

# Obscenity Statutes

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## **ALABAMA**

### **ALA. CODE § 13A-12-191 (2010). Dissemination or display of obscene matter**

Any person who shall knowingly disseminate or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony.

### **ALA. CODE § 13A-12-192 (2010). Possession of obscene matter**

(a) Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

(b) Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony.

### **ALA. CODE § 13A-12-196 (2010). Permitting or allowing child to engage in production of obscene matter**

Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

### **ALA. CODE § 13A-12-197 (2010). Production of obscene matter**

(a) Any person who knowingly films, prints, records, photographs or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

(b) For any person who violates Section 13A-12-197, each depiction of each individual less than 17 years of age constitutes a separate offense.

**ALA. CODE § 13A-12-200.2 (2010). Distribution of obscene material --  
Production of obscene matter**

(a) (1) It shall be unlawful for any person to knowingly distribute, possess with intent to distribute, or offer or agree to distribute any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal. 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 or sentenced to hard labor for the county for not more than one year. A second or subsequent violation of this subdivision is a Class C felony if the second or subsequent violation occurs after a conviction has been obtained for a previous violation. Upon a second violation, a corporation or business entity shall be fined not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(2) It shall be unlawful for any person, being a wholesaler, to knowingly distribute, possess with intent to distribute, or offer or agree to distribute, for the purpose of resale or commercial distribution at retail, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal. 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 twenty thousand dollars (\$20,000) and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than one year. A second or subsequent violation of this subdivision is a Class C felony if the second or subsequent violation occurs after a conviction has been obtained for a previous violation. Upon a second violation, a corporation or business entity shall be fined not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(3) It shall be unlawful for any person to knowingly produce, or offer or agree to produce, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal. Any person who violates this subsection shall be guilty of a Class C felony.

(4) 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.

**ALA. CODE § 13A-12-200.3 (2010). Dissemination of obscene material**

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.

**ALA. CODE § 13A-12-200.5 (2010). Distribution of obscene material to minors -- Display of material harmful to minors**

(1) It shall be unlawful for any person to knowingly or recklessly distribute to a minor, possess with intent to distribute to a minor, or offer or agree to distribute to a minor any material which is harmful to minors. 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.

(2) a. It shall be unlawful for any person to openly and knowingly display for sale at any business establishment frequented by minors, or any other place where minors are or may be invited as part of the general public, any material which is harmful to minors or to hire or employ a minor in an establishment that displays or disseminates material containing nudity or sexual conduct; provided, however, that a person shall not be deemed to have violated the provisions of this subsection, relating to display for sale, by displaying material harmful to minors in sealed wrappers or behind opaque covers commonly known as "blinder racks" so that in either event the material is located at a height of not less than five and one-half feet from the floor, the lower two-thirds of the material is concealed from view, the content of such material is not available for inspection by minors, and other reasonable efforts are made to prevent minors from perusing the 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. Any person who hires or employs a person in violation of this subsection is guilty of a Class C felony and, upon conviction, shall be fined not less than ten thousand dollars (\$10,000) nor more

than fifty thousand dollars (\$50,000).

**b.** This section shall not be applicable to employment of minors in establishments that sell or rent video cassettes or films that contain nudity or sexual acts if the cover of the video cassettes or films does not contain a depiction of nudity or sexual acts and the video cassettes or films are displayed in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction of the material contained in the video cassette or film.

**(3)** The following shall be affirmative defenses to a charge of violating this section as it may relate to a particular minor:

**a.** The minor exhibited to the defendant, his agent or employee a draft card, driver's license, birth certificate, marriage license or other governmental document purporting to show that such minor was not an unmarried person under the age of 18 years and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the minor was an unmarried person under the age of 18.

**b.** A parent or legal guardian accompanied the minor or consented to the act charged.

**c.** The defendant is the parent or legal guardian of the minor.

**d.** The act charged was done for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose.

**(4)** It shall be unlawful for any person to operate an adult bookstore, adult movie house, adult video store, or other form of adult-only enterprise within 1,000 feet of a church, place of worship, church bookstore, public park, public housing project, daycare center, public or private school, college, recreation center, skating rink, video arcade, public swimming pool, private residence, or any other place frequented by minors. 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.

**(5)** This subsection shall not be applicable to any video rental store that does not engage predominantly in and whose principle business is not the sale or rental of adult material, if the material is maintained in compliance with Section 13A-12-200.5(2), or is located in an area that is restricted to adults.

**(6)** 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.

## **ALASKA**

No obscenity laws.

