

**OBSCENITY EXEMPTIONS FOR EDUCATIONAL PURPOSES INVALIDATES
STATE ARMFUL TO MINORS STATUTES**

ALABAMA:

Alabama recodified its criminal law based in part on the ALI-MPC in 1980.

§ 13A-12-200.3. Dissemination of obscene material; penalty; disposition of fines.

It shall be unlawful for any person to knowingly procure or write advertisement for obscene material or disseminate publicly any obscene material. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail for not more than one year.

If a person is held under this section in the county jail, one-half of any fines collected and due to be deposited to the State General Fund for violations of this section shall be paid by the Comptroller to the general fund of the county where the person is held for the operation of the county jail.

Credits

(Acts 1989, No. 89-402, p. 791, § 5; Act 98-467, p. 893, § 6.)

Ala. Code 1975 § 13A-12-200.3, AL ST § 13A-12-200.3

Ala. Code § 13A-12-200.4 Affirmative defenses.

It shall be an affirmative defense to a charge of violating Sections 13A-12-200.2 and 13A-12-200.3 that the act charged was done for a bona fide medical, scientific, educational, legislative, judicial, or law enforcement purpose.

Credits

(Acts 1989, No. 89-402, p. 791, § 6.)

Ala. Code 1975 § 13A-12-200.4, AL ST § 13A-12-200.4

ALASKA:

Alaska recodified its criminal law based in part on the ALI-MPC in 1980.

Alaska Stat. Ann. § 11.61.128 (West)

§ 11.61.128. Distribution of indecent material to minors

(a) A person commits the crime of distribution of indecent material to minors if

(1) the person, being 18 years of age or older, intentionally distributes or possesses with intent to distribute any material described in (2) and (3) of this subsection to either

(A) a child that the person knows is under 16 years of age; or

- (B) another person that the person believes is a child under 16 years of age;
- (2) the person knows that the material depicts the following actual or simulated conduct:
 - (A) sexual penetration;
 - (B) the lewd touching of a person's genitals, anus, or female breast;
 - (C) masturbation;
 - (D) bestiality;
 - (E) the lewd exhibition of a person's genitals, anus, or female breast; or
 - (F) sexual masochism or sadism; And
- (3) the material is harmful to minors.
- (b) In this section, it is not a defense that the victim was not actually under 16 years of age.
- (c) In this section, "harmful to minors" means
 - (1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;
 - (2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and
 - (3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age.
- (d) Except as provided in (e) of this section, distribution of indecent material to minors is a class C felony.
- (e) Distribution of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

Credits

SLA 2005, ch. 97, § 2. Amended by SLA 2007, ch. 24, § 6, eff. July 1, 2007; SLA 2010, ch. 18, §§ 9 to 12, eff. July 1, 2010; 3rd Sp. Sess. 2012, ch. 1, § 5, eff. July 1, 2012. Notes of Decisions containing your search terms (0)View all 2AS § 11.61.128, AK ST § 11.61.128

[No exemption for libraries, schools, museums in the statute]

ARIZONA:

Arizona recodified its criminal law based in part on the ALI-MPC in 1978.

Ariz. Rev. Stat. Ann. § 13-3506

§ 13-3506. Furnishing harmful items to minors; applicability; classification

A. It is unlawful for any person, with knowledge of the character of the item involved, to recklessly furnish, present, provide, make available, give, lend, show, advertise or distribute to minors any item that is harmful to minors.

B. This section does not apply to the transmission or sending of items over the internet.

C. A violation of this section is a class 4 felony.

Credits

Added as § 13-536 by Laws 1970, Ch. 71, § 2. Amended by Laws 1972, Ch. 172, § 3; Laws 1974, Ch. 98, § 2; Laws 1976, Ch. 159, § 3, eff. June 27, 1976; Laws 1977, Ch. 125, § 6, eff. May 31, 1977. Renumbered as § 13-3506 by Laws 1977, Ch. 142, § 98, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 219, eff. Oct. 1, 1978; Laws 1986, Ch. 411, § 3; Laws 2000, Ch. 189, § 25; Laws 2001, Ch. 94, § 2.

Arizona Revised Statutes § 13-3506.01

§ 13-3506.01. Furnishing harmful items to minors; internet activity; classification; definitions

A. It is unlawful for any person, with knowledge of the character of the item involved, to intentionally or knowingly transmit or send to a minor by means of electronic mail, personal messaging or any other direct internet communication an item that is harmful to minors when the person knows or believes at the time of the transmission that a minor in this state will receive the item.

B. This section does not apply to:

1. Posting material on an internet web site, bulletin board or newsgroup.
2. Sending material via a mailing list or listserv that is not administered by the sender. For the purposes of this paragraph, “mailing list” or “listserv” means a method of internet communication where a message is sent to an internet address and then is retransmitted to one or more subscribers to the mailing list or listserv.

C. It is not a defense to a prosecution for a violation of this section that the recipient of the transmission was a peace officer posing as a minor.

D. A violation of this section is a class 4 felony.

E. The failure to report a violation of this section is a class 6 felony as prescribed by § 13-3620.

F. For the purposes of this section:

1. “Internet” means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the transmission control protocol or internet protocol or any successor protocol to transmit information.
2. “Internet web site” means a location where material placed in a computer server-based file archive is publicly accessible, over the internet, using hypertext transfer protocol or any successor protocol.

Credits

Added by Laws 2001, Ch. 94, § 3. Amended by Laws 2001, Ch. 334, § 15; Laws 2003, Ch. 222, § 1; Laws 2004, Ch. 29, § 3.

Ariz. Rev. Stat. Ann. § 13-3501

1. “Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:(a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:(i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.(ii) Portrays the description or representation in a patently offensive way.(b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

2. "Item" means any material or performance which depicts or describes sexual activity and includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, live or recorded telephone message or other similar items whether tangible or intangible and including any performance, exhibition, transmission or dissemination of any of the above. An item also includes a live performance or exhibition which depicts sexual activity to the public or an audience of one or more persons. An item is obscene within the meaning of this chapter when all of the following apply:(a) The average person, applying contemporary state standards, would find that the item, taken as a whole, appeals to the prurient interest. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.(b) The average person, applying contemporary state standards, would find that the item depicts or describes, in a patently offensive way, sexual activity as that term is described in this section.(c) The item, taken as a whole, lacks serious literary, artistic, political or scientific value.

ARKANSAS:

Arkansas recodified its criminal law based in part on the ALI-MPC in 1976.

Ark. Code Ann. § 5-68-308

§ 5-68-308. Obscenity defenses

- (a) No employee is liable to prosecution under this subchapter for promoting or possessing with intent to promote any obscene motion picture if the employee is acting within the scope of his or her regular employment.
- (b)(1) As used in subsection (a) of this section, "employee" means any person regularly employed by an owner or operator of a motion picture theater if the person:(A) Has no financial interest other than salary or wages in the ownership or operation of the motion picture theater;(B) Has no financial interest in or control over the selection of a motion picture shown in the theater; and(C) Is working within the motion picture theater where he or she is regularly employed.(2) However, "employee" does not include a manager of a motion picture theater.
- (c) No employee, director, or trustee of a bona fide school, museum, or public library, acting within the scope of his or her regular employment, is liable to prosecution for a violation of this subchapter for disseminating a writing, film, slide, drawing, or other visual reproduction that is claimed to be obscene.

Credits

Acts of 1981 (Ex. Sess.), Act 28, § 8.
Formerly A.S.A. 1947, § 41-3585.7.

CALIFORNIA:

Cal. Penal Code § 313.1 (West):

§ 313.1 Distribution or exhibition to minors; misrepresentation as parent or guardian; vending machines; blinder racks; adults only area; video recording alterations; distribution by telephone; defenses; confidentiality

Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4.

It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

Credits

(Added by Stats.1969, c. 248, p. 596, § 1. Amended by Stats.1970, c. 257, p. 522, § 1; Stats.1976, c. 1121, p. 5024, § 1; Stats.1987, c. 471, § 1; Stats.1988, c. 909, § 1; Stats.1988, c. 1392, § 7; Stats.1989, c. 1058, § 3; Stats.1990, c. 877 (S.B.2475), § 1; Stats.1993, c. 559 (A.B.538), § 1; Stats.1994, c. 38 (A.B.17), § 1.)

Cal. Penal Code § 313.2 (West):

§ 313.2. Exemption of parent or guardian

(a) Nothing in this chapter shall prohibit any parent or guardian from distributing any harmful matter to his child or ward or permitting his child or ward to attend an exhibition of any harmful matter if the child or ward is accompanied by him.

(b) Nothing in this chapter shall prohibit any person from exhibiting any harmful matter to any of the following:

(1) A minor who is accompanied by his parent or guardian.

(2) A minor who is accompanied by an adult who represents himself to be the parent or guardian of the minor and whom the person, by the exercise of reasonable care, does not have reason to know is not the parent or guardian of the minor.

Credits

(Added by Stats.1969, c. 248, p. 596, § 1. Amended by Stats.1970, c. 257, p. 522, § 2.)

Cal. Penal Code § 313.3 (West):

§ 313.3. Defense.

It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes.

Credits

(Added by Stats.1969, c. 248, p. 596, § 1.)

COLORADO:

Colorado recodified its criminal law based in part on the ALI-MPC in 1972.

Colo. Rev. Stat. Ann. § 18-7-501 (West)

(2) “Harmful to children” means that quality of any description or representation, in whatever form, of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:(a) Taken as a whole, predominantly appeals to the prurient interest in sex of children;(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and(c) Is, when taken as a whole, lacking in serious literary, artistic, political, and scientific value for children.

Credits

Added by Laws 1981, H.B.1310, § 1.

Colo. Rev. Stat. Ann. § 18-7-502 (West)

(1) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a child:(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children; or(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(2) It shall be unlawful for any person knowingly to sell to a child an admission ticket or pass, or knowingly to admit a child to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by children not admitted to any such premises.

(3) It shall be unlawful for any child falsely to represent to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is eighteen years of age or older, with the intent to procure any material set forth in subsection (1) of this section, or with the intent to procure his admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(4) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is the parent or guardian of any juvenile, or that any child is eighteen years of age or older, with the intent to procure any

material set forth in subsection (1) of this section, or with the intent to procure any child's admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(5) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment frequented by children or where children are or may be invited as part of the general public:(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children; or(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (5), or explicit verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.(6) A violation of any provision of this section is a class 2 misdemeanor.

Credits

Added by Laws 1981, H.B.1310, § 1.

Colo. Rev. Stat. Ann. § 18-7-503

Nothing contained in this part 5 shall be construed to apply to:

(a) The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher education;

(b) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds.

Credits

Added by Laws 1981, H.B.1310, § 1.

CONNECTICUT

Connecticut recodified its criminal law based in part on the ALI-MPC in 1971.

Conn. Gen. Stat. Ann. § 53a-194 (West)

§ 53a-194. Obscenity: Class B misdemeanor

(a) A person is guilty of obscenity when, knowing its content and character, he promotes, or possesses with intent to promote, any obscene material or performance.

(b) Obscenity is a class B misdemeanor.

Credits

(1969, P.A. 828, § 196, eff. Oct. 1, 1971.)

Conn. Gen. Stat. Ann. § 53a-195 (West):

In any prosecution for obscenity it is a defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same.

Credits

(1969, P.A. 828, § 197, eff. Oct. 1, 1971; 1992, P.A. 92-260, § 77.)

DELAWARE:

Delaware recodified its criminal law based in part on the ALI-MPC in 1973.

