

HOUSE BILL REPORT

HB 1448

As Reported By House Committee On:

Law & Justice

Title: An act relating to the well-being of children.

Brief Description: Protecting children from matter and any live performance that is harmful to minors.

Sponsors: Representatives McMahan, Sheldon, Stevens, Padden, Campbell, Koster, D. Schmidt, Pelesky, Talcott, Hickel, Lambert, McMorris, Fuhrman, Silver, Mitchell, Basich, Hatfield, Benton, Johnson, Buck, Smith, Chandler, Robertson, Delvin, Hargrove, Sherstad, Boldt, Chappell, Schoesler, Hymes and Backlund.

Brief History:

Committee Activity:

Law & Justice: 2/24/95, 2/28/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Chappell; Lambert; McMahan; Robertson; Sheahan and Smith.

Minority Report: Do not pass. Signed by 6 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Cody; Morris; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: Current Washington law prohibits the sale, distribution, or exhibition of "erotic materials" to minors (erotic materials statute). This prohibition applies only to materials determined by a court to be "erotic."

"Erotic material" is defined as printed material, photographs, pictures, motion pictures, sound recordings, or other material which, taken as a whole, appeals to the prurient interest in sex, which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sadomasochistic abuse, and which is utterly without redeeming social value.

Following notice to a dealer, distributor, or exhibitor, a county prosecuting attorney may seek a judicial determination that material is erotic. If the material is determined to be erotic, it must be labelled "adults only" and may not be displayed in a manner that makes the material readily accessible to minors. Any person who sells, distributes, or exhibits to a minor material determined by a court to be "erotic" is guilty of a criminal offense.

It is unlawful for a minor to misrepresent his or her age in order to acquire erotic materials and for an adult to misrepresent himself or herself as the minor's parent or guardian.

The provisions of the erotic materials statute do not apply to public libraries, recognized historical societies and museums, county law libraries, libraries of colleges and universities, the state library, the state law library, or public archives.

In a recent case, Soundgarden v. Eikenberry, 123 Wn.2d 750 (1994), the Washington Supreme Court held the current erotic materials statute unconstitutional. The court held that, although the state may regulate speech which is obscene as to minors, the provisions of the erotic materials statute violate due process and freedom of speech.

Both the federal and state constitutions protect freedom of speech. However, "obscenity" is not a protected form of speech and may be regulated or completely prohibited. Protected forms of speech may be regulated to a certain extent depending on the type of speech, the means of regulation, and the government's interest in regulating the speech.

The United States Supreme Court recognizes that protecting children from sexually explicit material is a legitimate governmental purpose which may justify regulation of some protected speech. The Court has upheld the use of a variable obscenity standard for minors under the federal Constitution. This standard recognizes that material that is not obscene as to adults may be obscene as to minors. States may regulate this protected material as long as the regulations do not impose unduly burdensome or significant restrictions on adult access to the material.

Summary of Substitute Bill: The statutory prohibitions on distribution and display of erotic materials to minors and providing for the labelling of materials determined by a court to be erotic are repealed. These provisions are replaced with provisions prohibiting the display, sale, or distribution to minors of materials which are "harmful to minors."

No person shall, with knowledge of its character, display, sell, furnish, present, distribute, or disseminate to a minor matter which is "harmful to minors" or present to a minor or participate in presenting to a minor any live performance which is "harmful to minors." Material is "harmful to minors" if it meets the following three-

part test: (1) the average adult person applying contemporary community standards would find it appeals to the prurient interest of minors; (2) it explicitly depicts or describes, by prevailing standards in the adult community with respect to what is suitable for minors, patently offensive representations or descriptions of specifically defined conduct; and (3) when considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

Examples of specifically defined conduct or activity that may be patently offensive include ultimate sexual acts, sexually explicit conduct, sexually explicit nudity, or sexual acts that are violent or destructive.

Matter is deemed not to be "displayed" if it is kept behind blinder racks that cover the lower two-thirds of the matter or, in the case of on-line accessibility to information stored in an electronic form, if the matter is stored in a restricted area where access is allowed only to persons reasonably believed to be 18 years of age or older and who have obtained a password for access, or if restricted access is not possible, the matter is stored in an area labelled "adults only."

Materials that can be harmful to minors include motion picture films, sexual devices, books, magazines, pamphlets, writings, printings, illustrations, pictures, sound recordings, telephonic communications, or coin-operated machines.

Any violation of the act is a gross misdemeanor punishable by up to one year in jail or a \$5,000 fine, or both. Each day a violation continues constitutes a separate offense.

It is an affirmative defense to an alleged violation of the act that the matter or performance was displayed or disseminated to a minor by the minor's parent or guardian, or with the written permission of the minor's parent or guardian, for bona fide purposes. It is also an affirmative defense that the person made a bona fide attempt to ascertain the true age of the minor by not relying solely on the oral allegations or apparent age of the minor.

The chapter does not apply to the circulation of material by a recognized historical society or museum, college or university libraries, or archives or libraries under the supervision and control of the state, county, municipality, or other political subdivision.

Substitute Bill Compared to Original Bill: The substitute bill adds an exemption for historical societies and museums, college and university libraries, and government supervised or controlled archives or libraries.

The substitute bill adds that matter is not deemed to be displayed if, in the case of on-line accessibility to information stored in electronic form, the matter is stored in a restricted area or in an area labelled "adults only."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Parents have a right and a responsibility to control what their children are exposed to. This right is useless if parents don't have the means to back it up. The bill is not about censorship. It is a constitutional means of protecting the exposure of minors to harmful materials. Minor access to sexually explicit material is causing the disintegration of family life. Pornography gives children the wrong message about sex, and this bill will help prevent minor access to this harmful material.

Testimony Against: This bill is an extreme cultural censorship statute that is overly broad and could affect many theaters, galleries, and museums. The bill is unconstitutional and bad policy. The bill discourages free and artistic expression, will encourage harassment of library and museum boards, and stifle a nationally recognized music community. Sound recordings should not be included in this bill because music is very different from visual material. Libraries should be exempt from this bill because the bill will require staff to check every item that the library receives, resulting in the expenditure of a great deal of money.

Testified: Representative McMahan, prime sponsor (pro); Chris Quinn-Brintnall, Pierce County Prosecuting Attorney's Office (pro); Mary Ingalls (pro); Andrea Vangor, Washington Together Against Pornography (pro); Kay Reagan, Friends of the Family (pro); Stu Halsan, Recording Industry Association of America (con); Tom Mayer, Sno-Isle Regional Library (con); Sharon Hammer, Fort Vancouver Regional Library (con); Mark Murphy, Metropolitan Arts Committee (con); and Celia Fritz, Motion Picture Association of America (with amendment).