

HOUSE BILL REPORT

ESHB 1009

As Passed House:

March 18, 2003

Title: An act relating to video and computer games depicting violence against public law enforcement officers.

Brief Description: Prohibiting sale of violent computer and video games to minors.

Sponsors: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Dickerson, Delvin, Skinner, Kagi, Chase, Wood, Sommers, Miloscia, Conway, Cody, O'Brien, Kenney, Schual-Berke, McDermott and Lovick).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 1/22/03, 1/30/03 [DPS].

Floor Activity:

Passed House: 3/18/03, 81-16.

Brief Summary of Engrossed Substitute Bill

- Provides that a retailer who sells, rents, or permits to be sold or rented to a minor, a violent video game that they know depicts violence against a public law enforcement officer has committed a class I civil infraction.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Delvin, Ranking Minority Member; Carrell, Eickmeyer and Hinkle.

Minority Report: Do not pass. Signed by 1 member: Representative Upthegrove.

Staff: Sonja Hallum (786-7092).

Background:

Video games may include store-bought games, computer games downloaded from the

internet, and hand-held game players. These games are a major industry and are very popular. The video games have become increasingly realistic and interactive. Many video games involve coordination and strategy and may have educational uses. Some video games have been criticized for their use of violence.

Some video games are rated by the Entertainment Software Rating Board (ESRB). The ESRB is an independent, self-regulatory entity supported by the entertainment industry which provides ratings for software titles, websites, and on-line games. The ratings are located on the front of the game packaging. There are six ratings: "Early Childhood," "Everyone," "Teen," "Mature," "Adults Only," and "Rating Pending."

Several states and municipalities have attempted to regulate minors' access to materials with violent themes. These laws and ordinances have faced constitutional challenges based on the First Amendment. The U.S. Supreme Court has not addressed the issue of restricting a minors' access to violent materials. Therefore, there is no definitive ruling from the U.S. Supreme Court that governs what states must do when regulating this type of material.

While there is no definitive ruling from the U.S. Supreme Court, one court has recently upheld a county ordinance which restricts the sale of violent video games to minors. The court found that the First Amendment does not apply to video games because they are games and not speech. The First Amendment only protects speech. The court also found that even if video games were considered speech the ordinance in question would meet the requirements of the First Amendment and would not be unconstitutional.

Several other courts have ruled on cases involving restrictions on minors' access to materials with violent themes. In most of these cases, the statutes and ordinances which have attempted to regulate this type of material have been found to be unconstitutional. These courts found that this material is protected under the First Amendment.

When a court finds that materials are protected speech under the First Amendment, the court carefully scrutinizes the statute or ordinance that attempted to restrict such speech. To be found constitutional, a statute or ordinance restricting protected speech must be narrowly tailored to advance a compelling governmental interest. Some of the courts that have considered these types of statutes and ordinances have found them to be too broad so that it is difficult to determine what type of video is being targeted by the law. Other statutes or ordinances have been struck down because the court found the government lacked proof that the ordinance was necessary to advance a compelling governmental interest. These courts found that there was not sufficient research showing the violent material caused harm to minors.

Summary of Engrossed Substitute Bill:

The Legislature finds that there is a compelling interest in curbing hostile and antisocial

behavior in youth and to foster respect for public law enforcement officers. Retailers and parents are encouraged to utilize the industry rating system for video games.

It is a class I civil infraction for a retailer to sell, rent, or permit to be sold or rented, a violent video game or computer game they know to be a violent video or computer game to a minor under the age of 17. This class I civil infraction is punishable by a fine of \$500.

A violent video or computer game is defined as a video or computer game which contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form which appears to be a law enforcement officer.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Psychologists have been studying violent behaviors with young children since the 1950s. Watching aggressive acts of people affects young children. Research has shown a link between children who have seen aggressive acts and their later aggressive behavior. Scientists have found negative effects on adults and children exposed to violence. There is a growth in the amount of research which shows video games increase aggressiveness and decrease pro-social behavior. These video games are an affront to any police officer who ever gave his life for his profession. These violent video games are more violent than most movies that adults see. Like a porn film, violent video games do not have a plot. Unlike movies, video games are participatory. There is a built in protection from parents because there are secret codes hidden in the games allowing skilled child players to access them while most parents can't get to that level. Parents lack knowledge because they can't get to this level. The packaging is deceptive because it doesn't accurately tell what is inside.

Testimony Against: (Original bill) The video games at issue are protected by the First Amendment. This might be costly to the state. The video stores are already putting protections in place to make sure they aren't renting or selling these games to kids whose parents don't want them to have the video games. These materials have not been prohibited by any appellate court. Ninety percent of the time purchasers are over 18. It is the role of the parents to decide what is appropriate for their kids. The ESRB ratings system and raters are unbiased. The industry is launching a major campaign to educate parents about the ratings system. There are operational problems with the bill. It would be difficult for retailers to know what is in every video game.

Testified: (In support) Sherwin Cotler, Clinical Psychologist; Delight Roberts, Children's Alliance; Bill Hanson, Washington Council of Police and Sheriffs; Larry Pederson, Community Network; Cristal Downing; Kristen Rogers, National Association of Social Workers; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Carol Taylor Cann, Washington State Parent Teacher Association; Connie Umphred, Ph. D., Washington State Psychological Association; Dorothy Marsh, League of Women Voters of Thurston County; and John E. Gabrielson, Pierce County Beekeepers Association.

(Opposed) Jerry Sheehan, American Civil Liberties Union; Brad Boswell and Jennifer Byron, Interactive Digital Software Association; and Tom Paine, Video Software Dealers Association.

(With concerns) Irene Roberts, Washington Federation of Business and Professional Women; and Alan Mountjoy-Venning.