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Seconded by Burgoyne

IN THE SENATE
SENATE AMENDMENT TO H.B. NO. 555

AMENDMENT TO SECTION 1

1
2 On page 1 of the printed bill, in line 14, following "without" insert:
3 "being induced by"; in line 17, following "and" insert: "knowingly and
4 willfully"; in line 18, delete "minor" and insert: "person or persons"; and
5 delete lines 20 through 41, and insert: "guilty of a misdemeanor provided
6 that the image was communicated in a form that there was a single recipient.

7 (2) A minor child who, without being induced by coercion, manipulation
8 or fraud, creates or causes to be created any photographic, electronic or
9 video content of said minor child that would be characterized under any of
10 the classifications defined in section 18-1507(1)(c) through (j), Idaho
11 Code, and knowingly and willfully distributes it in such a way and through
12 such a medium that the minor intended or had reason to believe that multiple
13 parties would receive or have access to the image:

14 (a) Is guilty of a misdemeanor on the first adjudicated offense; and

15 (b) Is guilty of a felony on the second or subsequent adjudicated of-
16 fense.

17 (3) A minor who is found to be in knowing and willful possession of the
18 content created and sent as described in subsection (1) or (2) of this sec-
19 tion is guilty of a misdemeanor if the content depicts a minor who is not
20 greater than three (3) years younger than the minor who is found to be in
21 possession. A minor who is found to be in knowing and willful possession
22 of content described in this subsection that depicts a minor greater than
23 three (3) years younger than themselves is guilty of a violation of section
24 18-1507(2)(a), Idaho Code.

25 (4) A minor who is found to be in possession of content described in sub-
26 section (1) or (2) of this section who knowingly and willfully transmits or
27 displays the image to one (1) or more third parties:

28 (a) Is guilty of a misdemeanor on the first adjudicated offense; and

29 (b) Is guilty of a felony on any second or subsequent adjudicated of-
30 fense.

31 (5) A minor who receives content under circumstances described in sub-
32 section (1) or (2) of this section and distributes or threatens to distribute
33 the image for the purposes of coercing any action, causing any embarrassment
34 or otherwise controlling or manipulating the sender is guilty of a felony.

35 (6) A minor who receives content under circumstances described in sub-
36 section (1) or (2) of this section and distributes the image to a parent,
37 guardian, one having custody of the minor or a law enforcement official for
38 the purpose of reporting the activity is not guilty of a crime under the pro-
39 visions of this section."

40 On page 2, in line 1, delete "4" and insert: "7".

AMENDMENT TO THE BILL

On page 2, following line 3, insert:

"SECTION 2. That Section 18-1507, Idaho Code, be, and the same is hereby amended to read as follows:

18-1507. DEFINITIONS -- SEXUAL EXPLOITATION OF A CHILD -- PENALTIES. (1) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

1 (j) "Sexually exploitative material" means any image, photograph, mo-
2 tion picture, video, print, negative, slide, or other mechanically,
3 electronically, digitally or chemically produced or reproduced visual
4 material which shows a child engaged in, participating in, observing,
5 or being used for explicit sexual conduct, or showing a child engaging
6 in, participating in, observing or being used for explicit sexual con-
7 duct, in actual time, including, but not limited to, video chat, webcam
8 sessions or video calling.

9 (2) A person commits sexual exploitation of a child if he knowingly and
10 willfully:

11 (a) Possesses or accesses through any means including, but not limited
12 to, the internet, any sexually exploitative material; or

13 (b) Causes, induces or permits a child to engage in, or be used for, any
14 explicit sexual conduct for the purpose of producing or making sexually
15 exploitative material; or

16 (c) Promotes, prepares, publishes, produces, makes, finances, offers,
17 exhibits or advertises any sexually exploitative material; or

18 (d) Distributes through any means including, but not limited to, mail,
19 physical delivery or exchange, use of a computer or any other electronic
20 or digital method, any sexually exploitative material. Distribution
21 of sexually exploitative material does not require a pecuniary transac-
22 tion or exchange of interests in order to complete the offense.

23 (3) The sexual exploitation of a child pursuant to subsection (2) (a) of
24 this section is a felony and shall be punishable by imprisonment in the state
25 prison for a period not to exceed ten (10) years or by a fine not to exceed ten
26 thousand dollars (\$10,000), or by both such imprisonment and fine.

27 (4) The sexual exploitation of a child pursuant to subsections (2) (b),
28 (c) and (d) of this section is a felony and shall be punishable by imprison-
29 ment in the state prison for a term not to exceed thirty (30) years or by a
30 fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and
31 imprisonment.

32 (5) Notwithstanding any other provisions of this section, a person
33 eighteen (18) years of age or older who is found to be in knowing and willful
34 possession of content created and distributed under circumstances defined
35 in section 18-1507A(1) or (2), Idaho Code, is guilty of a misdemeanor pro-
36 vided that:

37 (a) The minor depicted in the content distributed the content in such a
38 way that the minor intended the person found to be in possession to re-
39 ceive it;

40 (b) The minor depicted in the content is not greater than three (3)
41 years younger than the person found to be in possession; and

42 (c) The person found to be in possession of the content did not use coer-
43 cion, manipulation or fraud to obtain possession of the content.

