

NO. 43603-5

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DAVID CLYDE DANIELS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frederick W. Fleming

No. 12-1-00508-9

Response Brief

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether defendant's convictions for promoting commercial sexual abuse of a minor and second degree promoting prostitution violate double jeopardy where each conviction is based on a separate offense?
2. Did the trial court properly impose a three-year term of community custody where the court is statutorily required to impose such a term for those convicted of a sex offense?

B. STATEMENT OF THE CASE.

1. Procedure

On February 9, 2012, the State charged David Clyde Daniels with promoting commercial sexual abuse of a minor ("PCSAM"), robbery in the second degree, unlawful imprisonment, assault in the fourth degree, and driving while in suspended or revoked status in the second degree. CP 1–3. On April 23, 2012, the State amended defendant's charges to include one count of promoting prostitution in the second degree. CP 6–8.

Defendant's jury trial proceeded before the Honorable Frederick W. Fleming on April 23, 2012. 2RP 18.¹ The jury found defendant guilty

¹ The verbatim report of proceedings consists of six volumes, each of which have been paginated separately. The State will refer to the proceedings as follows:

1RP: Pretrial proceedings before the Honorable Katherine M. Stolz that occurred on April 3 and 16, 2012.

2RP: Defendant's jury trial, proceedings on April 23 and 24, 2012.

3RP: Defendant's jury trial, proceedings on April 25, 2012.

4RP: Defendant's jury trial, proceedings on April 26, 27, 30, and May 1, 2012.

5RP: Defendant's sentencing, which occurred on June 25, 2012.

of promoting prostitution in the second degree, assault in the fourth degree, and PCSAM. CP 49, 52–53. The jury could not reach agreement on the count of unlawful imprisonment, and acquitted defendant of robbery in the second degree. CP 50–51.

On June 15, 2012, the court sentenced defendant to 236 months in confinement for his conviction of PCSAM. CP 66 (Judgment and sentence, paragraph 4.5). Defendant had a standard range of 178–236 with an offender score of 7, which included one point for defendant's conviction of promoting prostitution. *See* CP 63 (Judgment and sentence, paragraph 2.3). For defendant's conviction of promoting prostitution, the court sentenced defendant to 16 months in confinement.² CP 66. On this count, defendant had an offender score of 4 with a standard range of 12–16 months. CP 63. Defendant timely filed a notice of appeal on June 19, 2012. CP 204–18.

2. Facts

In early January 2012, fifteen year-old N.R.J.³ was walking home from a Shell gas station when nineteen year-old defendant, also known as "2Sav,"⁴ pulled up in a white Ford Explorer and introduced himself. 3RP 11–12. When defendant asked N.R.J. her age, N.R.J. lied, stating she was

² The court ordered this sentence to be served concurrently with the sentence for the more serious conviction of PCSAM. CP 66.

³ Because N.R.J. is a minor, the State will refer to her by her initials to respect the victim's privacy.

⁴ 2RP 52–54; 3RP 22–23.

nineteen. 3RP 14. They exchanged phone numbers and N.R.J. agreed to meet defendant at his cousin Thurs' house on a later date still in early January. 3RP 13–15.

When N.R.J. arrived at Thurs' house, defendant asked her whether she was ready to prostitute herself for defendant. 3RP 17. N.R.J. agreed, so defendant and another man known as "2Sop" took pictures of her in her underclothing on a bed. 3RP 18. Defendant and 2Sop created a profile for N.R.J. on the website, "Backpage," and posted N.R.J.'s photographs, personal information, and phone number on the site to solicit sex. 3RP 15, 19. When solicitations started to come in, defendant told N.R.J. that she would perform oral sex for \$40 and sexual intercourse for \$60. 3RP 21. Defendant required N.R.J. to give him all of the money from each encounter. 3RP 27.

The next day defendant and his friends drove N.R.J. to Seattle's Aurora Avenue where he directed N.R.J. and another prostitute, Markeesha, to walk along the street and solicit sex. 3RP 22. Defendant's friends included Thurs, Corinthian Hinton—who knew N.R.J. from school⁵—and "Butta." 3RP 22. Defendant instructed N.R.J. and Markeesha to walk towards traffic until they were picked up. 3RP 24. He told them to perform the requested sexual act in either the person's vehicle or at a room defendant and his friends had rented at the Seals Motel on

⁵ 2RP 52–53.

Aurora Avenue. 3RP 24. Defendant followed closely behind N.R.J. until she successfully solicited customers. 3RP 24.

