictions of a minor  
38 engaged in sexually explicit conduct in the second degree is a class  
39 B felony punishable under chapter 9A.20 RCW.

1 (c) For the purposes of determining the unit of prosecution under  
2 this subsection, each incident of sending or bringing into the state  
3 one or more depictions or images of visual or printed matter  
4 constitutes a separate offense.

5 (3) This section does not apply to a minor who knowingly sends or  
6 causes to be sent, or brings or causes to be brought, into this state  
7 for distribution, visual or printed matter depicting any minor  
8 thirteen years of age or older engaged in sexually explicit conduct.

9 (4) This section does not apply to a person under thirteen years  
10 of age who knowingly sends or causes to be sent, or brings or causes  
11 to be brought, into this state for distribution, visual or printed  
12 matter depicting himself or herself engaged in sexually explicit  
13 conduct.

14 **Sec. 6.** RCW 9.68A.070 and 2017 c 126 s 2 are each amended to  
15 read as follows:

16 (1)(a) Except as provided in subsections (3) and (4) of this  
17 section, a person commits the crime of possession of depictions of a  
18 minor engaged in sexually explicit conduct in the first degree when  
19 he or she knowingly possesses a visual or printed matter depicting a  
20 minor engaged in sexually explicit conduct as defined in RCW  
21 9.68A.011(4) (a) through (e).

22 (b) Possession of depictions of a minor engaged in sexually  
23 explicit conduct in the first degree is a class B felony punishable  
24 under chapter 9A.20 RCW.

25 (c) For the purposes of determining the unit of prosecution under  
26 this subsection, each depiction or image of visual or printed matter  
27 constitutes a separate offense.

28 (2)(a) Except as provided in subsections (3) and (4) of this  
29 section, a person commits the crime of possession of depictions of a  
30 minor engaged in sexually explicit conduct in the second degree when  
31 he or she knowingly possesses any visual or printed matter depicting  
32 a minor engaged in sexually explicit conduct as defined in RCW  
33 9.68A.011(4) (f) or (g).

34 (b) Possession of depictions of a minor engaged in sexually  
35 explicit conduct in the second degree is a class B felony punishable  
36 under chapter 9A.20 RCW.

37 (c) For the purposes of determining the unit of prosecution under  
38 this subsection, each incident of possession of one or more

1 depictions or images of visual or printed matter constitutes a  
2 separate offense.

3 (3) This section does not apply to a minor's possession of visual  
4 or printed matter depicting any minor thirteen years of age or older  
5 engaged in sexually explicit conduct.

6 (4) This section does not apply to a person under thirteen years  
7 of age in possession of visual or printed matter depicting himself or  
8 herself engaged in sexually explicit conduct.

9 **Sec. 7.** RCW 9.68A.075 and 2010 c 227 s 7 are each amended to  
10 read as follows:

11 (1) Except as provided in subsections (5) and (6) of this  
12 section, a person who intentionally views over the internet visual or  
13 printed matter depicting a minor engaged in sexually explicit conduct  
14 as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing  
15 depictions of a minor engaged in sexually explicit conduct in the  
16 first degree, a class B felony punishable under chapter 9A.20 RCW.

17 (2) Except as provided in subsections (5) and (6) of this  
18 section, a person who intentionally views over the internet visual or  
19 printed matter depicting a minor engaged in sexually explicit conduct  
20 as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing  
21 depictions of a minor engaged in sexually explicit conduct in the  
22 second degree, a class C felony punishable under chapter 9A.20 RCW.

23 (3) For the purposes of determining whether a person  
24 intentionally viewed over the internet a visual or printed matter  
25 depicting a minor engaged in sexually explicit conduct in subsection  
26 (1) or (2) of this section, the trier of fact shall consider the  
27 title, text, and content of the visual or printed matter, as well as  
28 the internet history, search terms, thumbnail images, downloading  
29 activity, expert computer forensic testimony, number of visual or  
30 printed matter depicting minors engaged in sexually explicit conduct,  
31 defendant's access to and control over the electronic device and its  
32 contents upon which the visual or printed matter was found, or any  
33 other relevant evidence. The state must prove beyond a reasonable  
34 doubt that the viewing was initiated by the user of the computer  
35 where the viewing occurred.

36 (4) For the purposes of this section, each separate internet  
37 session of intentionally viewing over the internet visual or printed  
38 matter depicting a minor engaged in sexually explicit conduct  
39 constitutes a separate offense.

1       (5) This section does not apply to a minor who intentionally  
2 views over the internet visual or printed matter depicting a minor  
3 thirteen years of age or older engaged in sexually explicit conduct.

4       (6) This section does not apply to a person under thirteen years  
5 of age who intentionally views over the internet visual or printed  
6 matter depicting himself or herself engaged in sexually explicit  
7 conduct.

8       **Sec. 8.** RCW 13.40.070 and 2018 c 82 s 1 are each amended to read  
9 as follows:

10       (1) Complaints referred to the juvenile court alleging the  
11 commission of an offense shall be referred directly to the  
12 prosecutor. The prosecutor, upon receipt of a complaint, shall screen  
13 the complaint to determine whether:

14       (a) The alleged facts bring the case within the jurisdiction of  
15 the court; and

16       (b) On a basis of available evidence there is probable cause to  
17 believe that the juvenile did commit the offense.

