

Chapter 9.68A RCW
SEXUAL EXPLOITATION OF CHILDREN

Sections

9.68A.001	Legislative findings, intent.
9.68A.005	Chapter not applicable to lawful conduct between spouses.
9.68A.011	Definitions.
9.68A.040	Sexual exploitation of a minor—Elements of crime— Penalty.
9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct.
9.68A.053	Sexually explicit images—Crimes by minors—Penalties.
9.68A.055	Sexually explicit images—Forfeiture by minors.
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct.
9.68A.070	Possession of depictions of minor engaged in sexually explicit conduct.
9.68A.075	Viewing depictions of a minor engaged in sexually explicit conduct.
9.68A.080	Reporting of depictions of minor engaged in sexually explicit conduct—Civil immunity.
9.68A.090	Communication with minor for immoral purposes—Penalties.
9.68A.100	Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.
9.68A.101	Promoting commercial sexual abuse of a minor—Penalty— Consent of minor does not constitute defense.
9.68A.102	Promoting travel for commercial sexual abuse of a minor— Penalty—Consent of minor does not constitute defense.
9.68A.103	Permitting commercial sexual abuse of a minor—Penalty— Consent of minor does not constitute defense.
9.68A.105	Additional fee assessment.
9.68A.106	Additional fee assessment—Internet advertisement.
9.68A.107	Additional fee assessment—Depiction or image of visual or printed matter.
9.68A.110	Certain defenses barred, permitted.
9.68A.120	Seizure and forfeiture of property.
9.68A.130	Recovery of costs of suit by minor.
9.68A.150	Allowing minor on premises of live erotic performance— Definitions—Penalty.
9.68A.170	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Restrictions on access.
9.68A.180	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Sealing, storage, destruction of exhibits.
9.68A.190	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Depictions distributed to defense counsel or expert witnesses prior to June 7, 2012—Distribution of depictions under color of law not a defense.
9.68A.200	Child rescue fund.
9.68A.912	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

RCW 9.68A.001 Legislative findings, intent. 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.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The decisions of the Washington supreme court in *State v. Boyd*, 160 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution. The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

(1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;

(2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;

(3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;

(4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;

(5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants. [2012 c 135 s 1; 2010 c 227 s 1; 2007 c 368 s 1; 1984 c 262 s 1.]

RCW 9.68A.005 Chapter not applicable to lawful conduct between spouses. This chapter does not apply to lawful conduct between spouses. [2010 c 227 s 2.]

RCW 9.68A.011 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Digitization" means creating or altering any visual or printed matter to depict an identifiable minor in a realistic manner utilizing images of another person or computer-generated images, regardless of whether such creation or alteration is accomplished manually or through an automated process. "Digitization" includes, but is not limited to, creation or alteration of any visual or printed matter by using artificial intelligence.

(2) "Fabricated depiction of an identifiable minor" and "fabricated depiction" mean any visual or printed matter that depicts a minor who is identifiable from the matter itself or from information displayed with or otherwise connected to the matter, and that was created or altered by digitization to depict the minor engaging in sexually explicit conduct in which the minor did not actually engage.

(3) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(4) "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.

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

(6) 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.

(7) "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;

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

(f) Depiction 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. For the purposes of this subsection (7)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; 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.

(8) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph. "Visual or printed matter" includes, but is not limited to, any such photograph or other material that constitutes a fabricated depiction of an identifiable minor. [2024 c 88 s 1; 2010 c 227 s 3; 2002 c 70 s 1; 1989 c 32 s 1; 1984 c 262 s 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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 s 2; 1984 c 262 s 3.]

RCW 9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. (1)(a) A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of

sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e); or

(ii) 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 as defined in *RCW 9.68A.011(4) (a) through (e).

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

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

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

(i) 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 as defined in *RCW 9.68A.011(4) (f) or (g); or

(ii) 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 as defined in *RCW 9.68A.011(4) (f) or (g).

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

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

[2019 c 128 s 3; 2017 c 126 s 3; 2010 c 227 s 4; 1989 c 32 s 3; 1984 c 262 s 4.]

***Reviser's note:** RCW 9.68A.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (7).

Short title—2019 c 128: See note following RCW 13.40.660.

RCW 9.68A.053 Sexually explicit images—Crimes by minors—Penalties. (1)(a)(i) A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the first degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor thirteen years of age or older engaged in an act of sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e).

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

(b)(i) A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the second degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor

thirteen years of age or older engaged in an act of sexually explicit conduct as defined in *RCW 9.68A.011(4) (f) or (g).

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

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

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e); or

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

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

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

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

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

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

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

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

(5)(a) A person under the age of eighteen commits the crime of minor selling depictions of himself or herself engaged in sexually explicit conduct when he or she sells a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (g).

