

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 382

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMES AGAINST CHILDREN; AMENDING SECTION 18-1507, IDAHO CODE,
2 TO DEFINE TERMS, TO REVISE A DEFINITION, TO PROVIDE PENALTIES, TO PRO-
3 VIDE IMMUNITY FOR LAW ENFORCEMENT OFFICERS IN CERTAIN INSTANCES, AND TO
4 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-1507A, IDAHO CODE, TO
5 REVISE CODE REFERENCES; AMENDING SECTION 67-1401, IDAHO CODE, TO RE-
6 VISE PROVISIONS REGARDING A CERTAIN DUTY OF THE ATTORNEY GENERAL AND TO
7 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-1410, IDAHO CODE, TO
8 REVISE PROVISIONS REGARDING THE INTERNET CRIMES AGAINST CHILDREN UNIT;
9 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 18-1507, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 18-1507. DEFINITIONS -- SEXUAL EXPLOITATION OF A CHILD -- PENAL-
15 TIES. (1) As used in this section, unless the context otherwise requires:

16 (a) "Bestiality" means a sexual connection in any manner between a hu-
17 man being and any animal.

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

19 (c) "Erotic fondling" means touching a person's clothed or unclothed
20 genitals or pubic area, developing or undeveloped genitals or pubic
21 area (if the person is a child), buttocks, breasts (if the person is a
22 female), or developing or undeveloped breast area (if the person is a
23 female child), for the purpose of real or simulated overt sexual grat-
24 ification or stimulation of one (1) or more of the persons involved.
25 "Erotic fondling" shall not be construed to include physical contact,
26 even if affectionate, ~~which~~ that is not for the purpose of real or sim-
27 ulated overt sexual gratification or stimulation of one (1) or more of
28 the persons involved.

29 (d) "Erotic nudity" means the display of the human male or female geni-
30 tals or pubic area, the undeveloped or developing genitals or pubic area
31 of the human male or female child, the human female breasts, or the un-
32 developed or developing breast area of the human female child, for the
33 purpose of real or simulated overt sexual gratification or stimulation
34 of one (1) or more of the persons involved.

35 (e) "Explicit sexual conduct" means sexual intercourse, erotic
36 fondling, erotic nudity, masturbation, sadomasochism, sexual excite-
37 ment, or bestiality.

38 (f) "Identifiable child:"

39 (i) Means a person:

40 1. Who was a child at the time the visual depiction was cre-
41 ated, adapted, or modified or whose image as a child was used

1 in creating, adapting, or modifying the visual depiction;
 2 and

3 2. Who is recognizable as an actual person by the person's
 4 face, likeness, or other distinguishing characteristic,
 5 such as a unique birthmark or other recognizable feature;

6 and

7 (ii) Shall not be construed to require proof of the actual iden-
 8 tity of the identifiable child.

9 (g) The term "indistinguishable" used with respect to a visual material
 10 means virtually indistinguishable in that the visual material is such
 11 that an ordinary person viewing the visual material would conclude that
 12 the visual material is of an actual child engaged in, participating in,
 13 observing, or being used for explicit sexual conduct. This definition
 14 does not apply to depictions that are drawings, cartoons, sculptures,
 15 or paintings depicting children or adults.

16 (h) "Law enforcement officer" means any court personnel, sheriff,
 17 constable, peace officer, state police officer, correctional officer,
 18 probation officer, parole officer, prosecuting attorney, attorney gen-
 19 eral, or their employees.

20 ~~(f)~~ (i) "Masturbation" means the real or simulated touching, rubbing,
 21 or otherwise stimulating of a person's own clothed or unclothed geni-
 22 tals or pubic area, developing or undeveloped genitals or pubic area (if
 23 the person is a child), buttocks, breasts (if the person is a female), or
 24 developing or undeveloped breast area (if the person is a female child),
 25 by manual manipulation or self-induced or with an artificial instru-
 26 ment, for the purpose of real or simulated overt sexual gratification or
 27 arousal of the person.

28 ~~(g)~~ (j) "Sadomasochism" means:

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

31 (ii) The real or simulated condition of being fettered, bound, or
 32 otherwise physically restrained for sexual stimulation or grati-
 33 fication of a person.