Del. Code Ann. tit. 11, § 1361 (West)

§ 1361. Obscenity; acts constituting; class E felony or class G felony; subsequent violations

(a) A person is guilty of obscenity when the person knowingly:(1) Sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene;(2) Presents or directs an obscene play, dance or performance or participates in that portion thereof which makes it obscene;(3) Publishes, exhibits or otherwise makes available any obscene material;(4) Possesses any obscene material for purposes of sale or other commercial dissemination; or(5) Permits a person under the age of 12 to be on the premises where material harmful to minors, as defined by 11 Del. C. § 1365, is either sold or made available for commercial distribution and which material is readily accessible to or easily viewed by such minors. Any material covered by this paragraph shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located 5 feet or more above the floor of the subject premises or if the material is concealed so that no more than the top 3 inches is visible to the passerby.

(b) Obscenity is a class E felony if a person sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene to a person under the age of 18. In all other cases, obscenity is a class G felony. In addition to the above penalties, upon conviction of obscenity involving live conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 6 months.

Credits

58 Laws 1972, ch. 497, § 1; 60 Laws 1976, ch. 445, § 1; 61 Laws 1977, ch. 121, § 1; 63 Laws 1981, ch. 111, §§ 1-3; 67 Laws 1989, ch. 130, § 8; 67 Laws 1990, ch. 350, §§ 11, 12; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 74 Laws 2003, ch. 71, § 2, eff. June 30, 2003; 74 Laws 2004, ch. 380, §§ 1, 2, eff. July 19, 2004.

Del. Code Ann. tit. 11, § 1362 (West)

§ 1362. Obscenity; defenses

In any prosecution for obscenity it is an affirmative defense that dissemination was restricted to:

- (1) Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or
- (2) Noncommercial dissemination to personal associates of the accused who are known by the accused not to object to the receipt of such material.

Credits

Laws 1972, ch. 497, § 1.

DISTRICT OF COLUMBIA:

D.C. Code § 22-2201

§ 22-2201. Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception.

(a)(1) It shall be unlawful in the District of Columbia for a person knowingly:(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;(B) To present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;(C) To pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;(D) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;(E) To create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;(F) To advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or(G) To advertise or otherwise promote the sale of material represented or held out by such person to be obscene.(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than 3 copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.(B) For purposes of paragraph (1) of this subsection, the term “knowingly” means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1) of this subsection, which were named in the charge against

such person and which were found in the possession or under the control of such person at the time of such person's arrest.

(b)(1) It shall be unlawful in the District of Columbia for any person knowingly:(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor:(i) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or(ii) Any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors;(B) To exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.(2) For purposes of paragraph (1) of this subsection:(A) The term "minor" means any person under the age of 17 years.(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of:(i) The character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and(ii) The age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the 1st offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. A person convicted of a 2nd or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$1,000 and not more than the amount set forth in § 22-3571.01 or imprisoned not less than 6 months or more than 3 years, or both.

Credits

(Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872; Dec. 27, 1967, 81 Stat. 738, Pub. L. 90-226, title VI, § 606; May 21, 1994, D.C. Law 10-119, § 2(p), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(m), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(u), 60 DCR 2064.)

FLORIDA:

Florida recodified its criminal law based in part on the ALI-MPC in 1975.

Fla. Stat. Ann. § 847.001

(6) “Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance “harmful to minors.”

(8) “Minor” means any person under the age of 18 years.

(9) “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.

Fla. Stat. Ann. § 847.012 (West):

Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty

(1) As used in this section, “knowingly” means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:(a) The character and content of any material described in this section which is reasonably susceptible of examination by the defendant; and (b) The age of the minor.

(2) A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of this section.

(3) A person may not knowingly sell, rent, or loan for monetary consideration to a minor:(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

(4) A person may not knowingly use a minor in the production of any material described in subsection (3), regardless of whether the material is intended for distribution to minors or is actually distributed to minors.

(5) An adult may not knowingly distribute to a minor on school property, or post on school property, any material described in subsection (3). As used in this subsection, the term “school property” means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic. This subsection does not apply to the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers as those terms are defined in s. 1012.01.

(6) Any person violating any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Every act, thing, or transaction forbidden by this section constitutes a separate offense and is punishable as such.

Credits

Laws 1967, c. 67-153, §§ 1 to 7; Laws 1969, c. 69-41, § 1; Laws 1971, c. 71-136, § 1054; Laws 1971, c. 71-355, § 171; Laws 1973, c. 73-334, § 34; Laws 1983, c. 83-77, § 1; Laws 1986, c. 86-38, § 2; Laws 1986, c. 86-238, § 3; Laws 1988, c. 88-283, § 5. Amended by Laws 1997, c. 97-102, § 1349, eff. July 1, 1997; Laws 2008, c. 2008-120, § 3, eff. July 1, 2008; Laws 2013, c. 2013-75, § 1, eff. Oct. 1, 2013.

GEORGIA:

Georgia enacted a recodification of its criminal law based in part on the ALI-MPC in 1969

Ga. Code Ann. § 16-12-103 (West)

Unlawful disposition of material to minors

(a) It shall be unlawful for any person knowingly to sell or loan for monetary consideration or otherwise furnish or disseminate to a minor:(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or

explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(b)(1) It shall be unlawful for any person knowingly to sell or furnish to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors or exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by minors not admitted to any such premises. (2) It shall be unlawful for any person knowingly to sell or to furnish to a person under the age of 21 an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is harmful to minors and which, in whole or in part, consists of sexually explicit nudity on the part of one or more live performers; sexual conduct on the part of one or more live performers; or sadomasochistic abuse on the part of one or more live performers.

(c) It shall be unlawful for any person to falsely represent his or her age to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent with the intent to unlawfully procure any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(d) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent that he or she is the parent or guardian of any minor or knowingly to make a false representation with respect to the age of another person with the intent to unlawfully procure for such other person any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such other person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(e) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment or at any other public place frequented by minors or where minors are or may be invited as part of the general public:(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

Credits

Laws 1983, p. 1437, § 2; Laws 1984, p. 22, § 16; Laws 1984, p. 1495, § 3; Laws 1996, p. 273, § 2; Laws 2005, Act 392, § 1, eff. July 1, 2005.

§ 16-12-104. Exception as to libraries

The provisions of Code Section 16-12-103 shall not apply to any public library operated by the state or any of its political subdivisions nor to any library operated as a part of any school, college, or university

Credits

Laws 1984, p. 1495, § 3.

HAWAII:

Hawaii recodified its criminal law based in part on the ALI-MPC in 1973.

Haw. Rev. Stat. § 712-1210

“Pornographic for minors”. Any material or performance is “pornographic for minors” if:

(1) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:

(a) It is presented in such a manner that the average person applying contemporary community standards, would find that, taken as a whole, it appeals to a minor’s prurient interest; and

(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value; or

(2) It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:

(a) It is presented in such a manner that the average person, applying contemporary community standards, would find that, taken as a whole, it appeals to a minor’s prurient interest; and

(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value.

Haw. Rev. Stat. § 712-1215 (West):

§ 712-1215. Promoting pornography for minors

(1) A person commits the offense of promoting pornography for minors if:(a) Knowing its character and content, the person disseminates to a minor material which is pornographic for minors; or(b) Knowing the character and content of a motion picture film or other performance which, in whole or in part, is pornographic for minors, the person:(i) Exhibits such motion picture film or other performance to a minor; or(ii) Sells to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture film or other performance; or(iii) Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.

(2) Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor or to a sibling of the minor, or to a person who commits any act specified therein in the person's capacity and within the scope of the person's employment as a member of the staff of any public library.

(3) Promoting pornography for minors is a class C felony.

Credits

Laws 1972, ch. 9, § 1; Laws 1974, ch. 190, § 1; Laws 1984, ch. 90, § 1; Laws 1988, ch. 283, § 1; Laws 2000, ch. 21, § 2.

COMMENTARY ON § 712-1215 This section has no direct counterpart in previous Hawaii law. It is derived primarily from New York Revised Penal Law § 235.21 and its immediate predecessor, New York Penal Law § 484(h)--(i). It is based on the State of Hawaii's role as *parens patriae*, and the duties and powers which attach to that role

IDAHO:

§ 18-1513. Obscene materials--Dissemination to minors—Policy

It is hereby declared to be the policy of the legislature to restrain the distribution, promotion, or dissemination of obscene material, or of material harmful to minors, or the performance of obscene performances, or performances harmful to minors. It is found that such materials and performances are a contributing factor to crime, to juvenile crime, and also a basic factor in impairing the ethical and moral development of our youth.

Credits

S.L. 1972, ch. 336, § 1.

§ 18-1514. Obscene materials—Definitions

The following definitions are applicable to this act:

1. “Minor” means any person less than eighteen (18) years of age.
2. “Nudity” means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
3. “Sexual conduct” means any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, the breast.
4. “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
5. “Sado-masochistic abuse” means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.
6. “Harmful to minors” includes in its meaning one or both of the following:
 - (a) The quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
 - (1) appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards; and

(2) depicts or describes representations or descriptions of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse which are patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors and includes, but is not limited to, patently offensive representations or descriptions of:

(i) intimate sexual acts, normal or perverted, actual or simulated; or

(ii) masturbation, excretory functions or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors, according to prevailing standards in the adult community, with respect to what is suitable for minors.

(b) The quality of any material or of any performance, or of any description or representation, in whatever form, which, as a whole, has the dominant effect of substantially arousing sexual desires in persons under the age of eighteen (18) years.

7. “Material” means anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.

8. “Performance” means any play, motion picture, dance or other exhibition performed before an audience.

9. “Promote” means to manufacture, issue, sell, give, provide, deliver, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

10. “Knowingly” means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry.

§ 18-1515. Disseminating material harmful to minors--Defined—Penalty

A person is guilty of disseminating material harmful to minors when: 1. He knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or he knowingly sells or loans to a minor for monetary consideration: (a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or (c) Any other material harmful to minors.

Credits

S.L. 1972, ch. 336, § 1.

§ 18-1517. Disseminating material harmful to minors—Defenses

In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

- (a) The defendant had reasonable cause to believe that the minor involved was eighteen (18) years old or more, or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older.
- (b) The minor involved was accompanied by his parent or legal guardian, or by an adult and the adult represented that he was the minor's parent or guardian or an adult and signed a written statement to that effect.
- (c) The defendant was the parent or guardian of the minor involved.
- (d) The defendant was a bona fide school, college, university, museum or public library, or was acting in his capacity as an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Credits

S.L. 1972, ch. 336, § 1.

ILLINOIS:

Illinois recodified its criminal law based in part upon the ALI-MPC in 1962.

720 Ill. Comp. Stat. Ann. 5/11-20

Formerly cited as IL ST CH 38 ¶ 11-20

5/11-20. Obscenity

§ 11-20. Obscenity.

(a) Elements of the Offense. A person commits obscenity when, with knowledge of the nature or content thereof, or recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof, he or she:

- (1) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
- (2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
- (3) Publishes, exhibits or otherwise makes available anything obscene; or
- (4) Performs an obscene act or otherwise presents an obscene exhibition of his or her body for gain; or
- (5) Creates, buys, procures or possesses obscene matter or material with intent to disseminate it in violation of this Section, or of the penal laws or regulations of any other jurisdiction; or
- (6) Advertises or otherwise promotes the sale of material represented or held out by him or her to be obscene, whether or not it is obscene.

(b) Obscene Defined.

Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd

exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value.

(c) Interpretation of Evidence.

Obscenity shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.

Where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is lacking in serious literary, artistic, political or scientific value.

In any prosecution for an offense under this Section evidence shall be admissible to show:

- (1) The character of the audience for which the material was designed or to which it was directed;
- (2) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
- (3) The artistic, literary, scientific, educational or other merits of the material, or absence thereof;
- (4) The degree, if any, of public acceptance of the material in this State;
- (5) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;
- (6) Purpose of the author, creator, publisher or disseminator.

(d) Sentence.

Obscenity is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.