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

(6) This section does not apply to a person under eighteen years of age who finances, attempts to finance, develops, duplicates,

publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in *RCW 9.68A.011(4).

(7) For the purposes of determining the unit of prosecution under this section, each depiction or image of visual or printed matter constitutes a separate offense. [2019 c 128 s 4.]

***Reviser's note:** RCW 9.68A.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (7).

Short title—2019 c 128: See note following RCW 13.40.660.

RCW 9.68A.055 Sexually explicit images—Forfeiture by minors. A minor who possesses any depiction or depictions, including any fabricated depiction or depictions, of any other minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011 forfeits any right to continued possession of the depiction or depictions and any court exercising jurisdiction over such depiction or depictions shall order forfeiture of the depiction or depictions to the custody of law enforcement. [2024 c 88 s 2; 2019 c 128 s 9.]

Short title—2019 c 128: See note following RCW 13.40.660.

RCW 9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e).

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

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

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she 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 as defined in *RCW 9.68A.011(4) (f) or (g).

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

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

(3) This section does not apply to a minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state

for distribution, visual or printed matter depicting any minor thirteen years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under thirteen years of age who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 s 5; 2017 c 126 s 4; 2010 c 227 s 5; 1989 c 32 s 4; 1984 c 262 s 5.]

***Reviser's note:** RCW 9.68A.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (7).

Short title—2019 c 128: See note following RCW 13.40.660.

RCW 9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. (1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e).

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

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

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

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

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

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

(4) This section does not apply to a person under thirteen years of age in possession of visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 s 6; 2017 c 126 s 2; 2010 c 227 s 6; 2006 c 139 s 3; 1990 c 155 s 1; 1989 c 32 s 5; 1984 c 262 s 6.]

***Reviser's note:** RCW 9.68A.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (7).

Short title—2019 c 128: See note following RCW 13.40.660.

Effective date—1990 c 155 ss 1 and 2: "Sections 1 and 2 of this act shall be effective July 1, 1990." [1990 c 155 s 3.]

RCW 9.68A.075 Viewing depictions of a minor engaged in sexually explicit conduct. (1) Except as provided in subsections (5) and (6) of this section, a person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in *RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

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

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

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

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

(6) This section does not apply to a person under thirteen years of age who intentionally views over the internet visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 s 7; 2010 c 227 s 7.]

***Reviser's note:** RCW 9.68A.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (7).

Short title—2019 c 128: See note following RCW 13.40.660.

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 s 2; 1989 c 32 s 6; 1984 c 262 s 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 or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

(3) For the purposes of this section, "electronic communication" has the same meaning as defined in *RCW 9.61.260. [2013 c 302 s 1; 2006 c 139 s 1. Prior: 2003 c 53 s 42; 2003 c 26 s 1; 1989 c 32 s 7; 1986 c 319 s 2; 1984 c 262 s 8.]

***Reviser's note:** RCW 9.61.260 was recodified as RCW 9A.90.120 pursuant to 2022 c 231 s 4.

Effective date—2013 c 302: "This act takes effect August 1, 2013." [2013 c 302 s 13.]

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

RCW 9.68A.100 Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense. (1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2017 c 231 s 3; 2013 c 302 s 2; 2010 c 289 s 13; 2007 c 368 s 2; 1999 c 327 s 4; 1989 c 32 s 8; 1984 c 262 s 9.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

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.101 Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A "patron" is a person who provides or agrees to provide anything of value to another person as compensation for a sexually

explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2017 c 231 s 4; 2013 c 302 s 3; 2012 c 144 s 1; 2010 c 289 s 14; 2007 c 368 s 4.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

RCW 9.68A.102 Promoting travel for commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense to any offense listed in this section.

(4) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021. [2013 c 302 s 4; 2007 c 368 s 5.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

RCW 9.68A.103 Permitting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

(3) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section. [2013 c 302 s 5; 2007 c 368 s 7.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

RCW 9.68A.105 Additional fee assessment. (1)(a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and 9.68A.102, an adult offender who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for

violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the adult offender does not have the ability to pay in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services for victims, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Two percent of the revenue from fees imposed under this section shall be remitted quarterly to the department of commerce, together with a report detailing the fees assessed, the revenue received, and how that revenue was spent.

(c) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2015 c 265 s 13; 2013 c 121 s 4; 2012 c 134 s 4; 2010 c 289 s 15; 2007 c 368 s 11; 1995 c 353 s 12.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Intent—Finding—2013 c 121: See note following RCW 43.63A.740.

RCW 9.68A.106 Additional fee assessment—Internet advertisement.

(1) In addition to all other penalties under this chapter, an adult offender convicted of an offense under RCW 9.68A.100, 9.68A.101, or 9.68A.102 shall be assessed an additional fee of five thousand dollars per offense when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.

(2) For purposes of this section, an "internet advertisement" means a statement in electronic media that would be understood by a

reasonable person to be an implicit or explicit offer for sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, in exchange for something of value.