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

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

41 ~~(j)~~ (m) "Sexually exploitative material" means any image, photograph,
 42 motion picture, video, print, negative, slide, or other mechanically,
 43 electronically, digitally or chemically produced or reproduced or
 44 computer-generated visual material ~~which shows where such visual mate-~~
 45 rial:

46 (i) Shows a child engaged in, participating in, observing, or be-
 47 ing used for explicit sexual conduct, or showing a child engaging
 48 in, participating in, observing or being used for explicit sex-
 49 ual conduct, in actual time, including, but not limited to, video
 50 chat, webcam sessions or video calling;

1 (ii) Is a digital image, computer image, or computer-generated
2 image that is indistinguishable from that of a child engaging in,
3 participating in, observing, or being used for explicit sexual
4 conduct; or

5 (iii) Has been created, adapted, or modified to appear that an
6 identifiable child is engaging in, participating in, observing,
7 or being used for explicit sexual conduct.

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

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

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

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

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

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

26 (a) Any person convicted of a violation of subsection (2) (a) of this
27 section who, at or near the time of the violation, simultaneously
28 possessed at least five hundred (500) visual depictions of sexually ex-
29 ploitative material, shall be sentenced to an extended term of impris-
30 onment. The extended term of imprisonment authorized in this paragraph
31 shall be computed by increasing the minimum period of confinement by
32 three (3) years and the maximum period of confinement by ten (10) years
33 in state prison.

34 (b) The additional terms provided in paragraph (a) of this subsec-
35 tion shall not be imposed unless the necessary facts were separately
36 charged in the information or indictment and admitted by the accused
37 or found to be true by the trier of fact at the trial of the substantive
38 crime. A court shall not have the power to suspend, withhold, retain
39 jurisdiction over, or commute any minimum period of confinement imposed
40 pursuant to this section.

41 (c) The prosecuting attorney may charge in the information or indict-
42 ment a sentencing enhancement as provided in paragraph (a) of this sub-
43 section. Nothing in paragraph (a) of this subsection shall preclude the
44 prosecuting attorney from charging separate visual depictions of sexu-
45 ally exploitative material as distinct violations of this section.

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

1 (a) Any person convicted of a violation of subsection (2) (d) of this
 2 section who, within thirty (30) days before of after the violation, dis-
 3 tributed an aggregated total of at least fifty (50) visual depictions
 4 of sexually exploitative material, shall be sentenced to an extended
 5 term of imprisonment. The extended term of imprisonment authorized in
 6 this paragraph shall be computed by increasing the minimum period of
 7 confinement by five (5) years and the maximum period of confinement by
 8 fifteen (15) years in state prison.

9 (b) The additional terms provided in paragraph (a) of this subsec-
 10 tion shall not be imposed unless the necessary facts were separately
 11 charged in the information or indictment and admitted by the accused
 12 or found to be true by the trier of fact at the trial of the substantive
 13 crime. A court shall not have the power to suspend, withhold, retain
 14 jurisdiction over, or commute any minimum period of confinement imposed
 15 pursuant to this section.

16 (c) The prosecuting attorney may charge in the information or indict-
 17 ment a sentencing enhancement as provided in paragraph (a) of this sub-
 18 section. Nothing in paragraph (a) of this subsection shall preclude the
 19 prosecuting attorney from charging separate distributions of visual
 20 depictions of sexually exploitative material as distinct violations of
 21 this section.

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

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

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

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

34 (6) Subsection (2) (a), (c), and (d) of this section shall not be con-
 35 strued to impose criminal or civil liability on law enforcement officers
 36 acting in good faith and in the course and scope of their official duties.

37 ~~(6)~~ (7) If any provision of this section or the application thereof to
 38 any person or circumstance is held invalid, such invalidity shall not affect
 39 other provisions or applications of this section ~~which~~ that can be given ef-
 40 fect without the invalid provision or application, and to this end the provi-
 41 sions of this section are declared to be severable.

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

44 18-1507A. SEXUAL EXPLOITATION OF A CHILD BY ELECTRONIC MEANS. (1) A
 45 minor child who, without being induced by coercion, manipulation or fraud,
 46 creates or causes to be created any photographic, electronic or video con-
 47 tent of said minor child that would be characterized under any of the clas-
 48 sifications defined in section 18-1507(1) ~~(e) through (j)~~, Idaho Code, and
 49 knowingly and willfully distributes it to another person or persons through

1 electronic or other means or causes it to appear in a form where the dis-
2 tributing minor has reason to believe another will view it is guilty of a mis-
3 demeanor provided that the image was communicated in a form that there was a
4 single recipient.