(e) Permissive Inference.

The trier of fact may infer an intent to disseminate from the creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of obscenity specially adapted for reproducing multiple copies, or the possession of more than 3 copies of obscene material.

(f) Affirmative Defenses.

It shall be an affirmative defense to obscenity that the dissemination:

- (1) Was not for gain and was made to personal associates other than children under 18 years of age;
- (2) Was to institutions or individuals having scientific or other special justification for possession of such material.

(g) Forfeiture of property. A person who has been convicted previously of the offense of obscenity and who is convicted of a second or subsequent offense of obscenity is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963.

Credits

Laws 1961, p. 1983, § 11-20, eff. Jan. 1, 1962. Amended by Laws 1961, p. 2456, § 1, eff. Aug. 1, 1961; Laws 1965, p. 964, § 1, eff. July 1, 1965; Laws 1967, p. 2975, § 1, eff. Aug. 14, 1967; P.A. 77-2638, § 1, eff. Jan. 1, 1973; P.A. 84-709, § 1, eff. Jan. 1, 1986; P.A. 85-1014, § 1, eff. Jan. 1, 1989; P.A. 96-712, § 10, eff. Jan. 1, 2010; P.A. 96-1551, Art. 2, § 5, eff. July 1, 2011.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 11-20.

720 Ill. Comp. Stat. Ann. 5/11-21

§ 11-21. Harmful material.

(a) As used in this Section:

“Distribute” means to transfer possession of, whether with or without consideration.

“Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when, taken as a whole, it (i) predominately appeals to the prurient interest in sex of minors, (ii) is patently offensive to prevailing standards in the adult community in the State as a whole with respect to what is suitable material for minors, and (iii) lacks serious literary, artistic, political, or scientific value for minors.

“Knowingly” means having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents.

“Material” means (i) any picture, photograph, drawing, sculpture, film, video game, computer game, video or similar visual depiction, including any such representation or image which is stored electronically, or (ii) any book, magazine, printed matter however reproduced, or recorded audio of any sort.

“Minor” means any person under the age of 18.

“Nudity” means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

“Sado-masochistic abuse” means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one clothed for sexual gratification or stimulation.

“Sexual conduct” means acts of masturbation, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

“Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(b) A person is guilty of distributing harmful material to a minor when he or she:

(1) knowingly sells, lends, distributes, exhibits to, depicts to, or gives away to a minor, knowing that the minor is under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age:

(A) any material which depicts nudity, sexual conduct or sado-masochistic abuse, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which taken as a whole is harmful to minors;

(B) a motion picture, show, or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse and is harmful to minors; or

(C) an admission ticket or pass to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation; or

(2) admits a minor to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation, knowing that the minor is a person under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age.

(c) In any prosecution arising under this Section, it is an affirmative defense:

(1) that the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently

official document purporting to establish that the minor was 18 years of age or older, which was relied upon by the accused;

(2) that the defendant was in a parental or guardianship relationship with the minor or that the minor was accompanied by a parent or legal guardian;

(3) that the defendant was a bona fide school, museum, or public library, or was a person acting in the course of his or her employment as an employee or official of such organization or retail outlet affiliated with and serving the educational purpose of such organization;

(4) that the act charged was committed in aid of legitimate scientific or educational purposes; or

(5) that an advertisement of harmful material as defined in this Section culminated in the sale or distribution of such harmful material to a child under circumstances where there was no personal confrontation of the child by the defendant, his or her employees, or agents, as where the order or request for such harmful material was transmitted by mail, telephone, Internet or similar means of communication, and delivery of such harmful material to the child was by mail, freight, Internet or similar means of transport, which advertisement contained the following statement, or a substantially similar statement, and that the defendant required the purchaser to certify that he or she was not under the age of 18 and that the purchaser falsely stated that he or she was not under the age of 18: "NOTICE: It is unlawful for any person under the age of 18 to purchase the matter advertised. Any person under the age of 18 that falsely states that he or she is not under the age of 18 for the purpose of obtaining the material advertised is guilty of a Class B misdemeanor under the laws of the State."

(d) The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom such material was sold, lent, distributed or given, unless it appears from the nature of the matter or the circumstances of its dissemination or distribution that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.

(e) Distribution of harmful material in violation of this Section is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.

(f) Any person under the age of 18 who falsely states, either orally or in writing, that he or she is not under the age of 18, or who presents or offers to any person any evidence of age and identity that is false or not actually his or her own with the intent of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material is guilty of a Class B misdemeanor.

(g) A person over the age of 18 who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes to, or sends, or causes to be sent, or exhibits to, or offers to distribute, or exhibits any harmful material to a person that he or she believes is a minor is guilty of a Class A misdemeanor. If that person utilized a computer web camera, cellular telephone, or any other type of device to manufacture the harmful material, then each offense is a Class 4 felony.

(h) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

INDIANA:

Indiana recodified its criminal law based in part on the ALI-MPC in 1977.

Ind. Code §35-49-2-2 When matters or performances are harmful to minors.

A matter or performance is harmful to minors for purposes of this article if:

- (1) it describes or represents, in any form, nudity, sexual conduct, sexual excitement, or sado-masochistic abuse;
- (2) considered as a whole, it appeals to the prurient interest in sex of minors;
- (3) it is patently offensive to prevailing standards in the adult community as a whole with respect to what it is suitable matter for or performance before minors; and
- (4) considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

Ind. Code Ann. § 35-49-3-3 (West)

Dissemination of matter or conducting performance harmful to minors

Sec. 3. (a) Except as provided in subsection (b), a person who knowingly or intentionally:(1) disseminates matter to minors that is harmful to minors;(2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;(3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;(4) engages in or conducts a performance before minors that is harmful to minors;(5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;(6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or(7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors; commits a Level 6 felony.

- (b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer

network unless:(1) the matter is obscene under IC 35-49-2-1;(2) the matter is child pornography under IC 35-42-4-4; or(3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

Credits

As added by P.L.311-1983, SEC.33. Amended by P.L.59-1995, SEC.4; P.L.3-2002, SEC.4; P.L.140-2006, SEC.35; P.L.158-2013, SEC.648, eff. July 1, 2014.

Ind. Code Ann. § 35-49-3-4 (West)

35-49-3-4 Defense to prosecution for dissemination of matter or conducting performance harmful to minors

Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show: (1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment;

(3) that the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or

(4) that the defendant was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of the defendant's employment and that the defendant had no financial interest in the place where the defendant was so employed.

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.(2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.(4) The crime was committed by a person less than twenty-two (22) years of age.(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:(1) the image is disseminated to a person other than the person:(A) who sent the image; or(B) who is depicted in the image; or(2) the dissemination of the image violates:(A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);(C)

a workplace violence restraining order issued under IC 34-26-6;(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;(F) a no contact order issued as a condition of probation;(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:(i) tribe;(ii) band;(iii) pueblo;(iv) nation; or(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;(L) an order issued under IC 35-33-8-3.2; or(M) an order issued under IC 35-38-1-30.

Credits

As added by P.L.311-1983, SEC.33. Amended by P.L.180-2011, SEC.4; P.L.158-2013, SEC.649, eff. July 1, 2014.

IOWA:

Iowa recodified its criminal law based in part on the ALI-MPC in 1978.

728.2. Dissemination and exhibition of obscene material to minors

Any person, other than the parent or guardian of the minor, who knowingly disseminates or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed, is guilty of a public offense and shall upon conviction be guilty of a serious misdemeanor.

Credits

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2802, eff. Jan. 1, 1978.

728.7. Exemptions for public libraries and educational institutions. Nothing in this chapter prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is participating. Nothing in this chapter prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library.

Credits

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2806, eff. Jan. 1, 1978.

KANSAS:

Kansas recodified its criminal law based in part on the ALI-MPC in 1970.

K.S.A. 21-6401

Formerly cited as K.S.A. 21-4301; 21-4301a

21-6401. Promoting obscenity; promoting obscenity to minors

(a) Promoting obscenity is recklessly:

- (1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;
- (2) possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;
- (3) offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or
- (4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Promoting obscenity to minors is promoting obscenity, as defined in subsection (a), where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(c)(1) Promoting obscenity is a:

- (A) Class A nonperson misdemeanor, except as provided in (c)(1)(B); and
- (B) severity level 9, person felony upon a second or subsequent conviction.

(2) Promoting obscenity to minors is a:

- (A) Class A nonperson misdemeanor, except as provided in (c)(2)(B); and
- (B) severity level 8, person felony upon a second or subsequent conviction.

(3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity or promoting obscenity to minors shall be considered a conviction of promoting obscenity or promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.

(d) Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity or promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance.

(e) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be

relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

- (1) The materials or devices were promoted to emphasize their prurient appeal; or
- (2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(f) As used in this section:

(1) Any material or performance is "obscene" if:

- (A) The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;
- (B) the average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of:

- (i) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or
- (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

(C) taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value;

- (2) "material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner;
- (3) "obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy;
- (4) "performance" means any play, motion picture, dance or other exhibition performed before an audience;
- (5) "sexual intercourse" and "sodomy" mean the same as in K.S.A. 21-5501, and amendments thereto; and
- (6) "wholesaler" means a person who distributes or offers for distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(g) It shall be a defense to a prosecution for promoting obscenity and promoting obscenity to minors that the:

- (1) Persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;
- (2) defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
- (3) allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher,

instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(h) Notwithstanding the provisions of K.S.A. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; or

(2) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(i) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

Credits

Laws 2010, ch. 136, § 212, eff. July 1, 2011; Laws 2011, ch. 30, § 57, eff. July 1, 2011.

KENTUCKY:

Kentucky recodified its criminal law based in part on the ALI-MPC in 1975.

Kentucky Revised Statutes § 531.030

531.030 Distribution of obscene matter to minors

(1) A person is guilty of distribution of obscene material to minors when, knowing a person to be a minor, or having possession of such facts that he should reasonably know that such person is a minor, and with knowledge of the content and character of the material, he knowingly:

- (a) Sends or causes to be sent; or
- (b) Exhibits; or
- (c) Distributes, or offers to distribute,

obscene material to a minor.

(2) Distribution of obscene materials to minors is a Class A misdemeanor unless the defendant has previously been convicted of violation of this section or of KRS 531.020, in which case it shall be a Class D felony.

Credits

HISTORY: 1974 c 406, § 267, eff. 1-1-75

KRS § 531.070

531.070 Exemptions

The prohibitions and penalties imposed in this chapter shall not extend to persons having a bona fide scientific, educational, governmental, or other similar justification for conduct which would, except for such justification, be criminal under this chapter.

Credits

HISTORY: 1974 c 406, § 271, eff. 1-1-75

Editors' Notes

KENTUCKY CRIME COMMISSION/LRC COMMENTARY 1974:

The new statute sets forth an exemption for conduct which would otherwise be criminal under the Code. Distribution of material otherwise obscene to institutions or persons for scientific, educational or governmental purposes is justified conduct and does not expose the distributor to criminal sanctions. This exemption is designed to permit legitimate study of pornography for scholarly or scientific purposes. It is recognized by all modern codes. Prior Kentucky law recognized such an exception to KRS 436.101(7) and KRS 436.120.

LOUISIANA:

La. Rev. Stat. Ann. 14:106

§ 106. Obscenity:

A. The crime of obscenity is the intentional:

(1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.

(2)(a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.(b) Hard core sexual conduct is the public portrayal, for its own sake, and for ensuing commercial gain of:(i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or(ii) Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or(iii) Sadoomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female

breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or(iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or(v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.

(3)(a) Sale, allocation, consignment, distribution, dissemination, advertisement, exhibition, electronic communication, or display of obscene material, or the preparation, manufacture, publication, electronic communication, or printing of obscene material for sale, allocation, consignment, distribution, advertisement, exhibition, electronic communication, or display.