(3) Amounts collected as penalties under this section shall be deposited in the account established under RCW 43.63A.740. [2015 c 265 s 14; 2013 c 9 s 1.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

RCW 9.68A.107 Additional fee assessment—Depiction or image of visual or printed matter. (1) In addition to penalties set forth in RCW 9.68A.070, a person who is convicted of violating RCW 9.68A.070 shall be assessed a fee of one thousand dollars for each depiction or image of visual or printed matter that constitutes a separate conviction.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the state treasurer for deposit into the child rescue fund created in RCW 9.68A.200. [2015 c 279 s 2.]

Findings—2015 c 279: "The legislature finds that sexual abuse and exploitation of children robs victims of their childhood and irrevocably interferes with their emotional and psychological development. Victims of child pornography often experience severe and lasting harm from the permanent memorialization of the crimes committed against them. Child victims endure depression, withdrawal, anger, and other psychological disorders. Victims also experience feelings of guilt and responsibility for the sexual abuse as well as feelings of betrayal, powerlessness, worthlessness, and low self-esteem. Each and every time such an image is viewed, traded, printed, or downloaded, the child in that image is victimized again.

The legislature finds that the expansion of the internet and computer-related technologies have led to a dramatic increase in the availability of child pornography by simplifying how it can be created, distributed, and collected. Investigators and prosecutors report dramatic increases in the number and violent character of the sexually abusive images of children being trafficked through the internet. Between 2005 and 2009, the national center for missing and exploited children's child victim identification program has seen a four hundred thirty-two percent increase in child pornography films and files submitted for identification of the children depicted. The United States department of justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone. Furthermore, a well-known study conducted by crimes against children research center for the national center for missing and exploited children concluded that an estimated forty percent of those who possess child pornography have also directly victimized a child and fifteen percent have attempted to entice a child over the internet.

The legislature finds that due to a lack of dedicated resources, only two percent of known child exploitation offenders are being investigated. The legislature finds that additional funding sources are needed to ensure that law enforcement agencies can adequately investigate and prosecute offenders and victims can receive necessary services, including mental health treatment. Finally, the legislature

finds that offenders convicted of crimes relating to child pornography should bear the high cost of investigations and prosecutions of these crimes and also the cost of providing services to victims." [2015 c 279 s 1.]

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 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(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. 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.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. 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, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of 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. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim unless the charged offense involves a fabricated depiction.

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

- (i) He or she was engaged in a research activity;
 - (ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and
 - (iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or
- (b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:
- (i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;
 - (ii) The research is directly related to a legislative activity; and
 - (iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.
- (7) In a prosecution under RCW 9.68A.050, 9.68A.053, 9.68A.060, 9.68A.070, or 9.68A.075 where the charged offense involves a fabricated depiction, it is not a defense that the defendant lacked knowledge of whether the fabricated depiction had been created or altered by digitization.
- (8) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct. [2024 c 88 s 3; 2011 c 241 s 4. Prior: 2010 c 289 s 17; 2010 c 227 s 8; 2007 c 368 s 3; 1992 c 178 s 1; 1989 c 32 s 9; 1986 c 319 s 3; 1984 c 262 s 10.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

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 s 2.]

RCW 9.68A.120 Seizure and forfeiture of property. (Effective until January 1, 2026.) 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 or chapter 9A.88 RCW;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; 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.

(10)(a) By January 31st of each year, each seizing agency shall remit to the state an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the prostitution prevention and intervention account under RCW 43.63A.740.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to an independent selling agency.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure determined when possible by reference to an applicable commonly used index. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(11) Forfeited property and net proceeds not required to be remitted to the state 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. Money remaining after payment of these expenses shall be retained by the seizing law enforcement agency for the exclusive use of enforcing the provisions of this chapter or chapter 9A.88 RCW. [2022 c 162 s 4; 2014 c 188 s 3; 2009 c 479 s 12; 1999 c 143 s 8; 1984 c 262 s 11.]

Effective date—2022 c 162: See note following RCW 69.50.505.

Effective date—2009 c 479: See note following RCW 2.56.030.

RCW 9.68A.120 Seizure and forfeiture of property. (Effective January 1, 2026.) 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 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 are governed by chapter 7.120 RCW. [2025 c

306 s 6; 2022 c 162 s 4; 2014 c 188 s 3; 2009 c 479 s 12; 1999 c 143 s 8; 1984 c 262 s 11.]

Application—Effective date—2025 c 306: See notes following RCW 7.120.010.

Effective date—2022 c 162: See note following RCW 69.50.505.

Effective date—2009 c 479: See note following RCW 2.56.030.

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 s 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 s 43; 1987 c 396 s 2.]

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 s 4.]

