

SENATE BILL REPORT

SB 5105

As of January 9, 2025

Title: An act relating to offenses involving fabricated depictions of minors.

Brief Description: Concerning offenses involving fabricated depictions of minors.

Sponsors: Senator Orwall.

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, and stipulates that such depictions must be obscene.
- Eliminates the requirement for the state to establish the identity of the alleged victim for prosecutions related to depictions of minors engaged in sexually explicit conduct.
- Provides that lack of knowledge of whether a depicted minor exists is not a defense to prosecution.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Depictions of 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.

Obscenity. The First Amendment of the U.S. Constitution and Article 1, Section 5 of the Washington State Constitution protect freedom of speech. Neither the federal nor state constitutions consider obscenity to be a protected form of speech. Both allow obscenity to be regulated or completely prohibited.

Defenses and Immunities Regarding Depictions of Minor Engaged in Sexually Explicit Conduct. State law specifies circumstances that do not constitute a defense to certain prosecutions for offenses involving depictions of a minor engaged in sexually explicit conduct. For example, it is not a defense in a prosecution for an offense involving a fabricated depiction of a minor engaged in sexually explicit conduct that the defendant lacked knowledge of whether the fabricated depiction had been created or altered by digitization.

State law also specifies circumstances that do constitute a defense to certain prosecutions. For example, the prosecutor is required to establish the identity of the alleged victim in a prosecution for an offense involving a fabricated depiction of a minor engaged in sexually explicit conduct.

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. Instead, a "fabricated depiction" means any visual or printed matter that is: (1) created or altered by digitization to depict a minor engaging in sexually explicit conduct; and (2) obscene.

The requirement for the state to establish the identity of the alleged victim for prosecutions related to depictions of minors engaged in sexually explicit conduct is eliminated. Additionally, it is not a defense that the defendant lacked knowledge of whether the depicted minor actually exists.

Appropriation: None.

Fiscal Note: Requested on January 7, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.