(b) Obscene material is any tangible work or thing which the trier of fact determines that the average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest, and which depicts or describes in a patently offensive way, hard core sexual conduct specifically defined in Paragraph (2) of this Subsection, and the work or thing taken as a whole lacks serious literary, artistic, political, or scientific value.

(4) Requiring as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication to a purchaser or consignee that such purchaser or consignee also receive or accept any obscene material, as defined in Paragraph (3) of this Subsection, for resale, distribution, display, advertisement, electronic communication, or exhibition purposes; or, denying or threatening to deny a franchise to, or imposing a penalty, on or against, a person by reason of his refusal to accept, or his return of, such obscene material.(5) Solicitation or enticement of an unmarried person under the age of seventeen years to commit any act prohibited by Paragraphs (1), (2), or (3) of this Subsection.(6) Advertisement, exhibition, electronic communication, or display of sexually violent material. "Violent material" is any tangible work or thing which the trier of facts determines depicts actual or simulated patently offensive acts of violence, including but not limited to, acts depicting sadistic conduct, whippings, beatings, torture, and mutilation of the human body, as described in Item (2)(b)(iii) of this Subsection.(7)(a) Transmission or causing the transmission by a person, knowing the content of an advertisement to be sexually explicit as defined in this Paragraph, of an unsolicited advertisement containing sexually explicit materials in an electronic communication to one or more persons within this state without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement. A "subject line" is the area of an electronic communication that contains a summary description of the content of the message.(b) As used in this Paragraph, "sexually explicit" means the graphic depiction of sex, including but not limited to sexual audio, text, or images; depiction of sexual activity; nudity; or sexually oriented language.(8)(a) Transmission or causing the transmission by a person, knowing its content to be sexually explicit as defined in this Paragraph, of an unsolicited text message containing sexually explicit materials to a

wireless telecommunications device of one or more persons within this state.(b) As used in this Paragraph:(i) “Sexually explicit” means the graphic depiction of sex, including but not limited to sexual audio, text, or images, the depiction of sexual activity, nudity, or sexually oriented language and is obscene as defined in Subparagraph (A)(3)(b) of this Section.(ii) “Wireless telecommunications device” means a cellular telephone, a text-messaging device, a personal digital assistant, a tablet computer, or any other substantially similar wireless device.

B. Lack of knowledge of age or marital status shall not constitute a defense.

C. If any employee of a theatre or bookstore acting in the course or scope of his employment, is arrested for an offense designated in this Section, the employer shall reimburse the employee for all attorney's fees and other costs of defense of such employee. Such fees and expenses may be fixed by the court exercising criminal jurisdiction after contradictory hearing or by ordinary civil process.

D. (1) The provisions of this Section do not apply to recognized and established schools, churches, museums, medical clinics, hospitals, physicians, public libraries, governmental agencies, quasi-governmental sponsored organizations and persons acting in their capacity as employees or agents of such organizations, or a person solely employed to operate a movie projector in a duly licensed theatre.(2) For the purpose of this Subsection, the following words and terms shall have the respective meanings defined as follows:(a) “Churches” means any church, affiliated with a national or regional denomination.(b) “Medical clinics and hospitals” means any clinic or hospital of licensed physicians or psychiatrists used for the reception and care of persons who are sick, wounded, or infirm.(c) “Physicians” means any licensed physician or psychiatrist.(d) “Recognized and established schools” means schools having a full time faculty and pupils, gathered together for instruction in a diversified curriculum.

Credits

Amended by Acts 1950, No. 314, § 1; Acts 1958, No. 388, § 1; Acts 1960, No. 199, § 1; Acts 1962, No. 87, § 1; Acts 1968, No. 647, § 1, eff. July 20, 1968, at 1:30 P.M.; Acts 1970, No. 167, § 1; Acts 1972, No. 605, § 1; Acts 1972, No. 743, § 1; Acts 1974, No. 274, § 1; Acts 1977, No. 97, § 2; Acts 1977, No. 717, § 1, eff. July 20, 1977; Acts 1979, No. 252, § 1; Acts 1980, No. 464, § 1; Acts 1981, No. 159, § 1; Acts 1982, No. 680, § 1; Acts 1983, No. 384, § 1; Acts 1983, No. 385, § 1; Acts 2001, No. 177, § 1; Acts 2001, No. 403, § 1, eff. June 15, 2001; Acts 2003, No. 237, § 1; Acts 2012, No. 846, § 1; Acts 2014, No. 531, § 1; Acts 2014, No. 811, § 6, eff. June 23, 2014.

MAINE:

Maine recodified its criminal law based in part on the ALI-MPC in 1976.

17 M.R.S.A. § 2911

§ 2911. Dissemination of obscene matter to minors

1. Definitions. As used in this section, unless the context indicates otherwise, the following words

shall have the following meanings.

- A. “Distribute” means to transfer possession, whether with or without consideration.
- B. “Exhibit” means to display for viewing by the public.
- C. “Matter” means any printed or written material, any picture, photograph, motion picture or other visual representation.
- C-1. “Minor” means a person under 18 years of age.
- D. “Obscene matter” means matter which:(1) To the average individual, applying contemporary community standards, with respect to what is suitable material for minors, considered as a whole, appeals to the prurient interest;(2) Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and(3) Considered as a whole, lacks serious literary, artistic, political or scientific value.

2. General rule. A person is guilty of disseminating obscene matter to a minor if he knowingly distributes, or exhibits or offers to distribute or exhibit to a minor, any obscene matter declared obscene, in an action to which he was a party, pursuant to subsection 3.

A. This section shall not apply to any noncommercial distribution or exhibition for purely educational purposes by any library, art gallery, museum, public school, private school or institution of learning, nor to any commercial distribution or exhibition by any art gallery or museum.

B. It shall be a valid defense to any proceeding under this section that:

- (1) The defendant was a parent or guardian of the minor;
- (2) The distribution or exhibition is exempt under paragraph A; or
- (3) For motion pictures, the minor was accompanied by his spouse, parent or legal guardian.

3. Procedure for adjudicating obscenity. Whenever the Attorney General, or any district attorney, reasonably believes a person is disseminating to minors matter that is obscene, the Attorney General or district attorney may petition the Superior Court to declare the matter obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General or district attorney may join all persons the Attorney General or district attorney reasonably believes to be disseminating that matter to minors as parties to the action. The hearing on such petition may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.A. Trial on the issue of obscenity must be by jury.B. Intervention by others disseminating the same matter must be freely allowed.C. Determination by a court pursuant to this subsection that a matter is obscene does not bar relitigation of that issue in a criminal prosecution under this section.4. Penalty. Disseminating obscene matter to a minor is a Class C crime.

Credits

1977, c. 410, § 2; 1977, c. 696, § 168, eff. March 31, 1978; 1983, c. 300, §§ 2 to 5; 2011, c. 559, § A-18.17 M. R. S. A. § 2911, ME ST T. 17 § 2911Current with legislation through the 2013 Second Regular Session of the 126th Legislature. The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

MARYLAND:

MD Code, Criminal Law, § 11-203:

§ 11-203. Sale or display of obscene item to minor

(a)(1) In this section the following words have the meanings indicated.

(2) “Distribute” includes to rent.

(3) “Illicit sex” means:

- (i) human genitals in a state of sexual stimulation or arousal;
- (ii) acts of human masturbation, sexual intercourse, or sodomy; or
- (iii) fondling or other erotic touching of human genitals.

(4) “Item” means a:

- (i) still picture or photograph;
- (ii) book, pocket book, pamphlet, or magazine;
- (iii) videodisc, videotape, video game, film, or computer disc; or
- (iv) recorded telephone message.

(5) “Obscene” means:

- (i) that the average adult applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- (ii) that the work depicts sexual conduct specified in subsection (b) of this section in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and
- (iii) that the work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value.

(6) “Partially nude figure” means a figure with:

- (i) less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola; or
- (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Prohibited

(b)(1) A person may not willfully or knowingly display or exhibit to a minor an item:

- (i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or
- (ii) that consists of an obscene picture of a nude or partially nude figure.

(2) A person may not willfully or knowingly engage in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an item:

- (i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or
- (ii) that consists of an obscene picture of a nude or partially nude figure.

(3) If a newsstand or other place of business is frequented by minors, the owner, operator, franchisee, manager, or an employee with managerial responsibility may not openly and knowingly display at the place of business an item whose sale, display, exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

Exception

(c) The provision of services or facilities by a telephone company under a tariff approved by the Public Service Commission is not a violation of subsection (b) of this section relating to recorded telephone messages.

Penalty

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

- (1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and
- (2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

Credits

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2006, c. 346, § 1, eff. Oct. 1, 2006.

MD Code Criminal Law § 11-210. Exemption from subtitle

Bona fide justification

(a)(1) A person having a bona fide scientific, educational, governmental, artistic, news, or other similar justification for possessing or distributing prohibited matter is not subject to the prohibitions and penalties imposed by this subtitle.

(2) A distribution made in accordance with a bona fide scientific, educational, governmental, artistic, news, or other similar justification is not subject to the prohibitions and penalties imposed by this subtitle.

Exception to justification

(b) A justification is not bona fide under this section if a reasonable person would find that a dominant purpose of the depiction of an individual under the age of 16 years engaging in sexual conduct is to arouse or gratify sexual desire in either the violator, the individual under the age of 16 years, or the viewer.

Credits

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

Formerly Art. 27, § 423 (1957).

Case law (old statute): *400 E. Baltimore St., Inc. v. State*, 431 A.2d 682, 49 Md.App. 147 (1981): Mere posting around a store located in an “adult entertainment” area, catering to such of the general

public as visit such area, and loaded primarily with pornographic material, of signs indicating that everything in the store is sold only for scientific, educational, or governmental purposes does not suffice to make statutory exemption for persons having bona fide scientific, educational, governmental, or other similar justification for possessing obscene material applicable as a matter of law. Code 1957, Art. 27, §§ 418, 423.

MASSACHUSETTS:

Mass. Gen. Laws Ann. 272 § 29 (West):

Dissemination or possession of obscene matter; punishment; defense

Whoever disseminates any matter which is obscene, knowing it to be obscene, or whoever has in his possession any matter which is obscene, knowing it to be obscene, with the intent to disseminate the same, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars for the first offense, not less than five thousand nor more than twenty thousand dollars for the second offense, or not less than ten thousand nor more than thirty thousand dollars for the third and subsequent offenses, or by both such fine and imprisonment. A prosecution commenced under this section shall not be continued without a finding nor placed on file. It shall be a defense under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Credits

Amended by St.1974, c. 430, § 9; St.1982, c. 603, § 3

MICHIGAN:

Mich. Comp. Laws Ann. §752.365

752.365. Dissemination, or possession with intent to distribute, obscene material

Sec. 5. (1) A person is guilty of obscenity when, knowing the content and character of the material, the person disseminates, or possesses with intent to disseminate, any obscene material.

(2) Obscenity is a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than \$100,000.00, or both.

(3) A person convicted of a second or subsequent offense under this section is guilty of a felony and may be imprisoned for not more than 2 years, and shall be fined not less than \$50,000.00 or more than \$5,000,000.00. For purposes of this section, an offense is considered a second or subsequent offense if the defendant has previously been convicted under this section or under any similar statute of the United States or of any state.

Credits

P.A.1984, No. 343, § 5, Eff. March 29, 1985. Amended by P.A.1992, No. 216, § 1, Eff. March 31, 1993.

