

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 555, As Amended in the Senate

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO SEXUAL EXPLOITATION OF A CHILD; AMENDING CHAPTER 15, TITLE 18,
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1507A, IDAHO CODE, TO
3 PROVIDE THAT SEXUAL EXPLOITATION OF A CHILD BY CERTAIN ELECTRONIC MEANS
4 SHALL BE A MISDEMEANOR IN CERTAIN INSTANCES, TO PROVIDE THAT SEXUAL EX-
5 PLOITATION OF A CHILD BY CERTAIN ELECTRONIC MEANS SHALL BE A FELONY IN
6 CERTAIN INSTANCES, TO PROVIDE THAT A MINOR WHO RECEIVES CONTENT AND RE-
7 PORTS IT TO CERTAIN PERSONS SHALL NOT BE GUILTY OF A CRIME AND TO PROVIDE
8 THAT PROCEEDINGS SHALL FALL UNDER THE JUVENILE CORRECTIONS ACT; AMEND-
9 ING SECTION 18-1507, IDAHO CODE, TO PROVIDE THAT SEXUAL EXPLOITATION
10 OF A CHILD BY CERTAIN ELECTRONIC MEANS SHALL BE A MISDEMEANOR IN CER-
11 TAIN INSTANCES; AND AMENDING SECTION 18-8304, IDAHO CODE, TO PROVIDE
12 FOR FELONY SEXUAL EXPLOITATION OF A CHILD.
13

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

15 SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 18-1507A, Idaho Code, and to read as follows:

18 18-1507A. SEXUAL EXPLOITATION OF A CHILD BY ELECTRONIC MEANS. (1) A
19 minor child who, without being induced by coercion, manipulation or fraud,
20 creates or causes to be created any photographic, electronic or video con-
21 tent of said minor child that would be characterized under any of the clas-
22 sifications defined in section 18-1507(1)(c) through (j), Idaho Code, and
23 knowingly and willfully distributes it to another person or persons through
24 electronic or other means or causes it to appear in a form where the dis-
25 tributing minor has reason to believe another will view it is guilty of a mis-
26 demeanor provided that the image was communicated in a form that there was a
27 single recipient.

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

- 35 (a) Is guilty of a misdemeanor on the first adjudicated offense; and
36 (b) Is guilty of a felony on the second or subsequent adjudicated of-
37 fense.

38 (3) A minor who is found to be in knowing and willful possession of the
39 content created and sent as described in subsection (1) or (2) of this sec-
40 tion is guilty of a misdemeanor if the content depicts a minor who is not
41 greater than three (3) years younger than the minor who is found to be in
42 possession. A minor who is found to be in knowing and willful possession

1 of content described in this subsection that depicts a minor greater than
 2 three (3) years younger than themselves is guilty of a violation of section
 3 18-1507(2) (a), Idaho Code.

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

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

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

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

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

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

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

24 18-1507. DEFINITIONS -- SEXUAL EXPLOITATION OF A CHILD -- PENAL-
 25 TIES. (1) As used in this section, unless the context otherwise requires:

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

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

29 (c) "Erotic fondling" means touching a person's clothed or unclothed
 30 genitals or pubic area, developing or undeveloped genitals or pubic
 31 area (if the person is a child), buttocks, breasts (if the person is a
 32 female), or developing or undeveloped breast area (if the person is a
 33 female child), for the purpose of real or simulated overt sexual grat-
 34 ification or stimulation of one (1) or more of the persons involved.
 35 "Erotic fondling" shall not be construed to include physical contact,
 36 even if affectionate, which is not for the purpose of real or simulated
 37 overt sexual gratification or stimulation of one (1) or more of the per-
 38 sons involved.

39 (d) "Erotic nudity" means the display of the human male or female geni-
 40 tals or pubic area, the undeveloped or developing genitals or pubic area
 41 of the human male or female child, the human female breasts, or the un-
 42 developed or developing breast area of the human female child, for the
 43 purpose of real or simulated overt sexual gratification or stimulation
 44 of one (1) or more of the persons involved.