The first person to stop was a man who requested sexual intercourse in his truck. 3RP 25–26. After committing the prostitution service, N.R.J. took the money but hid \$20 in her sock before giving the remaining \$40 to defendant. 3RP 25–26. Over the course of the evening, N.R.J. engaged in sexual intercourse with twelve others, retaining \$80 for herself in her sock. 3RP 27–29. When defendant learned that N.R.J. was skimming cash, he forced N.R.J. to remove her clothes and retrieved it, leaving N.R.J. with nothing. 3RP 29–30.

That evening, N.R.J. told defendant that she had originally lied about her age and informed defendant that she was only fifteen years old. 3RP 30. Despite this admission, defendant prostituted N.R.J. for three more weeks. 3RP 31. Later in January, defendant drove N.R.J. to Pacific Avenue in Tacoma, between 72nd and 84th Streets, for her to engage in prostitution. 3RP 34. She had sex with eight people that day in locations such as their cars, homes, local parks, and once in the American Lodge motel. 3RP 34–38.

By the end of January and the beginning of February, N.R.J. began to prostitute on her own and had agreed via Backpage to meet a man for sex in Spanaway, Washington. 3RP 41–42. N.R.J. called defendant for a ride and offered to give him \$45 for the help. 3RP 44. Defendant and another prostitute called "Forrest" picked N.R.J. up and took her to the

meeting. 3RP 40–44. When N.R.J. returned to the vehicle, defendant accused N.R.J. of being a police informant, took her phone, and checked N.R.J. in the backseat for a possible wire. 3RP 45–46. Because N.R.J. refused to undress in front of Forrest, defendant punched N.R.J. in the face about ten times, pummeling her into the floor behind the driver's seat. 3RP 47–49.

The next morning on February 8, 2012, N.R.J. told Tacoma Police Department Officer Gerald Turney, a security officer at Mt. Tahoma High School, about the assault and her prostitution activities for defendant. 2RP 29–38; 3RP 50, 54. Officers arrested defendant that day. 2RP 43–44.

Defendant did not testify at trial or call any witnesses in his defense.

C. ARGUMENT.

1. DEFENDANT'S CONVICTIONS FOR PROMOTING COMMERCIAL SEXUAL ABUSE OF A MINOR AND SECOND DEGREE PROMOTING PROSTITUTION DO NOT VIOLATE DOUBLE JEOPARDY BECAUSE EACH CRIME IS A SEPARATE OFFENSE

The double jeopardy provisions of the federal and state constitutions "protect a defendant from being punished multiple times for the same offense." *State v. Allen*, 150 Wn. App. 300, 312, 207 P.3d 483 (2009). When there are multiple punishments for the same conduct, the primary question is whether the legislature intended that multiple

punishments be imposed. *State v. Louis*, 155 Wn.2d 563, 569, 120 P.3d 936 (2005) (holding that the court must look to the statute to see if the legislature expressly authorized multiple punishments for conduct that violates more than one statute). If the statute is unclear whether the legislature intended multiple punishments, then the court looks for legislative intent by applying a "same evidence" test. *Id.* Double jeopardy is violated if the defendant is convicted of offenses that are the same both in law and in fact. *See id.* at 569; *see also State v. Calle*, 125 Wn.2d 769, 777, 888 P.2d 155 (1995).

The offenses are not the same in law where "each offense requires proof of an element not required in the other, [and] where proof of one does not necessarily prove the other." *Louis*, 155 Wn.2d at 569 (noting that this test mirrors the "same elements" test in *Blockburger v. United States*⁶). "Notwithstanding a substantial overlap in the evidence that establishes the two crime, if each requires proof of a fact that the other does not, the . . . same evidence test is satisfied." *State v. Clark*, 170 Wn. App. 166, 188–89, 283 P.3d 1116 (2012) (emphasis added) (internal quotations omitted). Additional factors that demonstrate the legislature's intent to authorize multiple punishments include whether each crime is codified under a separate title or differs in severity (i.e., class A/B/C felony, offense level, etc.). *See id.* at 193.

⁶ 284 U.S. 299, 304, 52 S. Ct. 180 (1932).

- a. Defendant's convictions do not violate double jeopardy because PCSAM and promoting prostitution require proof of an element not required by the other and thus are not the same in law

The State charged defendant with PCSAM, in violation of RCW 9.68A.101, and promoting prostitution in the second degree, in violation of RCW 9A.88.080(1)(a)(b).⁷ Because neither statute expressly states the legislature's intent to impose multiple punishments in light of the other crime, *see* RCW 9.68A.101 and RCW 9A.88.080, a "same evidence" test is required here.

