

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass

Vote: 9 - 0 - 1

Yeas: Garrett, Nolan, Olson, Schaufler, Tomei, Wand, Whisnant, Barker, Krieger

Nays: 0

Exc.: Hicks

Prepared By: Aaron Knott, Counsel

Meeting Dates: 3/24, 4/13

WHAT THE MEASURE DOES: Modifies the definition of “visual depiction” in crimes relating to child pornography. Modifies the definition of “knowingly possess or control” as it pertains to a visual recording of child pornography.

ISSUES DISCUSSED:

- Judicial decisions referencing the legal difference between accessing pornography remotely and downloading pornography to a computer
- Impact of internet technologies on the distribution and prosecution of child pornography
- Possibility of an accidental access of child pornography on the internet

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 163.665-163.693 govern the prosecution of crimes involving child pornography. ORS 163.665 contains the definitions applicable within this section. ORS 163.665(4) defines “visual depiction” as including but not limited to photographs, films, videotapes, pictures or computer generated images or pictures, whether made or produced by electronic, mechanical or other means. House Bill 3323 modifies the definition of “visual depiction” by removing photographs, films, videotapes, pictures or computers and replacing these with “visual recording”, which is subsequently defined in a new subsection as including but not limited to photographs, films, videotapes and computer and other digital pictures, regardless of the manner in which the recording is stored. The practical import of this modification is an attempt to capture instances where a defendant views pornography on a third party website but does not download the images to his or her computer, print the images or retain the images.

ORS 163.684-163.389 criminalizes the knowing possession of a visual depiction or recording of sexually explicit conduct involving a child. House Bill 3323 expands the definition of “knowingly possess” to include knowingly accesses or views a visual depiction of sexually explicit conduct. The measure also attempts to capture the access of child pornography on websites without the retention of a physical or electronic copy of the materials viewed.