

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	5 - 0 - 0
Yeas:	Bonamici, Dingfelder, Kruse, Whitsett, Prozanski
Nays:	0
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	5/25, 6/1

WHAT THE MEASURE DOES: Repeals ORS 167.045, furnishing sexually explicit material to a minor, and repeals most of ORS 167.057, the luring of minors, with the exception of the inducing provision (ORS 167.057(1)(b)(B)) because the United States Court of Appeals for the 9th Circuit found these provisions unconstitutional. See *Powell's Books Inc. v. Kroger*, 622 F.3d 1202 (2010).

ISSUES DISCUSSED:

- Leaving unconstitutional statutes in the Oregon Revised Statutes can be a trap for the unwary

EFFECT OF COMMITTEE AMENDMENT: Replaces the measure.

BACKGROUND: The 2007 Legislative Assembly enacted House Bill 2843, which was the result of a bipartisan coalition from the House and Senate, to address problems related to pornography and children and the luring of minors for sexual conduct and activity. It created two new crimes: furnishing sexually explicit material to a child (a Class A misdemeanor); and luring a minor (a Class C felony). In 2010, the United States Court of Appeals for the 9th Circuit found ORS 167.504, furnishing sexually explicit material to a minor, unconstitutional and found most of ORS 167.057, the luring statute, with the exception of the inducing provision (ORS 167.057(1)(b)(B)), unconstitutional. See *Powell's Books Inc. v. Kroger*, 622 F.3d 1202 (2010).

Although the 9th Circuit found these provisions unconstitutional, they still are set forth in the Oregon Revised Statutes even though they are unenforceable. Consequently, they are a trap for law enforcement officers who may read these statutes and make an arrest without realizing they are unconstitutional and thus unenforceable. This could subject law enforcement officers to civil liability.

In addition to repealing ORS 167.504 and all but section (1)(b)(B) of ORS 167.057, House Bill 3323 A, removes cross-references to these provisions in other statutes including the statute of limitations