## **ARIZONA**

### **ARIZ. REV. STAT. § 13-3501 (2010). Definitions**

In this chapter, unless the context otherwise requires:

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.

3. "Knowledge of the character" means having general knowledge or awareness, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of that which is reasonably susceptible to examination by the defendant both:

(a) That the item contains, depicts or describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse, whichever is applicable, whether or not there is actual knowledge of the specific contents thereof. This knowledge can be proven by direct or circumstantial evidence, or both.

(b) If relevant to a prosecution for violating section 13-3506, 13-3506.01 or 13-3507, the age of the minor, provided that an honest mistake shall constitute an excuse from liability under this chapter if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

4. "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 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.

5. "Sadomasochistic 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 so clothed, for the purpose or in the context of sexual gratification or abuse.

6. "Sexual activity" means:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

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

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

9. "Ultimate sexual acts" means sexual intercourse, vaginal or anal, fellatio, cunnilingus,



bestiality or sodomy. A sexual act is simulated when it depicts explicit sexual activity which gives the appearance of consummation of ultimate sexual acts.

**ARIZ. REV. STAT. § 13-3502 (2010). Production, publication, sale, possession and presentation of obscene items; classification**

A person is guilty of a class 5 felony who, with knowledge of the character of the item involved, knowingly:

1. Prints, copies, manufactures, prepares, produces, or reproduces any obscene item for purposes of sale or commercial distribution.
2. Publishes, sells, rents, lends, transports or transmits in intrastate commerce, imports, sends or causes to be sent into this state for sale or commercial distribution or commercially distributes or exhibits any obscene item, or offers to do any such things.
3. Has in his possession with intent to sell, rent, lend, transport, or commercially distribute any obscene item.
4. Presents or participates in presenting the live, recorded or exhibited performance of any obscene item to the public or an audience for consideration or commercial purpose.

**ARIZ. REV. STAT. § 13-3503 (2010). Seizure of obscene things; disposition**

An obscene or indecent writing, paper, book, picture, print or figure found in possession, or under control of a person arrested therefor, shall be delivered to the magistrate before whom the person arrested is required to be taken, and if the magistrate finds it is obscene or indecent, he shall deliver one copy to the county attorney of the county in which the accused is liable to prosecution, and at once destroy all other copies. The copy delivered to the county attorney shall be destroyed upon conviction of the accused.

**ARIZ. REV. STAT. § 13-3504 (2010). Coercing acceptance of obscene articles or publications; classification**

A. No person, firm, association or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other item, article, book, or other publication which is obscene. No person, firm, association or corporation shall deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such items, articles, books, or publications, or by reason of the return thereof.

B. A violation of any provision of subsection A is a class 5 felony.

**ARIZ. REV. STAT. § 13-3505 (2010). Obscene prints and articles; jurisdiction**

A. The superior court has jurisdiction to enjoin the sale or distribution of obscene prints and articles, as described in subsection B of this section.

B. The county attorney of any county or the city attorney of any city in which a person, firm, association or corporation publishes, sells or distributes or is about to sell or distribute or has in his possession with intent to sell or distribute or is about to acquire possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose, or in any other respect defined in section 13-3501, may maintain an action on behalf of such county or city for an injunction against such person, firm, association or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution of the acquisition, publication or possession within the state of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photographed figure or image or any written or printed matter of an indecent character, described in this subsection or in section 13-3501.

C. The person, firm, association or corporation sought to be enjoined shall be entitled to a trial of the issues within ten days after joinder of issue and a decision shall be rendered by the court within ten days of the conclusion of the trial.

D. If a final order or judgment of injunction is entered against the person, firm, association or corporation sought to be enjoined, such final order of judgment shall contain a provision directing the person, firm, association or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in subsection B of this section and such sheriff shall be directed to seize and destroy such obscene prints and articles.

E. In any action brought as provided in this section, such county attorney or city attorney bringing the action shall not be required to file any undertaking before the issuance of an injunction order provided for in subsection C of this section.

F. The sheriff directed to seize and destroy such obscene prints and articles shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, association or corporation sought to be enjoined.

G. Every person, firm, association or corporation who sells, distributes, or acquires

possession with intent to sell or distribute any of the matter described in subsection B of this section, after the service upon him of a summons and complaint in an action brought pursuant to this section is chargeable with knowledge of the contents thereof.

**ARIZ. REV. STAT. § 13-3506 (2010). 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.

**ARIZ. REV. STAT. § 13-3506.01 (2010). 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 section 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.