44 (6) If any provision of this section or the application thereof to any
45 person or circumstance is held invalid, such invalidity shall not affect
46 other provisions or applications of this section which can be given effect
47 without the invalid provision or application, and to this end the provisions
48 of this section are declared to be severable.

1 SECTION 3. That Section 18-8304, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
4 visions of this chapter shall apply to any person who:

5 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
6 solicitation, or a conspiracy to commit a crime provided for in section
7 18-909 (assault with intent to commit rape, infamous crime against na-
8 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
9 murder or robbery), 18-911 (battery with intent to commit rape, infa-
10 mous crime against nature, or lewd and lascivious conduct with a minor,
11 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
12 by a medical care provider), 18-1505B (sexual abuse and exploitation
13 of a vulnerable adult), 18-1506 (sexual abuse of a child under six-
14 teen years of age), 18-1506A (ritualized abuse of a child), felony
15 violations of 18-1507 (sexual exploitation of a child), 18-1508 (lewd
16 conduct with a minor child), 18-1508A (sexual battery of a minor child
17 sixteen or seventeen years of age), 18-1509A (enticing a child over
18 the internet), 18-4003(d) (murder committed in perpetration of rape),
19 18-4116 (indecent exposure, but excluding a misdemeanor conviction),
20 18-4502 (first degree kidnapping committed for the purpose of rape,
21 committing the infamous crime against nature or for committing any lewd
22 and lascivious act upon any child under the age of sixteen, or for pur-
23 poses of sexual gratification or arousal), 18-4503 (second degree kid-
24 napping where the victim is an unrelated minor child), 18-5605 (deten-
25 tion for prostitution), 18-5609 (inducing person under eighteen years
26 of age into prostitution), 18-5610 (utilizing a person under eighteen
27 years of age for prostitution), 18-5611 (inducing person under eighteen
28 years of age to patronize a prostitute), 18-6101 (rape, but excluding
29 18-6101(1) where the defendant is eighteen years of age), 18-6108 (male
30 rape, but excluding 18-6108(1) where the defendant is eighteen years
31 of age), 18-6110 (sexual contact with a prisoner), 18-6602 (incest),
32 18-6605 (crime against nature), 18-6608 (forcible sexual penetration
33 by use of a foreign object), 18-6609 (video voyeurism where the victim
34 is a minor or upon a second or subsequent conviction), 18-7804 (if the
35 racketeering act involves kidnapping of a minor) or 18-8602(1), Idaho
36 Code, (sex trafficking).

37 (b) On or after July 1, 1993, has been convicted of any crime, an at-
38 tempt, a solicitation or a conspiracy to commit a crime in another ju-
39 risdiction or who has a foreign conviction that is substantially equiv-
40 alent to the offenses listed in subsection (1) (a) of this section and
41 enters this state to establish residence or for employment purposes or
42 to attend, on a full-time or part-time basis, any public or private ed-
43 ucational institution including any secondary school, trade or profes-
44 sional institution or institution of higher education.

45 (c) Has been convicted of any crime, an attempt, a solicitation or a
46 conspiracy to commit a crime in another jurisdiction, including mili-
47 tary courts, that is substantially equivalent to the offenses listed in
48 subsection (1) (a) of this section and was required to register as a sex

1 offender in any other state or jurisdiction when he established resi-
2 dency in Idaho.

3 (d) Pleads guilty to or has been found guilty of a crime covered in this
4 chapter prior to July 1, 1993, and the person, as a result of the of-
5 fense, is incarcerated in a county jail facility or a penal facility or
6 is under probation or parole supervision, on or after July 1, 1993.

7 (e) Is a nonresident regularly employed or working in Idaho or is a stu-
8 dent in the state of Idaho and was convicted, found guilty or pleaded
9 guilty to a crime covered by this chapter and, as a result of such con-
10 viction, finding or plea, is required to register in his state of resi-
11 dence.

12 (2) An offender shall not be required to comply with the registration
13 provisions of this chapter while incarcerated in a correctional institution
14 of the department of correction, a county jail facility, committed to the de-
15 partment of juvenile corrections or committed to a mental health institution
16 of the department of health and welfare.

17 (3) A conviction for purposes of this chapter means that the person has
18 pled guilty or has been found guilty, notwithstanding the form of the judg-
19 ment or withheld judgment.

20 (4) The department shall have authority to promulgate rules to imple-
21 ment the provisions of this chapter."

22 CORRECTION TO TITLE

23 On page 1, in line 7, following "INSTANCES" insert: ", TO PROVIDE THAT
24 A MINOR WHO RECEIVES CONTENT AND REPORTS IT TO CERTAIN PERSONS SHALL NOT BE
25 GUILTY OF A CRIME"; and in line 8, following "ACT" insert: "; AMENDING SEC-
26 TION 18-1507, IDAHO CODE, TO PROVIDE THAT SEXUAL EXPLOITATION OF A CHILD BY
27 CERTAIN ELECTRONIC MEANS SHALL BE A MISDEMEANOR IN CERTAIN INSTANCES; AND
28 AMENDING SECTION 18-8304, IDAHO CODE, TO PROVIDE FOR FELONY SEXUAL EXPLOITA-
29 TION OF A CHILD".