A person is guilty of PCSAM if (1) "he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor," or (2) "profits from a minor engaged in sexual conduct or a sexually explicit act." RCW 9.68A.101(1).⁸

⁷ RCW 9.68A.101 and RCW 9A.88.080 are included respectively as Appendices A and B.

⁸ The to-convict instruction in this case generally followed the statutory elements proscribed above. To convict defendant of PCSAM, the State had to prove the following elements beyond a reasonable doubt:

- (1) That on or about the period between the 1st day of January, 2012, and the 7th of February, 2012, the defendant knowingly advanced commercial sexual abuse of a minor or profited from a minor engaged in sexual contact; and
- (2) That any of these acts occurred in the State of Washington.

CP 31 (Jury instruction no. 10). When compared to the statute, the instruction differs in two regards: First, the instruction omits "sexually explicit acts" as a means to satisfy either prong. Second, under the second prong, the instructions required the State to prove the more specific element of the minor being engaged in "sexual contact" as opposed to the statutory requirement of "sexual conduct." As discussed *infra*, "sexual conduct" means either "sexual intercourse" or "sexual contact."

For the first prong, the statute defines "advances commercial sexual abuse of a minor" and "profits from commercial sexual abuse of a minor" as the following:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person 'profits from commercial sexual abuse of a minor' if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.⁹

RCW 9.68A.101(3)(a), (b).

Under the second prong, a person is guilty of PCSAM if he or she profits from a minor engaged in sexual conduct. RCW 9.68A.101(1).

"Sexual conduct" means either "sexual contact" or "sexual intercourse."

RCW 9.68A.101(4). "Sexual contact" is defined as "any touching of the

⁹ RCW 9.68A.101(3)(b).

sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party."

RCW 9A.44.010(2).¹⁰ "Sexual intercourse" is defined as follows:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

RCW 9A.44.010(1).

To convict defendant of promoting prostitution in the second degree, the jury had to find that defendant "knowingly (a) profit[ed] from prostitution; or (b) advance[d] prostitution." RCW 9A.88.080.¹¹

"Prostitution" is defined as an act where "a person engaged or agreed or offered to engage in sexual conduct with another person in return for a fee." RCW 9A.88.030(1).¹² The definitions for "advances prostitution" and "profits from prostitution" state:

¹⁰ The court instructed the jury with this definition. CP 30 (Jury instruction no. 9).

¹¹ The to-convict instruction parallels the statute. CP 45 (Jury instruction no. 24).

¹² The court instructed the jury with this definition. CP 44 (Jury instruction no. 23).

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution," if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

RCW 9A.88.060.

Under the same evidence test, PCSAM and promoting prostitution in the second degree each require proof of a factual element that the other does not. As defendant acknowledges, PCSAM requires the State to prove that the victim was a minor—an element not required under promoting prostitution.

Promoting prostitution in the second degree, on the other hand, differs from PCSAM because it requires proof that the defendant profited from "prostitution," or sexual conduct "*with another person.*" See RCW 9A.88.030(1) (emphasis added). Conversely, PCSAM does not require

proof of sexual conduct with "another person," but merely proof of a minor engaged in "sexual conduct." As defined above, "sexual conduct" can be "sexual contact" or "sexual intercourse." Sexual contact, unlike prostitution, does not require a sexual act to be performed on or with a third party, but can be the minor's sexual contact with his or her own body. *See* RCW 9A.44.010(2).¹³

The following example demonstrates how PCSAM does not necessarily constitute the crime of promoting prostitution in the second degree when the victim is a minor:¹⁴ consider a person who forces a child to masturbate for a third party in exchange for a fee, perhaps on a video-feed over the internet. The child engages in "sexual contact" only with himself or herself while the third party observes the act. Under these facts, the defendant's conduct would not constitute "prostitution" because there is no evidence that the minor engaged in sexual conduct "with another person." The State would be precluded from pursuing charges of

¹³ The instruction the court gave to the jury clarified that "sexual contact" did not require a sexual act on a third party. CP 30 (Jury instruction no. 9).

¹⁴ When the victim is a minor, the State is unable to create a hypothetical where promoting prostitution in the second degree would not necessarily constitute PCSAM.

promoting prostitution due to this additional element of "prostitution," or sexual conduct "with another person," which is not found under the crime of PCSAM.¹⁵

That the legislature intended these offenses to be separate is also evident because the legislature codified the crimes under different titles. PCSAM falls under chapter 9.68A RCW, titled, "Sexual exploitation of children." The legislature codified the crime of promoting prostitution in the second degree under chapter 9A.88 RCW, titled, "Indecent exposure—prostitution."