**ARIZ. REV. STAT. § 13-3507 (2010). Public display of explicit sexual materials; classification; definitions**

A. It is unlawful for any person knowingly to place explicit sexual material upon public display, or knowingly to fail to take prompt action to remove such a display from property in his possession or under his control after learning of its existence.

B. A person who violates any provision of this section is guilty of a class 6 felony.

C. For the purposes of this section:

1. "Explicit sexual material" means any drawing, photograph, film negative, motion picture, figure, object, novelty device, recording, transcription or any book, leaflet, pamphlet, magazine, booklet or other item, the cover or contents of which depicts human genitalia or depicts or verbally describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is harmful to minors. Explicit sexual material does not include any depiction or description which, taken in context, possesses serious educational value for minors or which possesses serious literary, artistic, political or scientific value.

2. "Public display" means the placing of material on or in a billboard, viewing screen, theater marquee, newsstand, display rack, vending machine, window, showcase, display case or similar place so that material within the definition of paragraph 1 of this subsection is easily visible or readily accessible from a public thoroughfare, from the property of others, or in any place where minors are invited as part of the general public.

**ARIZ. REV. STAT. § 13-3509 (2010). Duty to report; classification**

A. A person who is asked to record, film, photograph, develop or duplicate any visual or print medium depicting sexual activity, whether or not the person would be compensated, shall immediately report, or cause a report to be made of, such request to a municipal or county peace officer. The report shall include the name or names of the person, persons or business making the request, if known, and shall describe what was requested.

B. A person who knowingly violates this section is guilty of a class 6 felony.

**ARIZ. REV. STAT. § 13-3510 (2010). Evidence of obscenity**

A. Expert testimony or other ancillary evidence is not required to determine obscenity if the allegedly obscene item has been placed in evidence. The item itself is the best evidence of what it represents.

B. If a person relied upon a rating given to a film or motion picture by the motion picture association of America or an equivalent rating association, the rating and evidence concerning the person's reliance on such rating shall be admissible in evidence in a trial for violation of this article.

**ARIZ. REV. STAT. § 13-3511 (2010). Exemption; broadcasts and telecasts**

The provisions of this chapter shall not apply to broadcasts or telecasts through facilities licensed under the federal communications act or title 9, chapter 5, article 1.1.

**ARIZ. REV. STAT. § 13-3512 (2010). Obscene or indecent telephone communications to minors for commercial purposes; violation; classification**

A. It is unlawful for any person to knowingly make by means of a telephone, directly or by a recording device, any obscene or indecent communication for commercial purposes to any person who is under the age of eighteen years. The communication is unlawful regardless of whether the maker of the communication placed the call.

B. A person who violates this section is guilty of a class 4 felony.

**ARKANSAS**

**ARK. CODE ANN. § 5-68-201 (2010). Exhibition of obscene figures**

(a) Every person publicly exhibiting any obscene figures shall be deemed guilty of a misdemeanor. (b) Every person convicted under the provisions of this section shall be fined in any sum not less than fifty dollars (\$50.00).

**ARK. CODE ANN. § 5-68-203 (2010). Obscene films**

(a) It shall be unlawful for any person knowingly to exhibit, sell, offer to sell, give away, circulate, produce, distribute, attempt to distribute, or have in his possession any obscene film. (b) As used in this section:

- (1) "Person" means any individual, partnership, firm, association, club, corporation, or other legal entity;
- (2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest;
- (3) "Film" means motion picture film, still picture film, slides, and movie film of any type.
- (c) Any person who knowingly exhibits, sells, offers to sell, gives away, circulates, produces, distributes, or attempts to distribute any obscene film shall be guilty of a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000) or be imprisoned for a period not less than one (1) year nor more than five (5) years, or be both so fined and imprisoned. Any person who shall have in his possession obscene film shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or be imprisoned in the county jail for a period not to exceed one (1) year, or both.

### **ARK. CODE ANN. § 5-68-205 (2010). Public display of obscenity**

- (a)(1) As used in this subsection, (A) "Obscene" has the same meaning as it is defined by § 5-68-302.
- (B) "Obscenity" means an obscene sticker, painting, decal, emblem, or other device which is or contains an obscene writing, description, photograph, or depiction.
- (2) A person commits the offense of publicly displaying an obscenity when the person knowingly causes an obscenity to be displayed in a manner which is readily visible to the public and its content or character is distinguishable by normal vision.
- (3) Publicly displaying an obscenity is a Class B misdemeanor.
- (b)(1) It is unlawful to publicly display obscene material as defined by § 5-68-302 on any motor vehicle or wearing apparel.
- (2) Violations of this subsection shall be punishable as Class C misdemeanors.