45 (e) "Explicit sexual conduct" means sexual intercourse, erotic
 46 fondling, erotic nudity, masturbation, sadomasochism, sexual excite-
 47 ment, or bestiality.

48 (f) "Masturbation" means the real or simulated touching, rubbing, or
 49 otherwise stimulating of a person's own clothed or unclothed genitals

1 or pubic area, developing or undeveloped genitals or pubic area (if the
2 person is a child), buttocks, breasts (if the person is a female), or
3 developing or undeveloped breast area (if the person is a female child),
4 by manual manipulation or self-induced or with an artificial instru-
5 ment, for the purpose of real or simulated overt sexual gratification or
6 arousal of the person.

7 (g) "Sadomasochism" means:

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

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

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

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

20 (j) "Sexually exploitative material" means any image, photograph, mo-
21 tion picture, video, print, negative, slide, or other mechanically,
22 electronically, digitally or chemically produced or reproduced visual
23 material which shows a child engaged in, participating in, observing,
24 or being used for explicit sexual conduct, or showing a child engaging
25 in, participating in, observing or being used for explicit sexual con-
26 duct, in actual time, including, but not limited to, video chat, webcam
27 sessions or video calling.

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

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

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

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

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

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

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

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

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

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

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

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

20 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
 21 visions of this chapter shall apply to any person who:

22 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
 23 solicitation, or a conspiracy to commit a crime provided for in section
 24 18-909 (assault with intent to commit rape, infamous crime against na-
 25 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
 26 murder or robbery), 18-911 (battery with intent to commit rape, infa-
 27 mous crime against nature, or lewd and lascivious conduct with a minor,
 28 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
 29 by a medical care provider), 18-1505B (sexual abuse and exploitation
 30 of a vulnerable adult), 18-1506 (sexual abuse of a child under six-
 31 teen years of age), 18-1506A (ritualized abuse of a child), felony
 32 violations of 18-1507 (sexual exploitation of a child), 18-1508 (lewd
 33 conduct with a minor child), 18-1508A (sexual battery of a minor child
 34 sixteen or seventeen years of age), 18-1509A (enticing a child over
 35 the internet), 18-4003(d) (murder committed in perpetration of rape),
 36 18-4116 (indecent exposure, but excluding a misdemeanor conviction),
 37 18-4502 (first degree kidnapping committed for the purpose of rape,
 38 committing the infamous crime against nature or for committing any lewd
 39 and lascivious act upon any child under the age of sixteen, or for pur-
 40 poses of sexual gratification or arousal), 18-4503 (second degree kid-
 41 napping where the victim is an unrelated minor child), 18-5605 (deten-
 42 tion for prostitution), 18-5609 (inducing person under eighteen years
 43 of age into prostitution), 18-5610 (utilizing a person under eighteen
 44 years of age for prostitution), 18-5611 (inducing person under eighteen
 45 years of age to patronize a prostitute), 18-6101 (rape, but excluding
 46 18-6101(1) where the defendant is eighteen years of age), 18-6108 (male
 47 rape, but excluding 18-6108(1) where the defendant is eighteen years
 48 of age), 18-6110 (sexual contact with a prisoner), 18-6602 (incest),
 49 18-6605 (crime against nature), 18-6608 (forcible sexual penetration

1 by use of a foreign object), 18-6609 (video voyeurism where the victim
2 is a minor or upon a second or subsequent conviction), 18-7804 (if the
3 racketeering act involves kidnapping of a minor) or 18-8602(1), Idaho
4 Code, (sex trafficking).

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

13 (c) Has been convicted of any crime, an attempt, a solicitation or a
14 conspiracy to commit a crime in another jurisdiction, including mili-
15 tary courts, that is substantially equivalent to the offenses listed in
16 subsection (1) (a) of this section and was required to register as a sex
17 offender in any other state or jurisdiction when he established resi-
18 dency in Idaho.

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

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

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

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

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