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

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

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

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

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

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

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

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

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

38 (7) Proceedings for a violation of the provisions of this section shall
39 fall under the jurisdiction of the juvenile corrections act pursuant to sec-
40 tion 20-505(1), Idaho Code.

41 SECTION 3. That Section 67-1401, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
44 this chapter, it is the duty of the attorney general:

45 (1) To perform all legal services for the state and to represent the
46 state and all departments, agencies, offices, officers, boards, commis-
47 sions, institutions and other state entities in all courts and before all
48 administrative tribunals or bodies of any nature. Representation shall be
49 provided to those entities exempted pursuant to the provisions of section

1 67-1406, Idaho Code. Whenever required to attend upon any court or adminis-
2 trative tribunal, the attorney general shall be allowed necessary and actual
3 expenses, all claims for which shall be audited by the state board of exam-
4 iners.

5 (2) To advise all departments, agencies, offices, officers, boards,
6 commissions, institutions and other state entities in all matters involving
7 questions of law.

8 (3) After judgment in any of the causes referred to in this chapter, to
9 direct the issuing of such process as may be necessary to carry the same into
10 execution.

11 (4) To account for and pay over to the proper officer all moneys re-
12 ceived that belong to the state.

13 (5) To enforce the Idaho charitable solicitation act, chapter 12, ti-
14 tle 48, Idaho Code, and the Idaho nonprofit hospital sale or conversion act,
15 chapter 15, title 48, Idaho Code; to supervise charitable organizations, as
16 such term is defined in section 48-1903(4), Idaho Code; and to enforce when-
17 ever necessary any noncompliance or departure from the charitable purpose of
18 such charitable organizations as set forth and provided in chapter 19, title
19 48, Idaho Code.

20 (6) To give an opinion in writing, without fee, to the legislature or
21 either house thereof, or any senator or representative, and to the gover-
22 nor, secretary of state, treasurer, state controller, and the superinten-
23 dent of public instruction, when requested, upon any question of law relat-
24 ing to their respective offices. The attorney general shall keep a record of
25 all written opinions rendered by the office and such opinions shall be com-
26 piled annually and made available for public inspection. All costs incurred
27 in the preparation of said opinions shall be borne by the office of the attor-
28 ney general. A copy of the opinions shall be furnished to the supreme court
29 and to the state librarian.

30 (7) When required by the public service, to repair to any county in the
31 state and assist the prosecuting attorney thereof in the discharge of du-
32 ties.

33 (8) To bid upon and purchase, when necessary, in the name of the state,
34 and under the direction of the state controller, any property offered for
35 sale under execution issued upon judgments in favor of or for the use of the
36 state and to enter satisfaction in whole or in part of such judgments as the
37 consideration for such purchases.

38 (9) Whenever the property of a judgment debtor in any judgment men-
39 tioned in subsection (8) of this section has been sold under a prior judg-
40 ment, or is subject to any judgment, lien, or encumbrance, taking precedence
41 of the judgment in favor of the state, under the direction of the state
42 controller, to redeem such property from such prior judgment, lien, or en-
43 cumbrance; and all sums of money necessary for such redemption must, upon the
44 order of the board of examiners, be paid out of any money appropriated for
45 such purposes.

46 (10) When necessary for the collection or enforcement of any judgment
47 hereinbefore mentioned, to institute and prosecute, in behalf of the state,
48 such suits or other proceedings as may be necessary to set aside and annul all
49 conveyances fraudulently made by such judgment debtors; the cost necessary

1 to the prosecution must, when allowed by the board of examiners, be paid out
2 of any appropriations for the prosecution of delinquents.

3 (11) To exercise all the common law power and authority usually apper-
4 taining to the office and to discharge the other duties prescribed by law.

5 (12) To report to the governor the condition of the affairs of the attor-
6 ney general's office and of the reports received from prosecuting attorneys.

7 (13) To appoint deputy attorneys general and special deputy attorneys
8 general and other necessary staff to assist in the performance of the du-
9 ties of the office. Such deputies and staff shall be nonclassified employees
10 within the meaning of section 67-5302, Idaho Code.

11 (14) To establish a medicaid fraud control unit pursuant to the provi-
12 sions of section 56-226, Idaho Code, and to exercise concurrent investiga-
13 tive and prosecutorial authority and responsibility with county prosecutors
14 to prosecute persons for the violation of the criminal provisions of chap-
15 ter 2, title 56, Idaho Code, and for criminal offenses that are not defined
16 in said chapter 2, title 56, Idaho Code, but that involve or are directly re-
17 lated to the use of medicaid program funds or services provided through the
18 medicaid program.