### **ARK. CODE ANN. § 5-68-302 (2010). Definitions**

As used in this subchapter, unless the context otherwise requires: (1) "Advertising purposes" means purpose of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment;

(2) "Hard-core sexual conduct" means patently offensive acts, exhibitions, representations, depictions, or descriptions of:

(A) Intrusions, however slight, actual or simulated, by any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body; or

(B) Cunnilingus, fellatio, anilingus, bestiality, lewd exhibitions of genitals, or excretory functions, actual or simulated;

(3) "Live public show" means a public show in which human beings, animals, or both appear bodily before spectators or customers;

(4) "Obscene material" means that material which:

(A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;

(B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and

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

(5) "Obscene performance" means a play, motion picture, dance, show, or other presentation, whether pictured, animated, or live, performed before an audience and which in whole or in part depicts, or reveals, sexual conduct, hard-core sexual conduct, or sadomasochistic abuse, or which includes explicit verbal descriptions or narrative accounts of sexual conduct or hard-core sexual conduct, and which:

(A) Depicts or describes in a patently offensive manner, sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;

(B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and

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

(6) "Promote" means to produce, direct, perform in, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, or advertise, for consideration, or to offer or agree to do any of these things for consideration;

(7) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, regardless of whether an admission or other charge is levied or collected and regardless of whether minors are admitted or excluded;

(8) "Sadomasochistic abuse" means flagellation, mutilation, or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed, in a sexual context;

(9) "Sexual conduct" means human masturbation or sexual intercourse.

## **ARK. CODE ANN. § 5-68-303 (2010). Promoting obscene materials**

(a) Except as otherwise provided in § 5-68-308, a person commits promoting obscene materials if he knowingly promotes, or has in his possession with intent to promote, any obscene material. (b) As used in this section, "material" means any writing, picture, motion picture, films, slides, drawings, or other visual reproductions.

(c) Promoting obscene materials is a Class D felony.

#### **ARK. CODE ANN. § 5-68-304 (2010). Promoting obscene performance**

(a) A person commits promoting an obscene performance if he knowingly: (1) Directs, manages, finances, or presents an obscene performance; or

(2) Promotes any obscene performance, as owner, producer, director, manager, or performer.

(b) Promoting an obscene performance is a Class D felony.

#### **ARK. CODE ANN. § 5-68-305 (2010). Obscene performance at a live public show**

(a) A person commits an obscene performance at a live public show if he knowingly: (1) Engages in an obscene performance of sadomasochistic abuse, hard-core sexual conduct, or sexual conduct in a live public show; or

(2) Directs, manages, finances, or presents an obscene performance at a live public show in which the participants engage in sadomasochistic abuse, hard-core sexual conduct, or sexual conduct.

(b) Committing an obscene performance at a live public show is a Class C felony.

#### **ARK. CODE ANN. § 5-68-307 (2010). Public display of hard-core sexual conduct**

(a) A person commits a public display of hard-core sexual conduct if he knowingly engages in hard-core sexual conduct in an open public place. (b) Engaging in hard-core sexual conduct in an open public place is a Class D felony.

#### **ARK. CODE ANN. § 5-68-405 (2010). Possession, sale, or distribution**

(a) Every person who, with knowledge of its contents, sends or causes to be sent, or brings or causes to be brought, into this state for sale or commercial distribution, or in this state prepares, publishes, sells, exhibits, or commercially distributes, or gives away



or offers to give away or has in his possession with intent to sell or commercially distribute or to exhibit or to give away, any obscene printed or written matter or material, other than mailable matter, or any mailable matter known by such person to have been judicially found to be obscene under this subchapter, or who knowingly informs another of when, where, how, or from whom or by what means any of these things can be purchased or obtained, shall be guilty of a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000) or be imprisoned for a period not less than one (1) year nor more than five (5) years, or be both so fined and imprisoned. (b) Every person who, with knowledge of its contents, has in his possession any obscene printed or written matter or materials, other than mailable matter, or any mailable matter known by that person to have been judicially found to be obscene under this subchapter, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or be imprisoned in the county jail for a period not to exceed one (1) year, or both.