RCW 9.68A.170 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Restrictions on access. (1) In any criminal proceeding, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct, including

any fabricated depictions, shall remain in the care, custody, and control of either a law enforcement agency or the court.

(2) Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct, including any fabricated depictions, shall not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties. Such property or material shall be deemed to be reasonably available to the parties if the prosecution, defense counsel, or any individual sought to be qualified to furnish expert testimony at trial has ample opportunity for inspection, viewing, and examination of the property or material at a law enforcement facility or a neutral facility approved by the court upon petition by the defense.

(3) The defendant may view and examine the property and materials only while in the presence of his or her attorney. If the defendant is proceeding pro se, the court will appoint an individual to supervise the defendant while he or she examines the materials.

(4) The court may direct that a mirror image of a computer hard drive containing such depictions be produced for use by an expert only upon a showing that an expert has been retained and is prepared to conduct a forensic examination while the mirror imaged hard drive remains in the care, custody, and control of a law enforcement agency or the court. Upon a substantial showing that the expert's analysis cannot be accomplished while the mirror imaged hard drive is kept within the care, custody, and control of a law enforcement agency or the court, the court may order its release to the expert for analysis for a limited time. If release is granted, the court shall issue a protective order setting forth such terms and conditions as are necessary to protect the rights of the victims, to document the chain of custody, and to protect physical evidence. [2024 c 88 s 4; 2012 c 135 s 2.]

RCW 9.68A.180 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Sealing, storage, destruction of exhibits.

(1) Whenever a depiction of a minor engaged in sexually explicit conduct, regardless of its format and whether it is a fabricated depiction, is marked as an exhibit in a criminal proceeding, the prosecutor shall seek an order sealing the exhibit at the close of the trial. Any exhibits sealed under this section shall be sealed with evidence tape in a manner that prevents access to, or viewing of, the depiction of a minor engaged in sexually explicit conduct and shall be labeled so as to identify its contents. Anyone seeking to view such an exhibit must obtain permission from the superior court after providing at least ten days notice to the prosecuting attorney. Appellate attorneys for the defendant and the state shall be given access to the exhibit, which must remain in the care and custody of either a law enforcement agency or the court. Any other person moving to view such an exhibit must demonstrate to the court that his or her reason for viewing the exhibit is of sufficient importance to justify another violation of the victim's privacy.

(2) Whenever the clerk of the court receives an exhibit of a depiction of a minor engaged in sexually explicit conduct, he or she shall store the exhibit in a secure location, such as a safe. The clerk may arrange for the transfer of such exhibits to a law

enforcement agency evidence room for safekeeping provided the agency agrees not to destroy or dispose of the exhibits without an order of the court.

(3) If the criminal proceeding ends in a conviction, the clerk of the court shall destroy any exhibit containing a depiction of a minor engaged in sexually explicit conduct, including any fabricated depictions, five years after the judgment is final, as determined by the provisions of RCW 10.73.090(3). Before any destruction, the clerk shall contact the prosecuting attorney and verify that there is no collateral attack on the judgment pending in any court. If the criminal proceeding ends in a mistrial, the clerk shall either maintain the exhibit or return it to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set for retrial. If the criminal proceeding ends in an acquittal, the clerk shall return the exhibit to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction. [2024 c 88 s 5; 2012 c 135 s 3.]

RCW 9.68A.190 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Depictions distributed to defense counsel or expert witnesses prior to June 7, 2012—Distribution of depictions under color of law not a defense. Any depiction of a minor engaged in sexually explicit conduct, in any format and including any fabricated depictions, distributed as discovery to defense counsel or an expert witness prior to June 7, 2012, shall either be returned to the law enforcement agency that investigated the criminal charges or destroyed, if the case is no longer pending in superior court. If the case is still pending, the depiction shall be returned to the superior court judge assigned to the case or the presiding judge. The court shall order either the destruction of the depiction or the safekeeping of the depiction if it will be used at trial.

It is not a defense to violations of this chapter for crimes committed after December 31, 2012, that the initial receipt of the depictions was done under the color of law through the discovery process. [2024 c 88 s 6; 2012 c 135 s 4.]

RCW 9.68A.200 Child rescue fund. (1) The child rescue fund is created in the custody of the state treasurer. All receipts from fees collected under RCW 9.68A.107 must be deposited into the fund.

(2) Only the attorney general for the state of Washington or the attorney general's designee may authorize expenditures from the fund.

(3) The attorney general or his or her designee must make any expenditures from the fund according to the following schedule:

(a) Twenty-five percent of receipts for grants to child advocacy centers, as defined in RCW 26.44.020; and

(b) Seventy-five percent of receipts for grants to the Washington internet crimes against children task force for use in investigations and prosecutions of crimes against children.

(4) The fund is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2015 c 279 s 3.]

Findings—2015 c 279: See note following RCW 9.68A.107.

RCW 9.68A.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 s 20.]