Moreover, the crimes differ in both felony classification and offense seriousness. Promoting prostitution in the second degree is a class C felony with a seriousness level of 3. RCW 9A.88.080 (felony class); RCW 9.94A.515 (seriousness level). PCSAM, however, is a class A felony with a seriousness level of 12. RCW 9.68A.101 (felony class); RCW 9.94A.515 (seriousness level).

¹⁵ The example above is plausible when considering the legislative findings under the general statutory scheme prohibiting the sexual exploitation of children. Those findings provide:

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,

RCW 9.68A.001 (emphasis added).

PCSAM and promoting prostitution are not the same in law because, under the same evidence test, each crime includes an element not contained within the other. Proof of PCSAM does not necessarily prove promoting prostitution. Furthermore, the legislature enacted these separate offenses in separate titles of the revised code. This reflects a legislative intent to punish the crimes separately. Defendant's convictions did not place him in double jeopardy.

- b. Defendant's convictions do not violate double jeopardy because they were not the same in fact

Generally, challenges regarding double jeopardy involve defendants who have been convicted for violating several statutes—or the same statute multiple times—based on the same underlying act or unit of prosecution. *See, e.g., Blockburger v. United States*, 284 U.S. 299, 303–05, 52 S. Ct. 180 (1932) (affirming two convictions of narcotics transactions based on a single sale, and a third conviction because the sale occurred on a different day); *State v. Kier*, 164 Wn.2d 798, 802, 194 P.3d 212 (2008) (involving convictions of first degree robbery and second degree assault based on a single carjacking); *Calle*, 125 Wn.2d at 771–72 (charging defendant with both incest and rape where he forcibly engaged in sexual intercourse with his stepdaughter on one occasion); *State v. Adel*, 136 Wn.2d 629, 632, 965 P.2d 1072 (1998) (reversing two

convictions of possession of marijuana when the underlying act constituted a single unit of prosecution).

Here, however, defendant's convictions were based on different offenses that occurred on different times and in different locations. The evidence shows defendant prostituted N.R.J. for one evening on Aurora Avenue in Seattle when he believed her to be nineteen years old. *See* 3RP 14, 30. During closing argument, the prosecutor elected only these acts for the jury to consider as pertaining to defendant's charge of promoting prostitution:

Promoting Prostitution in the Second Degree, he's benefiting, profiting from her selling herself after he—I'm sorry, *before he learns that she's 15*. Because the Promoting Commercial Sexual Abuse of a Minor has an age requirement. She told you, I lied and I told him I'm 19. Now he's promoting a prostitute because she's not a minor in his mind, right. So promoting prostitution, *a benefit that he got prior to learning* that makes him guilty of Promoting Prostitution in the Second Degree.

4RP 14 (emphasis added).

After N.R.J. revealed her true age as a minor, defendant continued to prostitute her for several weeks. 3RP 31–38. The prosecutor elected these later acts for the jury to consider for defendant's charge of PCSAM:

If [N.R.J.] is telling the truth, you believe these things actually happened, he's guilty of Promoting Sexual Abuse of a Minor because he knew she was 15 years old after that date in Aurora and continued to profit from her selling herself, and the acts occurred in the State of Washington.

4RP 13. When considering evidence and the context of the prosecutor's election during closing argument, it is apparent that defendant's charges were based on separate offenses with different facts in support of each.

Defendant primarily relies on *Kier* to argue the prosecutor's election was insufficient. Brief of Appellant at 8–9. But defendant's reliance on *Kier* is misplaced because *Kier* involved the same factual basis for each of the defendant's convictions. In *Kier*, the defendant was charged with robbery and assault after he carjacked a vehicle by holding a man and his sixteen year-old son at gunpoint. 164 Wn.2d at 802. The jury instructions, however, did not clarify who the victims were for each crime. *Id.* at 812. Accordingly, during closing argument, the prosecutor elected the man as the victim of the robbery and the son as the victim of assault. *Id.* On appeal, the court in *Kier* determined that double jeopardy was violated because the prosecutor's election was insufficient. *Id.* at 812–13. The court reasoned that the facts underlying each conviction (the single carjacking) were too similar that it was confusing for the jury to identify which charge applied to which victim. *See id.* at 812–13.