**Mich. Comp. Laws Ann. § 752.367 (West):
Application of § 752.365 Sec. 7.**

Section 5 does not apply to the dissemination of obscene material by any of the following:

- (a) An individual who disseminates obscene material in the course of his or her duties as an employee of, or as a member of the board of directors of, any of the following:
 - (i) A public or private college, university, or vocational school.
 - (ii) A library established by this state or a library established by a county, city, township, village, or other local unit of government or authority or combination of local units of government and authorities or a library established by a community college district.
 - (iii) A public or private not for profit art museum that is exempt from taxation under section 501(c)(3) of the internal revenue code.
- (b) An individual who disseminates obscene material in the course of the individual's employment and does not have discretion with regard to that dissemination or is not involved in the management of the employer.
- (c) Any portion of a business regulated by the federal communications commission.
- (d) A cable television operator that is subject to the communications act of 1934, chapter 652, 48 Stat. 1064.

Credits

P.A.1984, No. 343, § 7, Eff. March 29, 1985. Amended by P.A.1992, No. 216, § 1, Eff. March 31, 1993

MINNESOTA:

Minnesota recodified its criminal law based in part on the ALI-MPC in 1963.

Minnesota Statutes Annotated § 617.293

Harmful materials; dissemination and display to minors prohibited

Subdivision 1. Dissemination. It is unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

- (a) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, or
- (b) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in clause (a), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse which, taken as a whole, is harmful to minors.

Subd. 2. Display.

- (a) It is unlawful for any person commercially and knowingly to exhibit or display any material which is harmful to minors in its content in any place of public accommodation where minors are or may be present and where minors are able to view the material unless each item is kept in a sealed wrapper at all times.

(b) It is unlawful for any person commercially and knowingly to exhibit or display any material the cover or packaging of which, standing alone, is harmful to minors in any place of public accommodation where minors are or may be present or allowed to be present and where minors are able to view the material unless each item is blocked from view by an opaque cover. The opaque cover requirement is satisfied if those portions of the cover or packaging containing the material harmful to minors are blocked from view by an opaque cover.

(c) The provisions of this subdivision do not apply to the exhibition or display of materials harmful to minors under circumstances where minors are not present or are not able to view the material or the material's cover or packaging. A person may comply with the requirements of this paragraph by (1) physically segregating the material in a manner that physically prohibits access to and view of the material by minors, (2) prominently posting at the entrance to the restricted area: "Adults only----you must be 18 to enter," and (3) enforcing the restriction.

Credits

Laws 1969, c. 1071, § 3, eff. June 7, 1969. Amended by Laws 1971, c. 25, § 95, eff. March 5, 1971; Laws 1988, c. 452, § 1, eff. Aug. 1, 1988.

Minnesota Statutes Annotated § 617.295

Exemptions

The following are exempt from criminal or other action hereunder:

(1) recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization. For the purpose of this section "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of a school; a church affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one-third of their support from publicly donated funds;

(2) individuals in a parental relationship with the minor; and

(3) motion picture machine operators, stagehands, or other theatre employees such as cashiers, doorkeepers, ushers, and concession employees, if such person or persons have no financial interest in the entertainment presented other than the salary or wage, or in any theatre or place where such employee has no financial interest when the employee's services are obtained solely for salary or wage; provided, that such employee is under the direct supervision of a theatre manager who is a resident of this state and who is not exempt from action under sections 617.291 to 617.297.

Credits

Laws 1969, c. 1071, § 5, eff. June 7, 1969. Amended by Laws 1986, c. 444.

MISSISSIPPI:

Miss. Code Ann. § 97-29-101

Distribution of obscene materials

A person commits the offense of distributing obscene materials or obscene performances when he sells, rents, leases, advertises, publishes or exhibits to any person any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. A person commits the offense of wholesale distributing obscene materials or obscene performances when he distributes for the purpose of resale any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. The word “knowing” as used in this section means either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material. The character and reputation of an individual charged with an offense under Sections 97-29-101 through 97-29-109 and, if a commercial dissemination of obscene material or an obscene performance is involved, the character and reputation of the business establishment involved, may be placed in evidence by the defendant on the question of intent to violate Sections 97-29-101 through 97-29-109.

Any person, other than a city attorney, county prosecuting attorney or district attorney, who shall sign an affidavit charging an offense prescribed by this section shall file a bond in the amount of five hundred dollars (\$500.00) at the time such affidavit is lodged. Such bond shall be conditioned that the affidavit was not filed frivolously, maliciously or out of ill will.

Credits

Laws 1983, Ch. 498, § 1, eff. July 1, 1983.

Miss. Code Ann. § 97-29-107 (West)

Exemptions and defenses:

- (1) Sections 97-29-101 through 97-29-109 shall not apply when the distribution or wholesale distribution of the material, performance or device was made by:
 - (a) A person, corporation, company, partnership, firm, association, business, establishment or other legal entity to a person associated with an institution of higher learning, either as a member of the faculty or as a matriculated student, teaching or pursuing a course of study related to such material, performance or device;
 - (b) A licensed physician or a licensed psychologist to a person whose receipt of such material or device was authorized in writing by such physician or psychologist in the course of medical or psychological treatment or care;
 - (c) A person who while acting in his capacity as an employee is employed on a full-time or part-time basis by (i) any recognized historical society or museum accorded charitable status by the federal government; (ii) any state, county or municipal public library; or (iii) any library of any public or private school, college or university in this state; or

(d) A community television antenna services system or a cable television system operating pursuant to a written agreement not in conflict with this paragraph granted by a county, municipality or other political subdivision of this state, or by an employee of such system while acting within the scope of his employment, when the signal transmitting the material or performance originates outside of the state of Mississippi.(2) Any exemption from prosecution claimed under the provisions of this section may be raised at a pretrial hearing by motion, and the court shall determine whether sufficient evidence exists to constitute an exemption from prosecution under the provisions of Sections 97-29-101 through 97-29-109. If the motion is sustained, the case shall be dismissed; provided, however, if the motion is not sustained then the defendant may offer into evidence at trial as an affirmative defense to conviction under this act any matter which could have been raised by the defendant in the motion to dismiss.

Credits

Laws 1983, Ch. 498, § 4, eff. July 1, 1983.

MISSOURI:

Missouri recodified its criminal law based in part on the ALI-MPC in 1979.

Mo. Ann. Stat. § 573.010 (West)

Definitions

(14) “Pornographic for minors”, any material or performance is pornographic for minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

Credits

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1985, H.B. Nos. 366, 248, 372 & 393, § B, eff. July 19, 1985; L.1987, H.B. Nos. 113, 501 & 668, § A, eff. July 15, 1987; L.1989, H.B. No. 225, § A; L.2000, S.B. Nos. 757 & 602, § A; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006.)

Mo. Ann. Stat. § 573.040 (West)

Furnishing pornographic materials to minors

A person commits the crime of furnishing pornographic material to minors if he or she:(1) Furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or(2) Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in

reckless disregard of the likelihood that a minor is viewing the performance; or(3) Furnishes, produces, presents, directs, participates in any performance or otherwise makes available material that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. It is not an affirmative defense to a prosecution for a violation of this section that the person being furnished the pornographic material is a peace officer masquerading as a minor.

3. Furnishing pornographic material to minors or attempting to furnish pornographic material to minors is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense committed at a different time pursuant to this chapter, chapter 566 or chapter 568, in which case it is a class D felony.

Credits

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1987, H.B. Nos. 113, 501 & 668, § A, eff. July 15, 1987; L.2000, S.B. Nos. 757 & 602, § A; L.2004, H.B. No. 1055, § A; L.2008, S.B. Nos. 714, 933, 899 & 758, § A; L.2009, H.B. No. 62, § A.)

MONTANA:

Montana recodified its criminal law based in part on the ALI-MPC in 1974

MCA 45-8-201

45-8-201. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly:

- (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age;
- (b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age;
- (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age;
- (d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;
- (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or
- (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

(2) A thing is obscene if:

- (a)(i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
- (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or
- (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

- (b) taken as a whole the material:
 - (i) applying contemporary community standards, appeals to the prurient interest in sex;
 - (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and
 - (iii) lacks serious literary, artistic, political, or scientific value.
- (3) In any prosecution for an offense under this section, evidence is admissible to show:
 - (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
 - (b) the artistic, literary, scientific, educational, or other merits of the material;
 - (c) the degree of public acceptance of the material in the community;
 - (d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the material; or
 - (e) the purpose of the author, creator, publisher, or disseminator.
- (4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.
- (5) Cities, towns, or counties may adopt ordinances or resolutions that are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

Credits

Enacted 94-8-110 by Laws 1973, ch. 513, § 1. Amended by Laws 1975, ch. 407, § 1; Revised Code of Montana 1947, 94-8-110; amended app. Nov. 7, 1978, I.M. 79, § 1; amended by Laws 1989, ch. 571, § 5; amended by Laws 2009, ch. 56, § 1702, eff. Oct. 1, 2009.

CRIMINAL LAW COMMISSION COMMENTS

Source: Substantially the same as Illinois Criminal Code 1961, Chapter 38, § 11-20.

This section closely follows section 11-20 of the Illinois Criminal Code, which is essentially the same as the American Law Institute Model Penal Code Draft. Slight changes in wording were undertaken in recognition that today's society often condones literature, movies and other art which may incidentally provide erotic stimulation. The significant difference between this section and the prior provisions is that a violation cannot occur unless the obscene art is specifically directed to a person under the age of majority with the exception of subdivision (1)(f) which is aimed at "pandering", using its common definition.

Montana Code Annotated §45-8-206

45-8-206. Public display or dissemination of obscene material to minors

- (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:
 - (a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.
 - (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor

to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

Credits

Enacted by Laws 1989, ch. 571, § 2. Amended by Laws 2007, ch. 180, § 6.

NEBRASKA:

Nebraska recodified its criminal law based in part on the ALI-MPC in 1979.

Neb.Rev.St. § 28-808

Obscene literature and material; sale to minor, unlawful; penalty.

(1) It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse

of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor.

Neb.Rev.St. § 28-810

Prosecution; defense.

It shall be a defense to a prosecution under sections 28-808 and 28-809 that:

(1) Such person had reasonable cause to believe that the minor involved was eighteen years of age or more, and that such reasonable cause is based on but not limited to the presentation by the minor exhibited to such person of a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such minor was eighteen years of age or more;

(2) The minor was accompanied by his parent or guardian and such person had reasonable cause to believe that the person accompanying the minor was the parent or guardian of that minor;

(3) Such person had reasonable cause to believe that the person was the parent or guardian of the minor; and

(4) Such person's activity falls within the defenses to a prosecution contained in section 28-815.

Neb.Rev.St. § 28-813

28-813. Obscene literature or material; prepares; distributes; promotes; penalty

(1) It shall be unlawful for a person knowingly to (a) print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, (b) publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, (c) have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promote any obscene material or performance.

(2) It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene. In all cases in which a charge for a violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.

(3) A person commits an offense of promoting obscene material if knowing its content and character he or she (a) disseminates for monetary consideration any obscene material, (b) produces, presents, or directs obscene performances for monetary consideration, or (c) participates for monetary consideration in that part of a performance which makes it obscene.

(4) Any person who violates this section shall be guilty of a Class I misdemeanor.

Credits

Laws 1977, LB 38, § 169; Laws 1988, LB 117, § 5; Laws 2006, LB 1113, § 27.

Neb. Rev. Stat. § 28-815:

Prosecution; defense It shall be a defense to a prosecution under section 28-813 that:

(1) Such person's activity consists of teaching in regularly established and recognized educational institutions, galleries or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history, science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation;

(2) Such person has no financial interest in an activity, product, or event entitling such person to participate in the promotion, management, proceeds, or profits of the activity, product, or event, and such person's only connection with the activity, product, or event entitles such person to a reasonable salary or wages for services actually rendered; and(3) The provisions of sections 28-807 to 28-829 with respect to the exhibition or the possession with the intent to exhibit of any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment if such projectionist, usher, or ticket taker has no financial interest in the place wherein he is so employed. Such person shall be required to give testimony regarding such employment in all judicial proceedings brought under sections 28-807 to 28-829 when granted immunity by the trial judge.

