

# HOUSE BILL REPORT

## SB 6003

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As Passed House - Amended  
March 4, 1994

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

**Brief Description:** Protecting children from sexually explicit films, publications, and devices.

**Sponsors:** Senators A. Smith, Quigley, L. Smith, Haugen, Oke, Nelson, McAuliffe, Ludwig and Franklin.

**Brief History:**

Reported by House Committee on:  
Judiciary, February 25, 1994, DPA;  
Passed House - Amended, March 4, 1994, 82-13.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; Long; Morris; Scott and Tate.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Appelwick, Chair; H. Myers and Wineberry.

**Staff:** Anastasia Sandstrom (786-7349).

**Background:** Current Washington law regulates minors' access to pornography in three ways: (1) erotic materials may not be sold or displayed to minors; (2) minors may not attend a live performance that contains erotic content; and (3) promoting pornography is prohibited. Each law regulating a minor's access to pornography is detailed below.

1. Erotic Materials.

The sale, distribution, or exhibition of erotic materials to minors is prohibited.

Definitions:

"Erotic material" as currently defined means materials which, taken as a whole, appeal to the prurient interest of minors in sex, and 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. This definition is based on the constitutional guidelines provided by the 1968 Ginsberg v. New York case. In 1973, the U.S. Supreme Court modified the test for obscene materials in Miller v. California.

The list of matter covered by the statute includes printed materials, photographs, pictures, motion pictures, sound recordings, and other materials. In 1992, sound recordings were added to the definition of erotic material. The Washington State Supreme Court is presently ruling on the constitutionality of the sound recordings portion of the statute.

#### Procedure:

The court must determine if the material is erotic before either civil or criminal actions may be taken.

Following notice to a dealer, distributor, or exhibitor, a county prosecuting attorney may seek a judicial determination that the material is erotic. If the material is found to be erotic, it must be labelled "adults only" and may not be displayed or sold in a manner that makes the material readily accessible to minors. Failure to comply with these labelling and display provisions subjects the dealer, distributor, or exhibitor to contempt sanctions.

Retailers who try to comply with the requirements of this law may not be discriminated against by their wholesalers or franchisers. Treble damages may be awarded against any wholesaler or franchiser who violates this anti-discrimination provision.

#### Crime:

If the court determines that the material is erotic, selling, distributing, or exhibiting erotic material to a minor is a crime. A first offense carries a maximum fine of \$500 and up to six months in jail; a second offense carries a maximum fine of \$1,000 and up to a year in jail; and a third offense is a felony with a maximum fine of \$5,000 and a minimum jail sentence of one year.

#### Exemptions:

In any prosecution, defenses available are: (1) a parent or guardian accompanied the minor while attending a motion picture or obtaining a sound recording; (2) the minor presented an apparently valid identification card; or (3)

the minor was accompanied by a person representing himself or herself as the minor's parent or guardian.

Libraries and historical societies are exempt. Film projectionists are also exempt from the law if showing a film during the normal course of employment.

## 2. Live Performances.

In 1987, the Legislature prohibited commercial establishments from permitting minors on their premises if there is a live performance which contains erotic material. A violation of this provision is a gross misdemeanor. The test for erotic materials in this statute is based on the current constitutional test found in Miller v. California and is directed toward minors.

## 3. Promoting Pornography.

A person who, for profit-making purposes, sells, exhibits, or displays any lewd matter is guilty of a class C felony. The test for lewd matter is based on Miller v. California.

Courts carefully scrutinize legislation that attempts to regulate obscene material because of the concern that the legislation may violate the First Amendment by impermissibly restricting protected speech. Courts, however, have been willing to allow more latitude to legislatures in the regulation of minors' access to obscene or lewd materials.

Vicarious liability: Generally, a person or entity is not criminally liable for the actions of another unless the person was acting as a principle or an accomplice. However, a statute provides that a corporation may be criminally liable under certain circumstances for the criminal conduct of its agents.

**Summary of Bill:** The statutory prohibitions on distribution or display of "erotic materials" to minors are repealed. These provisions are replaced with provisions prohibiting the display, sale, or distribution to minors of materials which are "harmful to minors." "Minor" means a person under age 17.