Unlike *Kier*, defendant's convictions for PCSAM and promoting prostitution in the second degree were based on separate incidents altogether. The evidence highlighted the distinction between defendant prostituting N.R.J. before and after he knew her age. *See* 3RP 30–31. The

prosecutor's election during closing argument was satisfactory because the evidence supported these two separate offenses.

The record demonstrates that defendant's convictions differed in fact. The convictions also differed in law because each required proof of an element not required by the other. Accordingly, double jeopardy was not violated. *See Louis*, 155 Wn.2d at 569.

2. THE COURT PROPERLY IMPOSED A THREE-YEAR TERM OF COMMUNITY CUSTODY FOR DEFENDANT'S CONVICTION OF PROMOTING COMMERCIAL SEXUAL ABUSE OF A MINOR BECAUSE THE CRIME IS A SEX OFFENSE.

Whether the trial court properly imposed community custody is reviewed de novo. *See State v. Kolesnik*, 146 Wn. App. 790, 806, 192 P.3d 937 (2008). A trial court may only impose statutorily authorized sentences. *State v. Paulson*, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). A defendant may raise this issue for the first time on appeal. *Id.*

Under RCW 9.94A.701, a court must sentence a defendant who is convicted of a sex offense to three years in community custody:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507; or

(b) A serious violent offense.

RCW 9.94A.701(1). A "sex offense" is defined in part as "[a] felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080." RCW 9.94A.030(46)(a)(iii). PCSAM qualifies as a sex offense because it falls under RCW 9.68A, and does not belong to either of the excluded statutory provisions outlined above—RCW 9.94A.507 or 9.68A.080.

Although defendant correctly identifies that PCSAM is not a "serious violent offense" under RCW 9.94A.030, RCW 9.94A.701 requires the court to sentence defendants who have been convicted of either serious violent offenses *or* sex offenses to three years in community custody. *See* RCW 9.94A.701. Here, PCSAM qualifies as a "sex offense" under RCW 9.94A.030(46)(a)(iii). Accordingly, the trial court properly imposed a three-year term of community custody.

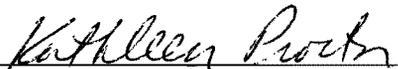
D. CONCLUSION.

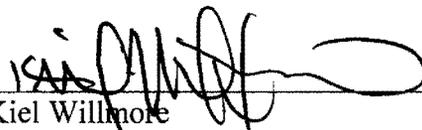
Defendant's convictions do not violate double jeopardy because they differ both in law and fact. It is evident the legislature intended to create separate offenses where each crime requires proof of an element not required by the other. Additionally, the underlying basis for the crimes here involved evidence from two separate crimes with a different factual

basis. This Court should thus affirm defendant's convictions of promoting prostitution and promoting commercial sexual abuse of a minor. The State also respectfully requests this Court to uphold the trial court's imposition of a three-year term of community custody because it complies with the statutory requirement under RCW 9.94A.701(1).

DATED: April 25, 2013.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-IMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4.25.13 
Date Signature

APPENDIX “A”



Effective: June 7, 2012

West's Revised Code of Washington Annotated Currentness

Title 9. Crimes and Punishments (Refs & Annos)

Chapter 9.68A. Sexual Exploitation of Children (Refs & Annos)

→ → 9.68A.101. Promoting commercial sexual abuse of a minor--Penalty

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

(e) A “patron” is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) For purposes of this section, “sexual conduct” means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

CREDIT(S)

[2012 c 144 § 1, eff. June 7, 2012; 2010 c 289 § 14, eff. June 10, 2010; 2007 c 368 § 4, eff. July 22, 2007.]

<(Formerly: Child Pornography)>

Current with 2013 Legislation effective through April 17, 2013

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APPENDIX “B”

C

Effective: July 22, 2011

West's Revised Code of Washington Annotated Currentness

Title 9A. Washington Criminal Code (Refs & Annos)

Chapter 9A.88. Indecent Exposure--Prostitution (Refs & Annos)

→→ **9A.88.080. Promoting prostitution in the second degree**

(1) A person is guilty of promoting prostitution in the second degree if he or she knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony.

CREDIT(S)

[2011 c 336 § 413, eff. July 22, 2011; 1975 1st ex.s. c 260 § 9A.88.080.]

Current with 2013 Legislation effective through April 17, 2013

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PIERCE COUNTY PROSECUTOR

April 25, 2013 - 11:22 AM

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Court of Appeals Case Number: 43603-5

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