18       (2) If the identical alleged acts constitute an offense under  
19 both the law of this state and an ordinance of any city or county of  
20 this state, state law shall govern the prosecutor's screening and  
21 charging decision for both filed and diverted cases.

22       (3) If the requirements of subsection (1)(a) and (b) of this  
23 section are met, the prosecutor shall either file an information in  
24 juvenile court or divert the case, as set forth in subsections (5),  
25 (6), and (8) of this section. If the prosecutor finds that the  
26 requirements of subsection (1)(a) and (b) of this section are not  
27 met, the prosecutor shall maintain a record, for one year, of such  
28 decision and the reasons therefor. In lieu of filing an information  
29 or diverting an offense a prosecutor may file a motion to modify  
30 community supervision where such offense constitutes a violation of  
31 community supervision.

32       (4) An information shall be a plain, concise, and definite  
33 written statement of the essential facts constituting the offense  
34 charged. It shall be signed by the prosecuting attorney and conform  
35 to chapter 10.37 RCW.

36       (5) The prosecutor shall file an information with the juvenile  
37 court if (a) an alleged offender is accused of an offense that is  
38 defined as a sex offense or violent offense under RCW 9.94A.030,  
39 other than assault in the second degree or robbery in the second



1 degree; or (b) an alleged offender has been referred by a diversion  
2 unit for prosecution or desires prosecution instead of diversion.

3 (6) Where a case is legally sufficient the prosecutor shall  
4 divert the case if the alleged offense is a misdemeanor or gross  
5 misdemeanor or violation and the alleged offense is the offender's  
6 first offense or violation. If the alleged offender is charged with a  
7 related offense that may be filed under subsections (5) and (8) of  
8 this section, a case under this subsection may also be filed.

9 (7) Where a case is legally sufficient to charge an alleged  
10 offender with:

11 (a) Either prostitution or prostitution loitering and the alleged  
12 offense is the offender's first prostitution or prostitution  
13 loitering offense, the prosecutor shall divert the case; ~~((or))~~

14 (b) Voyeurism in the second degree, the offender is under  
15 seventeen years of age, and the alleged offense is the offender's  
16 first voyeurism in the second degree offense, the prosecutor shall  
17 divert the case, unless the offender has received two diversions for  
18 any offense in the previous two years;

19 (c) Minor selling depictions of himself or herself engaged in  
20 sexually explicit conduct under section 4(5) of this act and the  
21 alleged offense is the offender's first violation of section 4(5) of  
22 this act, the prosecutor shall divert the case; or

23 (d) A distribution, transfer, dissemination, or exchange of  
24 sexually explicit images of other minors thirteen years of age or  
25 older offense as provided in section 4(1) of this act and the alleged  
26 offense is the offender's first violation of section 4(1) of this  
27 act, the prosecutor shall divert the case.

28 (8) Where a case is legally sufficient and falls into neither  
29 subsection (5) nor (6) of this section, it may be filed or diverted.  
30 In deciding whether to file or divert an offense under this section  
31 the prosecutor may be guided by the length, seriousness, and recency  
32 of the alleged offender's criminal history and the circumstances  
33 surrounding the commission of the alleged offense.

34 (9) Whenever a juvenile is placed in custody or, where not placed  
35 in custody, referred to a diversion interview, the parent or legal  
36 guardian of the juvenile shall be notified as soon as possible  
37 concerning the allegation made against the juvenile and the current  
38 status of the juvenile. Where a case involves victims of crimes  
39 against persons or victims whose property has not been recovered at

1 the time a juvenile is referred to a diversion unit, the victim shall  
2 be notified of the referral and informed how to contact the unit.

3 (10) The responsibilities of the prosecutor under subsections (1)  
4 through (9) of this section may be performed by a juvenile court  
5 probation counselor for any complaint referred to the court alleging  
6 the commission of an offense which would not be a felony if committed  
7 by an adult, if the prosecutor has given sufficient written notice to  
8 the juvenile court that the prosecutor will not review such  
9 complaints.

10 (11) The prosecutor, juvenile court probation counselor, or  
11 diversion unit may, in exercising their authority under this section  
12 or RCW 13.40.080, refer juveniles to community-based programs,  
13 restorative justice programs, mediation, or victim offender  
14 reconciliation programs. Such mediation or victim offender  
15 reconciliation programs shall be voluntary for victims.

16 (12) Prosecutors and juvenile courts are encouraged to engage  
17 with and partner with community-based programs to expand, improve,  
18 and increase options to divert youth from formal processing in  
19 juvenile court. Nothing in this chapter should be read to limit  
20 partnership with community-based programs to create diversion  
21 opportunities for juveniles.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.68A  
23 RCW to read as follows:

24 A minor who possesses any depiction or depictions of any other  
25 minor engaged in an act of sexually explicit conduct as defined in  
26 RCW 9.68A.011 forfeits any right to continued possession of the  
27 depiction or depictions and any court exercising jurisdiction over  
28 such depiction or depictions shall order forfeiture of the depiction  
29 or depictions to the custody of law enforcement.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 9A.86  
31 RCW to read as follows:

32 A minor who possesses any image of any other minor which  
33 constitutes an intimate image as defined in RCW 9A.86.010 forfeits  
34 any right to continued possession of the image and any court  
35 exercising jurisdiction over such image shall order forfeiture of the  
36 image.

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