### **ARK. CODE ANN. § 5-68-501 (2010). Definitions**

As used in this subchapter, unless the context otherwise requires: (1) "CD-ROM" means a compact disk which:

(A) Has the capacity to store graphic, audio, video, and written materials; and

(B) May be used by a computer or other device to play or display materials harmful to minors;

(2) "Harmful to minors" means 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:

(A) 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;

(B) 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

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;

(3) "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 in this section which is reasonably susceptible to examination by the defendant; and

(B) The age of the minor, provided that an honest mistake shall constitute an excuse from liability under this section if the defendant made a reasonable bona fide attempt to ascertain the age of the minor;

(4) "Magnetic disk memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including, but not limited to, hard disk drives and floppy diskettes;

(5) "Magnetic tape memory" means a memory system that stores and retrieves binary data on magnetic recording tape;

(6) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture, film, record, recording tape, CD-ROM disk, magnetic disk memory, magnetic tape memory, video tape, or other media, but does not include matters displayed, transmitted, retrieved, or stored on the internet or other network for the electronic dissemination of information;

(7) "Minor" means any person under the age of eighteen (18) years;

(8) "Nudity" means the:

(A) Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;

(B) Showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or

(C) Depiction of covered male genitals in a discernibly turgid state;

(9) "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one (1) or more, with or without consideration, but does not include matters displayed, transmitted, retrieved, or stored on the internet or other network for electronic dissemination of information;

(10) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind;

(11) "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor;

(12) "Sadomasochistic 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 so clothed;

(13) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or female breast; and

(14) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

### **ARK. CODE ANN. § 5-68-501 (2010). Unlawful acts**

It shall be unlawful for any person, including, but not limited to, any persons having custody, control, or supervision of any commercial establishment, to knowingly: (1)(A) 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.

(B) Provided, however, a person shall be deemed not to have displayed material harmful to minors if the lower two-thirds (2/3) of the material is not exposed to view and segregated in a manner that physically prohibits access to the material by minors; or

(2)(A) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors.

(B) Provided, this prohibition shall not apply to:

(i) Any dissemination by a parent, guardian, or relative within the third degree or consanguinity of the minor; or

(ii) Any dissemination with the consent of a parent or guardian of the minor; or

(3)(A) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(B) Provided, this prohibition shall not apply to:

(i) Any dissemination by a parent, guardian, or relative within the third degree or consanguinity of the minor; or

(ii) Any dissemination with the consent of a parent or guardian of the minor.

## **CALIFORNIA**

### **CAL. PENAL CODE § 311 (2009). Definitions**

As used in this chapter, the following definitions apply:

(a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination,

distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the conclusion that the conduct lacks serious

literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(h) The Legislature expresses its approval of the holding of *People v. Cantrell*, 7 Cal. App. 4th 523, that, for the purposes of this chapter, matter that "depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct" is limited to visual works that depict that conduct.

### **CAL. PENAL CODE § 311.1 (2009). Sale or distribution of obscene matter depicting person under age of 18 years engaging in sexual conduct**

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the fine and imprisonment.

(b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(c) This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(d) 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 perform related activities in providing telephone services.

### **CAL. PENAL CODE § 311.2 (2009). Production, distribution, or exhibition of obscene matter**

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information,

data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) 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.

### **CAL. PENAL CODE § 311.4 (2009). Employment of minor in sale or distribution of obscene matter or production of pornography**

(a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph,

negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d)

(1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(f) In every prosecution under this section involving a minor under the age of 14 years at



the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

**CAL. PENAL CODE § 311.5 (2009). Advertising or promotion of matter represented to be obscene**

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale, distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor.

**CAL. PENAL CODE § 311.6 (2009). Obscene live conduct**

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

**CAL. PENAL CODE § 311.7 (2009). Requiring purchaser or consignee to receive obscene matter**

Every person who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any obscene matter or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept obscene matter, or by reason of the return of such obscene matter, is guilty of a misdemeanor.

**CAL. PENAL CODE § 311.8 (2009). Defenses**

(a) 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.

(b) It shall be a defense in any prosecution for a violation of this chapter by a person who knowingly distributed any obscene matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the obscene matter by persons under 18 years of age:

(1) Required the person receiving the obscene matter to use an authorized access or

identification code, as provided by the information provider, before transmission of the obscene matter begins, where the defendant has previously issued the code by mailing it to the applicant therefor after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(c) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subdivision (b) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

### **CAL. PENAL CODE § 311.10 (2009). Advertisement of obscene matters depicting minors**

(a) Any person who advertises for sale or distribution any obscene matter knowing that it depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

(b) Subdivision (a) shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

## **COLORADO**

### **COLO. REV. STAT. § 18-7-101 (2009). Definitions**

As used in this part 1, unless the context otherwise requires:

(1) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.

