

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Be Adopted and Be Referred to the Committee on Rules by Prior Reference
Vote:	9 - 1 - 0
Yeas:	Garrett, Hicks, Olson, Schaufler, Tomei, Wand, Whisnant, Barker, Krieger
Nays:	Nolan
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	4/15, 4/19

WHAT THE MEASURE DOES: Refers to the voters an amendment to the Oregon Constitution to allow the Legislative Assembly to prohibit the furnishing of sexually explicit materials to minors so long as the prohibition is consistent with the United States Constitution.

ISSUES DISCUSSED:

- Difficulty in protecting children from hard-core pornography
- Uniqueness of the Oregon Constitution

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The 2007 legislature, in enacting House Bill 2843, created the crimes of furnishing sexually explicit material to a child, ORS 167.054, and using sexually explicit material for the purpose of luring a minor, ORS 167.057. This bill was in response to the *State v. Maynard*, 168. App.118, holding the predecessor statute, ORS 167.065, in violation of Article 1, section 8, of the Oregon Constitution. However, the 9th Federal Circuit Court found the ORS 167.054 unconstitutional and part of ORS 167.57 unconstitutional as being overly broad, *Powell's Books v. Kroger*, No. 09-35154 (2010).

The Oregon Supreme Court and the United States Supreme Court use two different standards in analyzing pornography. The Oregon Supreme Court will find unconstitutional any law directed to the content of the communication unless it fits within some historical exceptions that were well established when the first American guarantees of freedom of expression were adopted. Examples of historical exceptions include perjury, solicitation or verbal assistance in crime, some forms of theft, forgery and fraud. *State. Robertson*, 293 402 (1982). However, the Oregon Supreme Court did find that child pornography was not protected speech based on harm to children, *State v. Stoneman*, 323 Or 536, (1996). The United States Supreme Court has used a different standard. It will find material obscene if the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, if the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and if the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." *Miller v. California*, 413 U.S. 15 (1973). It remains to be seen whether Oregon can satisfy both the Oregon and United States Constitutions when enacting legislation intended to protect children from pornography.

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This summary has not been adopted or officially endorsed by action of the committee.