

SENATE BILL REPORT

SSB 5242

As Passed Senate, March 18, 2003

Title: An act relating to internet access for patrons of public libraries.

Brief Description: Requiring libraries to offer filtering software for minor access to the internet.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Swecker, Zarelli, Haugen, Oke, Stevens, Benton, Doumit, Roach, Hargrove, Schmidt, Mulliken and Rasmussen).

Brief History:

Committee Activity: Government Operations & Elections: 1/29/03, 2/18/03 [DPS].
Passed Senate: 3/18/03, 36-13.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5242 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Kastama, McCaslin and Reardon.

Staff: Ronda Larson (786-7429)

Background: Statutory law does not specifically address libraries' handling of Internet access to sexually explicit material. Although statutory law allows library trustees to create reasonable rules and regulations to assure the greatest benefit to the greatest number of library patrons, the statute speaks only in terms of general library usage.

Nevertheless, this general language allows public libraries to create policies that prohibit patrons from using Internet terminals to access illegal speech (i.e., speech not protected under the state or federal constitutions). Libraries may then impose penalties on patrons who violate these policies. For example, statutory law allows libraries to exclude violators from using the library.

As for constitutional provisions relating to the issue, the First Amendment of the federal Constitution and Article 1, Section 5 of the state Constitution protect freedom of speech. Neither the federal nor state constitutions consider "obscenity" to be a protected form of speech. Both allow it to be regulated or completely prohibited. The extent of regulation permissible depends on the type of speech, the means of regulation, and the government's purpose for regulating the speech.

In its interpretation of the federal Constitution, the United States Supreme Court recognizes that protecting children from sexually explicit material is a legitimate governmental purpose that may justify regulation of some protected speech. The court 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.

The Washington Supreme Court has not determined whether and to what extent regulation of protected forms of speech that are obscene as to minors is permissible under the Washington State Constitution. The court has held that the state Constitution does not give greater protection to "obscene" speech than the federal Constitution gives to such speech. The court has held, however, that the state Constitution does provide greater protection to some forms of protected speech.

Summary of Bill: Public libraries must use Internet filtering software on all library computers available to the public. To the extent technically possible, the filtering software must block access to material on the Internet that is adult-oriented and sexually explicit.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The current system in libraries has not been responsive to the public. As it is currently, all access is unfiltered unless the parents say otherwise. Allowing children access to pornography provokes a sickness. Allowing adults to access sexually explicit material at the library leads to molesters offending more often.

Testimony Against: If a library has only one computer, and therefore the computer is filtered because minors access it, it could possibly deny adults access to legal speech, since filtering software is unable to consistently distinguish between legal and illegal speech. Where the library is too small for a children's section, the librarian is in such close proximity to the computers that problems do not occur regarding people accessing pornography.

Testified: PRO: Margaret Tweet, SAFE; Bob Higley, WERG; Rochester members of Students Against Drunk Driving, including Billie Smith, Jennifer Belcher, Tia Smith, and Elizabeth Belcher; CON: Jerry Sheehan, American Civil Liberties Union of Washington; Amory Peck, Whatcom Co. Library; Phelps Shephard, Mid-Columbia Library District.