

SENATE BILL REPORT

ESB 6079

As Passed Senate, May 23, 1995

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

Brief Description: Providing for the well-being of children.

Sponsors: Senators Smith and Gaspard.

Brief History:

First Special Session: Passed Senate, 5/23/95, 44-2.

Staff: Dick Armstrong (786-7460)

Background: Washington law prohibits the sale, distribution, or exhibition of erotic materials to minors. The prohibition applies only to materials which have been determined by a court to be erotic. Erotic materials are those that appeal to the prurient interest of minors in sex, are patently offensive, and are utterly without redeeming social value. A person who violates these provisions is guilty of a misdemeanor for the first offense, a gross misdemeanor for the second offense, and a felony for the third and subsequent offenses.

In 1994, the Washington Supreme Court held that, while the Legislature may regulate speech it considers "harmful to minors," the present statute is unconstitutional because it violates a variety of procedural due process requirements.

Summary of Bill: The statutory prohibitions on distribution or display of erotic materials to minors are repealed and replaced with provisions prohibiting the display, sale, or distribution of materials harmful to minors. Material that may be harmful to minors includes written and visual materials which: (1) the average adult person, applying contemporary community standards, would find appeals to the prurient interest of minors; (2) depicts conduct that under prevailing adult community standards is patently offensive for minors; and (3) lacks serious literary, artistic, political, or scientific value for minors. A person does not display such materials if it is placed behind "blinder racks" or, in the case of cable operators, a subscriber can block the viewing of a cable service.

Materials that can be harmful to minors include writings, printings, movies, books, magazines, sexual devices, and coin-operated machines. Sound recordings are not subject to the act.

A person who knowingly displays, sells, or distributes such material to minors is guilty of a gross misdemeanor.

It is an affirmative defense to an alleged violation of the act if a parent or guardian of the minor gives permission for the minor to view the material, or a reasonable attempt is made to ascertain the true age of the minor.

All local ordinances relating to harmful to minor statutes must be consistent with the provisions of the bill.

Libraries, museums, contraceptive devices, distributions by public health care providers, and instructional material approved by a public school district and material obtained through electronic telecommunications networks designed for educational use are exempt from the provisions of the bill. Also exempt are persons who provide access to electronic communications (internet and telephone lines).

The existing criminal statute on communicating with minors is expanded to make it a felony if the person has previously been convicted under the harmful to minor statute or has concurrently violated the harmful to minor statute.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

House Amendment(s): The striking amendment applies to sound recordings, telephonic communications, live performances, and any medium used to electronically transmit or reproduce images on a screen. The striker repeals 9.68A.140, 9.68A.150, and 9.68A.160, provisions which make it a crime for a person to knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing erotic material. The underlying bill does not apply to sound recordings, telephonic communications, live performances, and some types of media used to electronically transmit or reproduce images on a screen. The underlying bill does not repeal 9.68A.140, 9.68A.150, and 9.68A.160.

The striker exempts museums, historical societies, college and university libraries, and government operated or controlled archives and libraries. In addition to these exemptions, the underlying bill also exempts: (1) the provision of electronic communication access; (2) instructional materials reviewed by a school's board of directors; (3) health care providers under the supervision of, or funded in whole or in part by, the state or a political subdivision; and 4) devices designed for contraception or the prevention of sexually transmitted diseases.

The striker provides that, in the case of on-line access to matter stored in an electronic form, matter is deemed not to be displayed if it is stored in a restricted area or it is not possible to restrict access. The underlying bill does not contain this provision, but does provide that matter is deemed not to be displayed if it is transmitted by cable and the cable operator provides a device which can block a particular cable service.

The striker does not amend RCW 9.68A.090, communicating with a minor for immoral purposes. The underlying bill amends this section to provide that any sexual offense, not just felony sexual offenses, and any violation of the provisions of the bill, will make a violation of

the communicating with a minor for immoral purposes statute a class C felony rather than a gross misdemeanor.