Credits:

Laws 1977, LB 38, § 171

NEVADA:

N.R.S. § 201.249

201.249. Production, sale, distribution, exhibition and possession of obscene items or materials; penalty

Except as otherwise provided in NRS 201.237 and except under the circumstances described in NRS 200.720 or 200.725, a person is guilty of a misdemeanor who knowingly:

1. Prints, produces or reproduces any obscene item or material for sale or commercial distribution.
2. Publishes, sells, rents, transports in intrastate commerce, or commercially distributes or exhibits any obscene item or material, or offers to do any such things.
3. Has in his or her possession with intent to sell, rent, transport or commercially distribute any obscene item or material.

Credits

Added by Laws 1979, p. 364. Amended by Laws 1995, p. 951.

Nev. Rev. Stat. Ann. § 201.237 (West)

Exemptions

The provisions of NRS 201.235 to 201.254, inclusive, do not apply to those universities, schools, museums or libraries which are operated by or are under the direct control of the State, or any political subdivision of the State, or to persons while acting as employees of such organizations.

Credits

Added by Laws 1979, p. 363.

NEW HAMPSHIRE:

New Hampshire recodified its criminal law based in part on the ALI-MPC in 1973.

N.H. Rev. Stat. § 650:2

650:2 Offenses.

I. A person is guilty of a misdemeanor if he commits obscenity when, with knowledge of the nature of content thereof, he:

- (a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene material; or
- (b) Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or
- (c) Publishes, exhibits or otherwise makes available any obscene material; or
- (d) Possesses any obscene material for purposes of sale or other commercial dissemination; or
- (e) Sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

II. A person who commits any of the acts specified in subparagraphs (a) through (e) of paragraph I with knowledge that such act involves a child in material deemed obscene pursuant to this chapter is guilty of:

- (a) A class B felony if such person has had no prior convictions in this state or another state for the conduct described in this paragraph;
- (b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

III. For the second and for each subsequent violation of paragraph I, such person shall be guilty of a class B felony.

N.H. Rev. Stat. § 650:4

650:4 Justifiable and Non-Commercial Private Dissemination.

It is an affirmative defense to prosecution under this chapter that dissemination was restricted to:
I. Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or
II. Non-commercial dissemination to personal associates of the accused who are not under 18 years of age.

NEW JERSEY:

New Jersey recodified its criminal law based in part on the ALI-MPC in 1979.

N.J.S.A. 2C:34-3

2C:34-3. Obscenity for persons under 18

a. Definitions for purposes of this section:

(1) "Obscene material" means any description, narrative account, display, depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording, live performance or film, which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.

(2) "Obscene film" means any motion picture film or preview or trailer to a film, not including newsreels portraying actual current events or pictorial news of the day, in which a scene, taken by itself:

(a) Depicts a specified anatomical area or specified sexual activity, or the simulation of a specified sexual activity, or verbalization concerning a specified sexual activity; and

(b) Emits sensuality sufficient, in terms of the duration and impact of the depiction, to appeal to prurient interest.

(3) "Specified anatomical area" means:

(a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if covered.

(4) "Specified sexual activity" means:

(a) Human genitals in a state of sexual stimulation or arousal; or

(b) Any act of human masturbation, sexual intercourse or deviate sexual intercourse; or

(c) Fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

(5) "Knowingly" means:

(a) Having knowledge of the character and content of the material or film described herein;
or

(b) Having failed to exercise reasonable inspection which would disclose its character and content.

(6) "Exhibit" means the sale of admission to view obscene material.

(7) "Show" means cause or allow to be seen.

b. Promoting obscene material.

(1) A person who knowingly sells, distributes, rents or exhibits to a person under 18 years of age obscene material is guilty of a crime of the third degree.

(2) A person who knowingly shows obscene material to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene material is at least four years older than the person under 18 years of age viewing the material.

c. Admitting to exhibition of obscene film.

(1) Any person who knowingly admits a person under 18 years of age to a theatre then exhibiting an obscene film is guilty of a crime of the third degree.

(2) A person who knowingly shows an obscene film to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene film is at least four years older than the person under 18 years of age viewing the film.

d. Presumption of knowledge and age.

The requisite knowledge with regard to the character and content of the film or material and of the age of the person is presumed in the case of an actor who sells, distributes, rents, exhibits or shows obscene material to a person under 18 years of age or admits to a film obscene for a person under 18 years of age a person who is under 18 years of age.

e. Defenses.

(1) It is an affirmative defense to a prosecution under subsections b. and c. which the defendant must prove by a preponderance of evidence that:

(a) The person under age 18 falsely represented in or by writing that he was age 18 or over;

(b) The person's appearance was such that an individual of ordinary prudence would believe him to be age 18 or over; and

(c) The sale, distribution, rental, showing or exhibition to or admission of the person was made in good faith relying upon such written representation and appearance and in the reasonable belief that he was actually age 18 or over.

(2) It is an affirmative defense to a prosecution under subsection c. that the defendant is an employee in a motion picture theatre who has no financial interest in that motion picture theatre other than his wages and has no decision-making authority or responsibility with respect to the selection of the motion picture show which is exhibited.

Credits

L.1978, c. 95, § 2C:34-3, eff. Sept. 1, 1979. Amended by L.1989, c. 54, § 2, eff. April 14, 1989; L.1999, c. 227, § 1.

NEW MEXICO:

New Mexico recodified its criminal law based in part on the ALI-MPC in 1963.

N. M. S. A. 1978, § 30-37-2

§ 30-37-2. Offenses; books; pictures

It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or

B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

Credits

L. 1973, Ch. 257, § 2.

Formerly 1953 Comp., § 40-50-2

N. M. S. A. 1978, § 30-37-5

§ 30-37-5. Exclusions; defenses

No person shall be guilty of violating the provisions of this act:

A. where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or

B. if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or

C. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or

D. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

Credits

L. 1973, Ch. 257, § 5.

Formerly 1953 Comp., § 40-50-5.

NEW YORK:

New York recodified its criminal law based in part on the ALI-MPC in 1967.

McKinney's Penal Law § 235.15

§ 235.15 Obscenity or disseminating indecent material to minors in the second degree; defense

1. In any prosecution for obscenity, or disseminating indecent material to minors in the second degree in violation of subdivision three of section 235.21 of this article, it is an affirmative defense that the persons to whom allegedly obscene or indecent material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing, disseminating or viewing the same.

2. In any prosecution for obscenity, it is an affirmative defense that the person so charged was a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of obscene material for sale, rental or exhibition or in the promotion, presentation or direction of any obscene performance, or is in any way responsible for acquiring obscene material for sale, rental or exhibition.

Credits

(L.1965, c. 1030. Amended L.1971, c. 1031, § 1; L.1996, c. 600, § 1.)

Comment: Affirmative Defense to Obscenity

Two affirmative defenses to a prosecution for obscenity are provided [Penal Law § 235.15]. An affirmative defense requires that the defendant establish the defense by a preponderance of the evidence [Penal Law § 25.00(2)].

The first affirmative defense is provided for persons or institutions having a scientific, educational, or governmental purpose or similar justification for possessing or viewing obscene material [Penal Law § 235.15(1)]. The defense was drawn from the Model Penal Code § 251.4(3). It has been held not to be impermissibly vague. *People v. Illardo*, 48 N.Y.2d 408, 423 N.Y.S.2d 470, 399 N.E.2d 59 (1979).

NORTH CAROLINA:

N.C. Gen. Stat. Ann. § 14-190.15 (West)

§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors

(a) Disseminating Harmful Material.--A person commits the offense of disseminating harmful material to minors if, with or without consideration and knowing the character or content of the material, he:

- (1) Sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or
- (2) Allows a minor to review or peruse material that is harmful to minors.

(b) Exhibiting Harmful Performance.--A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance that is harmful to minors.

(c) Defenses.--Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

- (1) The defendant was a parent or legal guardian of the minor.

(2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(4) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(d) Punishment.--Violation of this section is a Class 1 misdemeanor.

Credits

Added by Laws 1985, c. 703, § 9. Amended by Laws 1993, c. 539, § 126; eff. Oct. 1, 1994; Laws 1994(1st Ex.Sess.), c. 24, § 14(c), eff. March 26, 1994.

NORTH DAKOTA:

North Dakota recodified its criminal law based in part on the ALI-MPC in 1975.

NDCC, 12.1-27.1-03.1

§ 12.1-27.1-03.1. Objectionable materials or performance--Display to minors--Definitions--Penalty

1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.

b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.

c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

Credits

S.L. 1977, ch. 126, § 1.

N.D. Cent. Code Ann. § 12.1-27.1-11 (West)

Exceptions to criminal liability

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

Credits

S.L. 1975, ch. 119, § 11.

OHIO:

Ohio recodified its criminal law based in part on the ALI-MPC in 1974.

Ohio Rev. Code Ann. § 2907.31 (West)

2907.31 Disseminating matter harmful to juveniles

(A) No person, with knowledge of its character or content, shall recklessly do any of the following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or to the defendant's agent or employee a draft

card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was eighteen years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of eighteen and unmarried.

(C)(1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

OKLAHOMA:

21 Okl.St. Ann. § 1040.75

§ 1040.75. Definitions

As used in Sections 1040.75 through 1040.77 of this title:

1. "Minor" means any unmarried person under the age of eighteen (18) years;
2. "Harmful to minors" means:
 - a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:
 - (1) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and
 - (2) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
 - 3) the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors, or
 - b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence;

21 Okl.St. Ann. § 1040.76

§ 1040.76. Material or performances harmful to minors--Prohibited acts

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have “displayed” material harmful to minors if the material is kept behind devices commonly known as “blinder racks” so that the lower two-thirds ($\frac{2}{3}$) of the material is not exposed to view;
2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or
3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

Credits

Laws 1992, c. 7, § 2; Laws 1995, c. 66, § 2, eff. July 1, 1995.

OREGON:

Oregon recodified its criminal law based in part on the ALI-MPC in 1972.

O.R.S. § 167.080

167.080. Displaying obscene materials to minors

(1) A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, the person knowingly or recklessly permits a minor who is not accompanied by the parent or lawful guardian of the minor to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

- (a) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse; or
- (b) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that reveals a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

(2) Displaying obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding \$10,000.

Credits

Laws 1971, c. 743, § 259.

O.R.S. § 167.085

167.085. Defenses

In any prosecution under ORS 167.075 and 167.080, it is an affirmative defense for the defendant to prove:

- (1) That the defendant was in a parental or guardianship relationship with the minor;
- (2) That the defendant was a bona fide school, museum or public library, or was acting in the course of employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization;
- (3) That the defendant was charged with furnishing, showing, exhibiting or displaying an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise nonoffending whole, and serving some purpose therein other than titillation; or
- (4) That the defendant had reasonable cause to believe that the person involved was not a minor.

Credits

Laws 1971, c. 743, § 260; Laws 1993, c. 18, § 27; Laws 2001, c. 607, § 1.

PENNSYLVANIA:

Pennsylvania recodified its criminal law based in part on the ALI-MPC in 1973.

