

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass and Be Referred to the Committee on Rules
Vote:	5 - 0 - 0
Yeas:	Bonamici, Dingfelder, Kruse, Whitsett, Prozanski
Nays:	0
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	3/2, 4/20, 4/21

WHAT THE MEASURE DOES: Creates an affirmative defense for juveniles who have taken a picture of their intimate body parts or other juvenile’s intimate body parts, copied or disseminated these pictures, possessed or controlled these pictures, or failed to report these pictures. Applies this defense to a defendant who is less than three years older than the victim at the time of the offense. The defense does not apply if the victim was under twelve, or the defendant has a prior conviction for these crimes. The three year age defense does not apply to a defendant who sold the images or used them for extortion. Creates the new offense of inappropriate use of a sexual image that applies to juveniles and those who are within three years of the victim and classifies it as an A misdemeanor. Gives the judge discretion to impose a sentence other than a Measure 11 sentence if the defendant is under eighteen and the victim under twelve years of age. Requires the court to consider the age of the victim and the defendant, the nature of the pictures and the criminal history of the defendant.

ISSUES DISCUSSED:

- “Sexting”
- Need for milder sanctions for teenagers sending inappropriate images
- Brain development

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: “Sexting” is the term used when someone, usually a juvenile, often using the camera on a cell phone, takes a picture of that person’s, or another person’s intimate body part, and then forwards the picture to another person or persons. Across the county, teenagers are being charged with serious sex offenses, offenses that can result in prison and registration as sex offenders.¹

In Oregon, a teenager who uses his or her cell phone for these purposes could be charged with Using a Child in a Display of Sexually Explicit Conduct, ORS 163.670. This is a relatively recent phenomenon. When the law was originally enacted in 1985, cell phones did not exist, let alone cell phones with cameras that could almost instantaneously post pictures on the Internet. This may very well be a case of technology outpacing the law with unintended consequences. The penalty for displaying sexually explicit conduct of a minor is a mandatory seventy months and also requires the person to register as a sex offender.

The recently enacted Measure 73 references ORS 131.505 for the purposes of defining “previous conviction.” As a result, a person, including a juvenile, with no prior criminal record can be found guilty during the same criminal trial

¹ MSNBC.com, January 15, 2010; OregonLive.com, February 17, 2010; USA Today.com, March 11, 2009; CNN.com/crime, April 8, 2009

proceeding of two separate acts of Using a Child in a Display of Sexually Explicit Conduct with the first conviction used to enhance the sentence for the second. It is not uncommon for juveniles to send cell phone camera pictures of intimate body parts to more than one individual at more than one time. Measure 73 calls for a minimum of twenty-five years for a second offense.