19 (15) To seek injunctive and any other appropriate relief as expedi-
20 tiously as possible to preserve the rights and property of the residents
21 of the state of Idaho and to defend as necessary the state of Idaho, its
22 officials, employees, and agents in the event that any law or regulation
23 violating the public policy set forth in the Idaho health freedom act, chap-
24 ter 90, title 39, Idaho Code, is enacted by any government, subdivision, or
25 agency thereof.

26 (16) To establish an internet crimes against children unit (ICAC) pur-
27 suant to the provisions of section 67-1410, Idaho Code, and to exercise con-
28 current investigative and prosecutorial authority and responsibility with
29 county prosecutors to prosecute persons for the violation of the criminal
30 provisions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code,
31 ~~which may also encompass~~ and criminal offenses that are not defined in said
32 sections but that involve or are directly related to child pornography and,
33 solicitation of minors for pornography, ~~prostitution~~ or any sex-related of-
34 fenses involving minors discovered during an ICAC investigation.

35 (17) To respond to allegations of violation of state law by elected
36 county officers, to investigate such claims, to issue appropriate findings
37 and to refer such cases for further investigation and prosecution pursuant
38 to section 31-2002, Idaho Code.

39 (18) To establish a sobriety and drug monitoring program to reduce the
40 number of people on Idaho's highways who drive under the influence of alco-
41 hol or drugs, to reduce the number of repeat offenders for certain offenses
42 in which the abuse of alcohol or drugs was a contributing factor, and to in-
43 crease pretrial and posttrial options for prosecutors and judges in respond-
44 ing to repeat DUI offenders and offenders for certain crimes in which the
45 abuse of alcohol or drugs was a contributing factor in the commission of the
46 crime; and to adopt such rules and establish such fees as are necessary for
47 the operation of said program, as set forth by law.

48 SECTION 4. That Section 67-1410, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 67-1410. INTERNET CRIMES AGAINST CHILDREN UNIT. (1) There is hereby
2 established in the office of the attorney general the internet crimes
3 against children unit (ICAC) that shall have the authority and responsibili-
4 ties as set forth in this section.

5 (2) The ICAC shall have the authority and responsibility to conduct a
6 statewide program for the investigation and prosecution of violations of all
7 applicable Idaho laws that involve or are directly related to child pornog-
8 raphy and solicitation of minors for pornography, ~~prostitution~~ or any sex-
9 related offenses involving minors discovered during an ICAC investigation.

10 (3) The ICAC shall be under the exclusive control of the attorney gen-
11 eral.

12 (4) The attorney general may request and receive the assistance of, and
13 may enter into written agreements with, any prosecutor or law enforcement
14 agency as necessary to implement the duties and responsibilities assigned
15 to the ICAC under this section. This will include contracting for the as-
16 sistance of law enforcement personnel in the investigation of any violation
17 of any applicable laws pertaining to child pornography and solicitation of
18 minors for pornography, ~~prostitution~~ or any sex-related offenses involving
19 minors discovered during an ICAC investigation. The attorney general may
20 renew, suspend or revoke any ICAC agreement with a law enforcement agency at
21 any time.

22 (5) The attorney general shall have the authority to designate ICAC
23 task force agents. ICAC task force agents shall be commissioned law enforce-
24 ment officers employed by law enforcement agencies.

25 (a) The designation of an ICAC task force agent is not an act of employ-
26 ment by the office of the attorney general.

27 (b) ICAC task force agents serve solely at the discretion and will of
28 the attorney general and designation as an ICAC task force agent is not a
29 property right to which due process applies.

30 (6) Designated ICAC task force agents shall have general peace officer
31 powers and the authority to arrest individuals throughout the state for the
32 purpose of investigation of ~~internet~~ the crimes committed against children
33 set forth under this section.

34 (7) The office of the attorney general shall employ such attorneys, in-
35 vestigators and other personnel as necessary to carry out the responsibili-
36 ties of the ICAC as set forth under this section.

37 (8) The attorney general shall have the authority to adopt rules neces-
38 sary to implement the duties and responsibilities assigned to the ICAC under
39 this section.

40 SECTION 5. An emergency existing therefor, which emergency is hereby
41 declared to exist, this act shall be in full force and effect on and after
42 July 1, 2024.