18 Pa. Cons. Stat. Ann. s 5903:

Obscene and other sexual materials and performances

(a) **Offenses defined.**--No person, knowing the obscene character of the materials or performances involved, shall:(1) display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;(2) sell, lend, distribute, transmit, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner;(3)(i) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials; or(ii) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials in which a minor is depicted;(4)(i) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had; or(ii) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom or by what means any obscene materials can be purchased, obtained or had in which a minor is included;(5)(i) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity; or(ii) produce, present or direct any obscene performance or

participate in a portion thereof that is obscene or that contributes to its obscenity if a minor is included;(6) hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;(7) knowingly take or deliver in any manner any obscene material into a State correctional institution, county prison, regional prison facility or any other type of correctional facility;(8) possess any obscene material while such person is an inmate of any State correctional institution, county prison, regional prison facility or any other type of correctional facility; or(9) knowingly permit any obscene material to enter any State correctional institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.(a.1) Dissemination of explicit sexual material via an electronic communication.--No person, knowing the content of the advertisement to be explicit sexual materials as defined in subsection (c)(1) and (2), shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in section 5702 (relating to definitions) to one or more persons within this Commonwealth that contains explicit sexual materials as defined in subsection (c)(1) and (2) without including in the advertisement the term “ADV-ADULT” at the beginning of the subject line of the advertisement.

(j) Exemptions.--Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

Credits

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1977, Nov. 5, P.L. 221, No. 68, § 1, effective in 60 days; 1980 Oct. 16, P.L. 978, No. 167, § 2, effective in 60 days; 1990, Dec. 19, P.L. 1332, No. 207, § 1, imd. effective; 1998, June 18, P.L. 534, No. 76, § 1, effective in 60 days; 2000, June 13, P.L. 130, No. 25, § 1, effective in 60 days; 2000, Dec. 20, P.L. 721, No. 98, § 1, imd. effective; 2011, Dec. 20, P.L. 446, No. 111, § 1.2, effective in 60 days [Feb. 21, 2012].

RHODE ISLAND:

R.I. Gen.Laws § 11-31-10

§ 11-31-10. Sale or exhibition to minors of indecent publications, pictures, or articles

(a) Every person who shall willfully or knowingly engage in the business of selling, lending, giving away, showing, advertising for sale, or distributing to any person under the age of eighteen (18) years, has in his or her possession with intent to engage in that business or to otherwise offer for sale or commercial distribution to any person under the age of eighteen (18) years, or who shall display at newsstands or any other business establishment frequented by persons under the age of eighteen (18) years or where persons under the age of eighteen (18) years are or may be invited as a part of the general public, any motion picture, any still picture, photograph, or any book, pocket book, pamphlet, or magazine of which the cover or content consists of explicit representations of “sexual conduct”, “sexual excitement”, “nudity” and which is indecent for minors or which is predominantly made up of descriptions of “sexual conduct”, “sexual excitement”, “nudity” and

which is indecent, shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than two (2) years, or both.

(b) As used in this section, the following words have the following meaning:

(1) “Indecent for minors” means:

- (i) Appealing to the prurient interest in sex of minors;
- (ii) Patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors; and
- (iv) Lacking serious literary, artistic, political, or scientific value for minors;

(2) “Knowingly” means having knowledge of the character and content of the publication or failure on notice to exercise reasonable inspection which would disclose its content and character;

(3) “Nudity” means less than completely and opaquely covered; human genitals, pubic regions, buttock, and female breast below a point immediately above the top of the areola;

(4) “Sexual conduct” means act of human masturbation, sexual intercourse, sodomy, fondling, or other erotic touching of human genitals, pubic region, buttock, or female breasts; and

(5) “Sexual excitement” means human genitals in a state of sexual stimulation or arousal.

Credits

P.L. 1956, ch. 3686, § 1; P.L. 1960, ch. 134, § 3; P.L. 1966, ch. 259, § 2; P.L. 1971, ch. 30, § 1; P.L. 1979, ch. 406, § 1; P.L. 1981, ch. 221, § 1.

SOUTH CAROLINA:

S.C. Code § 16-15-385

§ 16-15-385. Disseminating harmful material to minors and exhibiting harmful performance to minor defined; defenses; penalties.

(A) A person commits the offense of disseminating harmful material to minors if, knowing the character or content of the material, he:

- (1) sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or
- (2) allows a minor to review or peruse material that is harmful to minors.

A person does not commit an offense under this subsection when he employs a minor to work in a theater if the minor's parent or guardian consents to the employment and if the minor is not allowed in the viewing area when material harmful to minors is shown.

(B) A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance which is harmful to minors.

(C) Except as provided in item (3) of this subsection, mistake of age is not a defense to a prosecution under this section. It is an affirmative defense under this section that:

(1) the defendant was a parent or legal guardian of a minor, but this item does not apply when the parent or legal guardian exhibits or disseminates the harmful material for the sexual gratification of the parent, guardian, or minor.

(2) the defendant was a school, church, museum, public, school, college, or university library, government agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

(3) before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least eighteen years old, and the defendant reasonably believed the minor was at least eighteen years old.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

Credits

HISTORY: 1987 Act No. 168 § 3; 1990 Act No. 358, §§ 1, 2; 1993 Act No. 184, § 34; 2004 Act No. 208, § 7, eff April 26, 2004.

SOUTH DAKOTA:

South Dakota recodified its criminal law based in part on the ALI-MPC in 1977.

S.D. Codified Laws § 22-24-28

22-24-28. Disseminating material harmful to minors as misdemeanor

Any person who disseminates material harmful to minors is guilty of a Class 1 misdemeanor.

Credits

Source: SL 1968, ch 29, §§ 3, 9 (b); SDCL Supp, §§ 22-24-13, 22-24-20; SL 1974, ch 165, § 18; SL 1976, ch 158, § 24-6.

SDCL § 22-24-29

22-24-29. Possession, sale, or loan as disseminating material harmful to minors

A person is guilty of disseminating material harmful to minors if that person knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or if that person knowingly sells or loans to a minor for monetary consideration any material described in subdivision § 22-24-27(4).

Credits

Source: SL 1974, ch 165, § 18 (1); SL 2005, ch 120, § 304.

SDCL § 22-24-31**22-24-31. Defenses for disseminating materials harmful to minors**

In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

- (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more. A draft card, driver's license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;
- (2) The minor involved was accompanied by a parent or guardian, or by an adult and the adult represented that he or she was the minor's parent or guardian or an adult and the adult signed a written statement to that effect;
- (3) The defendant was the parent or guardian of the minor involved; or
- (4) The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Credits

Source: SL 1974, ch 165, § 20; SL 1993, ch 213, § 107; SL 2005, ch 120, § 307

22-24-37. Activities and persons excepted

The provisions of §§ 22-24-27 to 22-24-37, inclusive, do not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise proscribed by those sections, if such possession, distribution, or conduct occurs:

- (1) In the course of law enforcement and judicial activities;
- (2) In the course of bona fide school, college, university, museum, or public library activities or in the course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or
- (3) In the course of employment as a moving picture machine operator, or assistant operator, in a motion picture theater in connection with a motion picture film or show exhibited in such theater if such operator or assistant operator has no financial interest in the motion picture theater wherein that operator or assistant operator is so employed other than wages received or owed;

or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.

Credits

Source: SL 1973, ch 148; SDCL Supp, § 22-24-12.1; SL 1974, ch 165, § 2; SL 2005, ch 120, § 311.

TENNESSEE:

Tenn. Code Ann. § 39-17-902 (West)

§ 39-17-902. Production and distribution; children and minors

(a) It is unlawful to knowingly produce, send or cause to be sent, or bring or cause to be brought, into this state for sale, distribution, exhibition or display, or in this state to prepare for distribution, publish, print, exhibit, distribute, or offer to distribute, or to possess with intent to distribute or to exhibit or offer to distribute any obscene matter, or to do any of the aforementioned with any matter found legally obscene that violates the requirements of 18 U.S.C. § 2257. It is unlawful to direct, present or produce any obscene theatrical production, peep show or live performance, and every person who participates in that part of the production which renders the production or performance obscene is guilty of the offense.

(b) It is unlawful for any person to hire, employ or use a minor to do or assist in doing any of the acts described in subsection (a) with knowledge that the person is a minor under eighteen (18) years of age, or while in possession of the facts that the person should reasonably know that the person is a minor under eighteen (18) years of age. However, this section shall not apply to those acts that are prohibited by §§ 39-17-1003 -- 39-17-1005.

(c)(1) A violation of subsection (a) is a Class A misdemeanor, and, in addition, any corporation or business entity that violates this section shall be fined an amount not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(2) A second or subsequent violation of subsection (a) is a Class E felony; provided, that the second or subsequent violation occurs after a conviction has been obtained for the previous violation; provided further, that the range of fines authorized for a first violation by a corporation or business entity shall also be applicable for second or subsequent violations by the corporation or entity.

(d) A violation of subsection (b) is a Class E felony, and, in addition, a violator shall be fined an amount not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).

(e) It is an exception to this section that the obscene material is possessed by a person having scientific, educational, governmental or other similar justification.

Credits

1989 Pub.Acts, c. 591, § 1; 1990 Pub.Acts, c. 1092, § 4; 1991 Pub.Acts, c. 469, § 1; 1996 Pub.Acts, c. 1070, § 1, eff. May 15, 1996.

Tenn. Code Ann. § 39-17-911 (West)

§ 39-17-911. Children and minors; harmful materials; sale; loan or exhibition

Currentness

(a) It is unlawful for any person to knowingly sell or loan for monetary consideration or otherwise exhibit or make available to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, video game, computer software game, or similar visual representation or image of a person or portion of the human body,

that depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording, which contains any matter enumerated in subdivision (a)(1), or that contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors.

(b) It is unlawful for any person to knowingly exhibit to a minor for monetary consideration, or to knowingly sell to a minor an admission ticket or pass or otherwise admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors.

(c) A violation of this section is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section that the minor to whom the material or show was made available or exhibited was, at the time, accompanied by the person's parent or legal guardian, or by an adult with the written permission of the parent or legal guardian.

TEXAS

Texas recodified its criminal law based in part on the ALI-MPC in 1974.

Tex. Penal Code Ann. § 43.24:

§ 43.24. Sale, Distribution, or Display of Harmful Material to Minor

(a) For purposes of this section:

(1) "Minor" means an individual younger than 18 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2).

(c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.

(c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

Credits

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, **eff. Jan. 1, 1974**. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 2011, 82nd Leg., ch. 497 (H.B. 1344), § 1, eff. Sept. 1, 2011.

UTAH:

Utah recodified its criminal law based in part on the ALI-MPC in 1973.

Utah Code Ann. §76-10-1206

§ 76-10-1206. Dealing in material harmful to a minor--Penalties--Exemptions for Internet service providers and hosting companies

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.

Credits

Laws 1973, c. 196, § 76-10-1206; Laws 1975, c. 49, § 6; Laws 1989, c. 187, § 8; Laws 1990, c. 163, §§ 10, 11; Laws 1997, c. 164, § 1, eff. May 5, 1997; Laws 2000, c. 53, § 1, eff. May 1, 2000; Laws 2005, c. 281, § 5, eff. March 21, 2005; Laws 2007, c. 337, § 5, eff. Mar. 19, 2007; Laws 2008, c. 297, § 2, eff. May 5, 2008; Laws 2009, c. 345, § 2, eff. May 12, 2009.

Utah Code Ann. § 76-10-1208

§ 76-10-1208. Affirmative defenses

(1) It is an affirmative defense to prosecution under this part that the distribution of pornographic material is restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.

(2) It is not a defense to prosecution under this part that the actor is a motion picture projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate this part incident to the person's employment.

(3) It is an affirmative defense to prosecution under Section 76-10-1206, 76-10-1227, or 76-10-1228 for displaying or exhibiting an outer portion of material, that the material is:

(a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;

(b) placed behind a blinder rack; or

(c) displayed in an area from which a minor is physically excluded if the material cannot be viewed by the minor from an area in which a minor is allowed.

Credits

Laws 1977, c. 92, § 8; Laws 2007, c. 123, § 2, eff. April 30, 2007.