(1.5) "Minor" means a person under eighteen years of age.

(2) "Obscene" means material or a performance that:

(a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(b) Depicts or describes:

(I) Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(II) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and

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

(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.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of tolerance.

(5) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(6) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6.5) "Prurient interest" means a shameful or morbid interest.

(7) "Simulated" means the explicit depiction or description of any of the types of conduct set forth in paragraph (b) of subsection (2) of this section, which creates the appearance of such conduct.

(8) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(9) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

## **COLO. REV. STAT. § 18-7-102 (2009). Obscenity**

(1) (a) Except as otherwise provided in subsection (1.5) of this section, a person commits wholesale promotion of obscenity if, knowing its content and character, such person wholesale promotes or possesses with intent to wholesale promote any obscene material.

(b) Wholesale promotion of obscenity is a class 1 misdemeanor.

(1.5) (a) A person commits wholesale promotion of obscenity to a minor if, knowing its content and character, such person wholesale promotes to a minor or possesses with intent to wholesale promote to a minor any obscene material.

(b) Wholesale promotion of obscenity to a minor is a class 6 felony.

(2) (a) Except as otherwise provided in subsection (2.5) of this section, a person commits promotion of obscenity if, knowing its content and character, such person:

(I) Promotes or possesses with intent to promote any obscene material; or

(II) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(b) Promotion of obscenity is a class 2 misdemeanor.

(2.5) (a) A person commits promotion of obscenity to a minor if, knowing its content and character, such person:

(I) Promotes to a minor or possesses with intent to promote to a minor any obscene material; or

(II) Produces, presents, or directs an obscene performance involving a minor or participates in a portion thereof that is obscene or that contributes to its obscenity.

(b) Promotion of obscenity to a minor is a class 6 felony.

(3) Repealed.

(4) A person who possesses six or more identical obscene materials is presumed to possess them with intent to promote the same.

(5) This section does not apply to a person who possesses or distributes obscene material or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

(6) This section does not apply to a person's conduct otherwise proscribed by this section which occurs in that person's residence as long as that person does not engage in the wholesale promotion or promotion of obscene material in his residence.

### **COLO. REV. STAT. § 18-7-103 (2009). Injunctions to restrain the promotion of obscene materials**

(1) The district courts of this state and the judges thereof shall have full power, authority, and jurisdiction to enjoin the wholesale promotion, promotion, or display of obscene materials as specified in this section and to issue all necessary and proper restraining orders, injunctions, and writs and processes in connection therewith not inconsistent with this article.

(2) The district attorney of the county in which a person, firm, or corporation wholesale promotes, promotes, or displays, or is about to wholesale promote, promote, or display, or has in his, her, or its possession with intent to wholesale promote, promote, or display, or is about to acquire possession with intent to wholesale promote, promote, or display any obscene material may maintain an action for injunction against such person, firm, or corporation to prevent the wholesale promotion, promotion, or display or further wholesale promotion, promotion, or display of said material described or identified in said suit for injunction.

(3) This article shall not authorize the issuance of temporary restraining orders except where exigent circumstances require the same. In matters of exigent circumstances, the restraining order shall provide that the action must be commenced on the earliest possible date. No temporary restraining order may be issued to restrain the continued exhibitions

of a motion picture being shown commercially before the public, notwithstanding the existence of exigent circumstances.

(4) No temporary restraining order or temporary injunction may be issued except after notice to the person, firm, or corporation sought to be enjoined and only after all parties have been offered or afforded an opportunity to be heard. A person, firm, or corporation shall be deemed to have been offered or afforded an opportunity to be heard if notice has been given and he, she, or it fails to appear. At such hearing, evidence shall be presented and witnesses examined.

(5) Before or after the commencement of the hearing on an application for a temporary injunction, the court may, and on motion of the party sought to be restrained shall, order the trial on the action on the merits to be advanced and consolidated with the hearing on the application. Where such hearings are not so consolidated, and a temporary injunction or restraining order is issued, the court shall hold a final hearing and a trial of the issues within one day after joinder of issue, and a decision shall be rendered within two days of the conclusion of the trial. If a final hearing is not held within one day after joinder of issue or a decision not rendered within two days of the conclusion of the trial, the injunction shall be dissolved. No temporary injunction or restraining order shall issue until after a showing of probable cause to believe that the material or display is obscene and a showing of probable success on the merits. Any such temporary injunction or restraining order shall provide that the defendant may not be punished for contempt if the material is found not to be obscene after joinder of issue, final hearing, and trial.