### Definitions:

The "erotic material" standard is replaced by a "harmful to minors" standard. Matter which may be harmful to minors includes live performances and written, auditory, and visual materials which: (1) the average adult person, applying contemporary community standards, would find appeals to the prurient interest of minors; (2) depicts or describes

conduct that under prevailing adult community standards is patently offensive; and (3) lacks serious literary, artistic, political, or scientific value for minors. This is the Miller test directed toward minors.

Materials that can be harmful to minors include motion picture films, sexual devises, and publications. Books, magazines, sound recordings, or coin-operated machines are included in the definition of publications. Telephonic communications are included in the definitions of publications and live performances.

Procedure:

The provision for judicial determinations on whether materials are erotic and the provision requiring erotic material to be labelled as "adult only" are repealed and not replaced. Also repealed is the civil liability provision for wholesalers and wholesaler-distributors who discriminate against retailers.

Crime:

A person who knowingly displays, sells, or distributes material harmful to minors, or allows the minor to view or listen to such materials, or brings a minor to a live performance which is harmful to minors is guilty of a gross misdemeanor, punishable by up to one year in jail and up to a \$5,000 fine.

Each day a person violates the act constitutes a separate offense.

If the material is kept behind devices that cover the lower two-thirds of the matter, it will not be deemed to be displayed.

Exemptions:

In any prosecution, affirmative defenses available are: (1) the minor's parent or guardian disseminated the material for bona fide purposes; (2) the parent or guardian of the minor has given written permission for the minor to view the material for bona fide purposes; or (3) a reasonable attempt was made to ascertain the true age of the minor by not relying solely on the oral allegations or apparent age of the minor.

Exemptions from the provisions are as follows: (1) Official circulations of material by historical societies or museums, libraries of colleges or universities, archives or libraries under the supervision and control of the state, county,

city, or other political subdivisions; (2) the official distribution or use of material by a public school; (3) the official distribution or use of material by a health care provider, or health agency under the supervision and control, or funded in whole or in part by the state, county, city, or other political subdivision of the state; (4) contraceptive devices; or (5) depictions of a female breast feeding an infant.

No person shall be vicariously liable for the conduct of agents, employees, or employers who violate the act except as provided in the corporation liability statute. That statute is amended to provide that a corporation will not be liable for the conduct of an agent who violates the act if the agent is not a member of the board of directors or a person in a high managerial position.

The film projectionist exemption is repealed.

Also repealed is the provision that makes it unlawful for a minor to misrepresent his or her age or for an adult or a minor to misrepresent the status of the minor's and adult's relationship to help a minor obtain access to proscribed materials.

**Fiscal Note:** Not requested.

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

**Testimony For:** The existing erotic materials and minors law is unconstitutional and unworkable. The proposed bill has the most current constitutional standard and is workable. Many other states have had laws like this for years, and they have been upheld by the courts. This bill is designed to keep adult pornography out of the hands of children.

**Testimony Against:** Booksellers, magazine sellers and distributors will not know what is covered by the statute because the standard is too vague and overly broad. Additionally, the bill intrudes on the family's right to determine what is appropriate for children and may prohibit public health education.

**Witnesses:** Jan Gee and Jeff Cox, Washington Retail Association (con with amendment); Jim Boldt, Washington Food Dealers (con); Linda Stordahl, Seattle First Covenant Church (pro); Susan Patrick, Office of the Superintendent of Public Instruction; Mike Ryherd, Seattle-King County Department of Public Health (with amendment); Winnie Boland, Washington Coalition Against Censorship (con); Celia Fritz, Motion Picture Association of America (with amendment); Jerry

Sheehan, American Civil Liberties Union (con); Andrea Vangor, Washington Together Against Pornography (pro); Larry Taylor, counselor (pro); Tammy Tavares, citizen (pro); Michele Ray, citizen (pro); Bob Seeber, Washington Publications Distributors (con); Stu Halsan, Recording Industry Association of America (with amendment); and Chuck Robinson, American Booksellers Association (con).