VERMONT:

13 Vt. Stat. Ann. §2802

§ 2802. Disseminating indecent material to a minor in the presence of the minor

(a) No person may, with knowledge of its character and content, sell, lend, distribute or give away to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image, including any such representation or image which is stored electronically, of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subdivision (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

(b) No person may, with knowledge of the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors:

(1) Exhibit such a motion picture, show or other presentation to a minor; or

(2) Sell or give away to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation; or

(3) Admit a minor to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation.

(c) This section shall apply only to acts occurring in the presence of the minor.

Credits

1967, Adj. Sess., No. 340, § 2; 1999, Adj. Sess., No. 124, § 7; 2001, No. 41, § 7.

13 V.S.A. § 2804b

§ 2804b. Displaying obscene materials to minors

A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, he or she knowingly or recklessly permits a minor who is not accompanied by his or her parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

(1) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse which is harmful to minors; or

(2) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that pictorially reveals a person or portion of the human body, depicts nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, which is harmful to minors.

Credits

1973, Adj. Sess., No. 204, § 4.

13 V.S.A. § 2805

§ 2805. Presumption and defense

(a) A person who engages in conduct prohibited by section 2802, 2802a, 2803, 2804, 2804a, or 2804b of this title is presumed to do so with knowledge of the character and content of the material, or the motion picture, show or presentation exhibited or to be exhibited.

(b) In any prosecution arising under section 2802, 2802a, 2803, or 2804 of this title, it is an affirmative defense:

(1) That the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older; or

(2) That the defendant was in a parental or guardianship relationship with the minor; or that the minor was accompanied by a parent or legal guardian; or

(3) That the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

(c) In any prosecution arising out of sections 2804a and 2804b of this title, it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for literary, political, scientific or artistic purposes; or

(2) That the public display was exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting; or

(3) That the defendant was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Credits

1967, Adj. Sess., No. 340, § 4; 1973, Adj. Sess., No. 204, § 5; 2001, No. 41, § 9.

VIRGINIA:

Virginia recodified its criminal law based in part on the ALI-MPC in 1975.

VA Code Ann. § 18.2-374

§ 18.2-374. Production, publication, sale, possession, etc., of obscene items

It shall be unlawful for any person knowingly to:

- (1) Prepare any obscene item for the purposes of sale or distribution; or
- (2) Print, copy, manufacture, produce, or reproduce any obscene item for purposes of sale or distribution; or
- (3) Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item, or offer to do any of these things; or
- (4) Have in his possession with intent to sell, rent, lend, transport, or distribute any obscene item. Possession in public or in a public place of any obscene item as defined in this article shall be deemed prima facie evidence of a violation of this section.

For the purposes of this section, “distribute” shall mean delivery in person, by mail, messenger or by any other means by which obscene items as defined in this article may pass from one person, firm or corporation to another.

Credits

Acts 1975, c. 14; Acts 1975, c. 15.

VA Code Ann. § 18.2-383

§ 18.2-383. Exceptions to application of article

Nothing contained in this article shall be construed to apply to:

- (1) The purchase, distribution, exhibition, or loan of any book, magazine, or other printed or manuscript material by any library, school, or institution of higher learning, supported by public appropriation;
- (2) The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school, or institution of higher learning, supported by public appropriation;
- (3) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum of fine arts, school or institution of higher learning, supported by public appropriation.

Credits

Acts 1975, c. 14; Acts 1975, c. 15.

VA Code Ann. § 18.2-390

§ 18.2-390. Definitions

As used in this article:

- (1) "Juvenile" means a person less than 18 years of age.
- (2) "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.
- (3) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.
- (4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (5) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (6) "Harmful to juveniles" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest of juveniles, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and (c) is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.
- (7) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both (a) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and (b) the age of the juvenile, provided however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.
- (8) "Video or computer game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, television gaming system, console, or other technology.

VA Code §18.2-391. Unlawful acts; penalties

A. It shall be unlawful for any person to sell, rent or loan to a juvenile, knowing or having reason to know that such person is a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

1. Any picture, photography, drawing, sculpture, motion picture in any format or medium, video or computer game, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or
2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message

containing words, or sound recording which contains any matter enumerated in subdivision 1 of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

However, if a person uses services of an Internet service provider or an electronic mail service provider in committing acts prohibited under this subsection, such Internet service provider or electronic mail service provider shall not be held responsible for violating this subsection.

B. It shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

C. It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection A or subsection B hereof, or to his agent, that such juvenile is 18 years of age or older, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

D. It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection A or subsection B hereof or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

E. No person shall sell, rent, or loan any item described in subdivision A 1 or A 2 to any individual who does not demonstrate his age in accordance with the provisions of subsection C of § 18.2-371.2.

F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail establishment who violates subsection E shall be liable for a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

VA Code Ann. § 18.2-391.1

§ 18.2-391.1. Exceptions to application of article

Nothing contained in this article shall be construed to apply to:

1. The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher education.
2. The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds.

Va. Code Ann. § 18.2-391.1 (West)

WASHINGTON:

Washington recodified its criminal law based in part on the ALI-MPC in 1976.

West's RCWA 9.68.015

9.68.015. Obscene literature, shows, etc.--Exemptions

Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

Credits

[1959 c 260 § 2.]

West's RCWA 9.68.140

9.68.140. Promoting pornography--Class C felony--Penalties

A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state.

Credits

[1985 c 235 § 3; 1982 c 184 § 8.]

WEST VIRGINIA:

W. Va. Code, § 61-8A-2

§ 61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses

(a) Any adult, with knowledge of the character of the matter, who knowingly and intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both.

(b) It is a defense to a prosecution under the provisions of this section that the obscene matter:

(1) Was displayed in an area from which minors are physically excluded and the matter so located cannot be viewed by a minor from nonrestricted areas; or

(2) Was covered by a device, commonly known as a "blinder rack," such that the lower two thirds of the cover of the material is not exposed to view; or

(3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material

was not exposed to view; or

(4) Was displayed or distributed after taking reasonable steps to receive, obtain or check an adult identification card, such as a driver's license or other technically or reasonably feasible means of verification of age.

(c) It is a defense to an alleged violation under this section that a parent had taken reasonable steps to limit the minor's access to the obscene matter.

Credits

Acts 2000, c. 193, eff. 90 days after March 10, 2000.

W. Va. Code, § 61-8A-3

§ 61-8A-3. Exemptions from criminal liability

The criminal provisions of section two of this article do not apply to:

(a) A bona fide school, in the presentation of local or state approved curriculum;

(b) A public library, or museum, which is displaying or distributing any obscene matter to a minor only when the minor was accompanied by his or her parent;

(c) A licensed medical or mental health care provider, or judicial or law-enforcement officer, during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement activities;

(d) A person who did not know or have reason to know, and could not reasonably have learned, that the person to whom the obscene matter was distributed or displayed was a minor and who took reasonable measures to ascertain the identity and age of the minor;

(e) A person who routinely distributes obscene matter by the use of telephone, computer network or the internet and who distributes such matter to any minor under the age of eighteen years after the person has taken reasonable measures to prevent access by minors to the obscene matter; or

(f) A radio or television station, cable television service or other telecommunications service regulated by the federal communications commission.

Credits

Acts 2000, c. 193, eff. 90 days after March 10, 2000.

WISCONSIN:

Wis. Stat. Ann. s 944.21 (West Supp. 1994):

(1) The legislature intends that the authority to prosecute violations of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The legislature further intends that the enforcement of this section shall be

consistent with the first amendment to the U.S. constitution, article I, section 3, of the Wisconsin constitution and the compelling state interest in protecting the free flow of ideas.

(2) In this section:

(a) "Community" means this state.

(am) "Exhibit" has the meaning given in s. 948.01(1d).

(b) "Internal revenue code" has the meaning specified in s. 71.01(6).

(c) "Obscene material" means a writing, picture, film, or other recording that:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(d) "Obscene performance" means a live exhibition before an audience which:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(dm) "Recording" has the meaning given in s. 948.01(3r).

(e) "Sexual conduct" means the commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

(f) "Wholesale transfer or distribution of obscene material" means any transfer for a valuable consideration of obscene material for purposes of resale or commercial distribution; or any distribution of obscene material for commercial exhibition. "Wholesale transfer or distribution of obscene material" does not require transfer of title to the obscene material to the purchaser, distributee or exhibitor.

(3) Whoever does any of the following with knowledge of the character and content of the material or performance and for commercial purposes is subject to the penalties under sub. (5):

(a) Imports, prints, sells, has in his or her possession for sale, publishes, exhibits, plays, or distributes any obscene material.

(b) Produces or performs in any obscene performance.

(c) Requires, as a condition to the purchase of periodicals, that a retailer accept obscene material.

(4) Whoever does any of the following with knowledge of the character and content of the material is subject to the penalties under sub. (5):

(a) Distributes, exhibits, or plays any obscene material to a person under the age of 18 years.

(b) Has in his or her possession with intent to distribute, exhibit, or play to a person under the age of 18 years any obscene material.

(5)(a) Except as provided under pars. (b) to (e), any person violating sub. (3) or (4) is subject to a Class A forfeiture.

(b) If the person violating sub. (3) or (4) has one prior conviction under this section, the person is guilty of a Class A misdemeanor.

(c) If the person violating sub. (3) or (4) has 2 or more prior convictions under this section, the person is guilty of a Class H felony.

(d) Prior convictions under pars. (b) and (c) apply only to offenses occurring on or after June 17, 1988.

(e) Regardless of the number of prior convictions, if the violation under sub. (3) or (4) is for a wholesale transfer or distribution of obscene material, the person is guilty of a Class H felony.

(5m) A contract printer or employee or agent of a contract printer is not subject to prosecution for a violation of sub. (3) regarding the printing of material that is not subject to the contract printer's editorial review or control.

(6) Each day a violation under sub. (3) or (4) continues constitutes a separate violation under this section.

(7) A district attorney may submit a case for review under s. 165.25(3m). No civil or criminal proceeding under this section may be commenced against any person for a violation of sub. (3) or (4) unless the attorney general determines under s. 165.25(3m) that the proceeding may be commenced.

(8)(a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school.

2. A private school, as defined in s. 115.001(3r), or a tribal school, as defined in s. 115.001(15m).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the educational approval board under s. 38.50, or is a school described in s. 38.50(1)(e)6., 7. or 8.; and

b. Is exempt from taxation under section 501(c)(3) of the internal revenue code.

4. Any institution of higher education that is accredited, as described in s. 39.30(1)(d), and is exempt from taxation under section 501(c)(3) of the internal revenue code.

5. A library that receives funding from any unit of government.

(9) In determining whether material is obscene under sub. (2)(c) 1. and 3., a judge or jury shall examine individual pictures, recordings of images, or passages in the context of the work in which they appear.

(10) The provisions of this section, including the provisions of sub. (8), are severable, as provided in s. 990.001(11).

Credits:

1994, 2007, 2010

WYOMING:

Wyoming recodified its criminal law based in part on the ALI-MPC in 1983.

§ 6-4-302. Promoting obscenity; penalties

(a) A person commits the crime of promoting obscenity if he:(i) Produces or reproduces obscene material with the intent of disseminating it;(ii) Possesses obscene material with the intent of disseminating it; or(iii) Knowingly disseminates obscene material.

(b) Promoting obscenity is a misdemeanor punishable upon conviction as follows:(i) If to an adult, by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for not to exceed one (1) year, or both;(ii) If to a minor, for each violation, by a fine not to exceed six thousand dollars (\$6,000.00) or by imprisonment for not to exceed one (1) year, or both.

(c) This section shall not apply to any person who may produce, reproduce, possess or disseminate obscene material:(i) In the course of law enforcement and judicial activities;(ii) In the course of bona fide school, college, university, museum or public library activities or in the course of employment of such an organization.

Credits

Laws 1982, ch. 75, § 3; Laws 1983, ch. 171, § 1.