(6) Nothing contained in this article shall prevent the court from issuing a temporary restraining order forbidding the removing, destroying, deleting, splicing, or otherwise altering of any motion picture alleged to be obscene.

(7) Any person, firm, or corporation sought to be permanently enjoined shall be entitled to a full adversary trial of the issues within one day after the joinder of issue, and a decision shall be rendered by the court within two days of the conclusion of the trial. If the defendant in any suit for a permanent injunction filed under the terms of this article shall fail to answer or otherwise join issue within the time required to file his, her, or its answer, the court, on motion of the party applying for the injunction, shall enter a general denial for the defendant and set a date for hearing on the question raised in the suit for injunction within ten days following the entry of the general denial entered by the court. The court shall render its decision within two days after the conclusion of the hearing.

(8) In the event that a final order or judgment of injunction is entered against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the material described in subsection (2) of this section, and such sheriff shall be directed to seize and destroy the same six months after the entry of the said final order unless criminal proceedings or an indictment is brought before that time, in which event, said material may be used as evidence in such criminal proceeding.

(9) In any action brought as herein provided, the district attorney shall not be required to file any undertaking, bond, or security before the issuance of any injunction order provided for above, shall not be liable for costs, and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.

(10) Every person, firm, or corporation who wholesale promotes, promotes, displays, or acquires possession with intent to wholesale promote, promote, or display any of the material described in subsection (2) of this section, after the service upon him of a summons and complaint in an action brought pursuant to this article, is chargeable with knowledge of the contents.

### **COLO. REV. STAT. § 18-7-104.5 (2009). Remedies under the “Colorado Organized Crime Control Act”**

When a person or persons, through an enterprise, engage in a pattern of racketeering activity for which the predicate offenses are the promotion or wholesale promotion of obscenity, pursuant to article 17 of this title, the difference in the fair market value of real property in the vicinity of the location of such enterprise from what the value would be if such enterprise or any part thereof were not located in the vicinity, as established by the opinion testimony of experts or otherwise, shall be deemed a compensable injury for which the owners of victimized real property can exercise all civil remedies set forth in article 17 of this title, in addition to any other measure of damages provable pursuant to article 17 of this title.

## **CONNECTICUT**

### **CONN. GEN. STAT. § 53a-193 (2010). Definitions**

The following definitions are applicable to this section and sections 53a-194 to 53a-210, inclusive:

(1) Any material or performance is "obscene" if, (A) taken as a whole, it predominantly appeals to the prurient interest, (B) it depicts or describes in a patently offensive way a prohibited sexual act, and (C) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or performance or the circumstances of its dissemination to be designed for some other specially susceptible audience. Whether a material or performance is obscene shall be judged by ordinary adults applying contemporary community standards. In applying contemporary community standards, the state of Connecticut is deemed to be the community.

(2) Material or a performance is "obscene as to minors" if it depicts a prohibited sexual

act and, taken as a whole, it is harmful to minors. For purposes of this subdivision: (A) "Minor" means any person less than seventeen years old as used in section 53a-196 and less than sixteen years old as used in sections 53a-196a and 53a-196b, and (B) "harmful to minors" means that quality of any description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

(3) "Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse.

(4) "Nude performance" 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 in any play, motion picture, dance or other exhibition performed before an audience.

(5) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "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 so clothed.

(8) "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument.

(9) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(10) "Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(11) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.



(12) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

(13) "Child pornography" means any visual depiction including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

(14) "Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

(15) "Visual depiction" includes undeveloped film and videotape and data, as defined in subdivision (8) of section 53a-250, that is capable of conversion into a visual image and includes encrypted data.

**CONN. GEN. STAT. § 53a-194 (2010). 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.

**CONN. GEN. STAT. § 53a-195 (2010). Defense**

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.

**CONN. GEN. STAT. § 53a-196 (2010). Obscenity as to minors : Class D felony**

(a) A person is guilty of obscenity as to minors when he knowingly promotes to a minor, for monetary consideration, any material or performance which is obscene as to minors.

(b) For purposes of this section, "knowingly" means having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or

inquiry as to (1) the character and content of any material or performance which is reasonably susceptible of examination by such person and (2) the age of the minor.

(c) In any prosecution for obscenity as to minors, it shall be an affirmative defense that the defendant made (1) a reasonable mistake as to age, and (2) a reasonable bona fide attempt to ascertain the true age of such minor, by examining a draft card, driver's license, birth certificate or other official or apparently official document, exhibited by such minor, purporting to establish that such minor was seventeen years of age or older.

(d) Obscenity as to minors is a class D felony.

