

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 § 1; 2010 c 227 § 1; 2007 c 368 § 1; 1984 c 262 § 1.]