

House Research Act Summary

CHAPTER: 217

SESSION: 1999 Regular Session

TOPIC: Child pornography

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Overview

This act clarifies the definitions of sexual performance and sexual conduct as applied to minors. It adds a definition of pornographic work that includes sexual performance and also applies to a variety of images that use or appear to use minors. It prohibits the use of minors to create a sexual performance or a pornographic work, prohibits the business of reproducing or disseminating pornographic work and prohibits the private possession or dissemination of pornographic work. The act provides increased felony penalties for violating these provisions.

Section

1 Definitions. Clarifies "sexual performance" to mean the use of a minor to depict actual or simulated sexual conduct. Retains the definition of sexual conduct but separately lists "lewd exhibition" as one of the components. Defines pornographic work to include

(1) an original or reproduction of a sexual performance, or

(2) any visual depiction that

- uses a minor to depict sexual conduct,
- appears to be a minor engaging in sexual conduct,
- is created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct or
- is promoted as being a minor engaging in sexual conduct.

Defines identifiable minor as a minor whose image was used to create the depiction. Includes computer-generated images and images created by electronic and other means as well as traditional types of visual depictions.

2-4 Profiting from pornographic work. Replaces language used in current law with "pornographic

work." Prohibits the business of disseminating or reproducing pornographic work or disseminating for profit. Clarifies that the prohibition applies to dissemination to adults or minors. Increases the current felony penalty from five to ten years and increases the fines to \$20,000 for a first offense and \$40,000 for a second offense.

- 5 **Affirmative defense.** Adds an affirmative defense to profiting from pornographic work that applies if an accused establishes that the sexual performance or pornographic work was produced using persons 18 years or older.
- 6 **Policy, purpose.** Replaces language in current law with "pornographic work" and expands the legislative policy to protect minors from being victimized by pornography that appears to involve minors.
- 7-8 **Dissemination not for profit.** Adopts the new definition of "pornographic work." Makes disseminating pornographic work a five-year felony with a maximum \$10,000 fine for a first offense and a ten year felony with a maximum \$20,000 fine for a second offense. Clarifies that the prohibition applies to dissemination to adults or minors.
- 9 **Possession prohibited.** Defines possession to include computer, electronic, mechanical, or optical storage systems or any other type of storage system containing pornographic work, knowing or with reason to know its content and character. Makes possession of pornographic work a three-year felony with a maximum \$5,000 fine for a first offense and a five-year felony with a maximum \$10,000 fine for a second offense.
- 10 **Affirmative defense.** Adds an affirmative defense to private possession or dissemination that applies if an accused establishes that the alleged pornographic work was created using only persons who were 18 years or older.
- 11 **Effective date.** August 1, 1999 for crimes committed on or after that date.