**CONN. GEN. STAT. § 53a-196a (2010). Employing a minor in an obscene performance: Class A felony**

(a) A person is guilty of employing a minor in an obscene performance when such person (1) employs any minor, whether or not such minor receives any consideration, for the purpose of promoting any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience, or (2) permits any such minor to be employed, whether or not such minor receives any consideration, in the promotion of any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience, and such person is the parent or guardian of such minor or otherwise responsible for the general supervision of such minor's welfare.

(b) Employing a minor in an obscene performance is a class A felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court.

**CONN. GEN. STAT. § 53a-196b (2010). Promoting a minor in an obscene performance: Class B felony**

(a) A person is guilty of promoting a minor in an obscene performance when he knowingly promotes any material or performance in which a minor is employed, whether or not such minor receives any consideration, and such material or performance is obscene as to minors notwithstanding that such material or performance is intended for an adult audience.

(b) For purposes of this section, "knowingly" means having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry as to (1) the character and content of any material or performance which is reasonably susceptible of examination by such person and (2) the age of the minor employed.

(c) Promoting a minor in an obscene performance is a class B felony.

**CONN. GEN. STAT. § 53a-199 (2010). Injunction against promoting any obscene material or performance**

An injunction may be granted against the promoting of any material or performance that is obscene or obscene as to minors or the possessing with intent to promote any such material.

**CONN. GEN. STAT. § 53a-200 (2010). Institution of action for adjudication of obscenity**

Whenever any state's attorney or assistant state's attorney has reasonable cause to believe that any person is knowingly promoting any material or performance that is obscene or obscene as to minors, he shall institute an action for an adjudication of the obscenity of such material or performance. Such action shall commence with the filing of an application for an injunction with a judge of the superior court for the judicial district wherein is located such material or performance. The complaint shall: (1) Be directed against the promoting of the material or performance; (2) designate as defendants and list the names and addresses, if known, of its promoters, or any person possessing it with intent to promote it; (3) allege its obscene nature; (4) seek an adjudication that it is obscene or obscene as to minors and an injunction against any promoting or possessing with intent to promote; (5) seek its surrender, seizure, destruction or termination.

**DELAWARE**

**DEL. CODE ANN. tit. 11, § 1361 (2010). 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 § 1365 of this title, 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.

(c) Notwithstanding Chapter 42 of this title, the minimum sentence for a subsequent violation of this section occurring within 5 years of a former conviction shall be a fine in the amount of \$5,000, imprisonment for a minimum period of 9 months, no portion which may be suspended or reduced, and probation for a period of 2 years; provided, however, that where the defendant is an organization, the fine shall be \$10,000. In addition to the above penalties, upon conviction of obscenity involving 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 2 years.

(d) Where the criminality of conduct depends on a child being under the age of 12, subsection (a)(5) of this section, or under the age of 18, subsection (b) of this section, it is no defense that the actor did not know the child's age. (11 Del. C. 1953, § 1361; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 445, § 1; 61 Del. Laws, c. 121, § 1; 63 Del. Laws, c. 111, §§ 1-3; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, §§ 11, 12; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 71, § 2; 74 Del. Laws, c. 380, §§ 1, 2.)

### **DEL. CODE ANN. tit. 11, § 1362 (2010). 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. (11 Del. C. 1953, § 1362; 58 Del. Laws, c. 497, § 1.)

### **DEL. CODE ANN. tit. 11, § 1363 (2010). Obscenity; presumption**

A person who disseminates or possesses obscene material in the course of business is presumed to do so knowingly or recklessly. (11 Del. C. 1953, § 1363; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

### **DEL. CODE ANN. tit. 11, § 1364 (2010). Definition of obscene**

Material or live conduct is obscene if:

(1) The average person applying contemporary community standards would find the material or conduct, taken as a whole, appeals to the prurient interests; and

(2) The material depicts or describes or the live conduct portrays:

a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or

b. Patently offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and

(3) The work or conduct taken as a whole lacks serious literary, artistic, political or scientific value. (11 Del. C. 1953, § 1364; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 236, § 1; 63 Del. Laws, c. 111, § 4.)

**DEL. CODE ANN. tit. 11, § 1365 (2010). Obscene literature harmful to minors; class A misdemeanor**

(a) Definitions as used in this section:

(1) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) "Knows" means:

a. Knowledge that the character and content of any material described in subsection (i)(1) of this section is harmful to minors; or

b. Knowledge of facts that would lead a reasonable person to inquire whether the character and content of any material described in subsection (i)(1) of this section is harmful to minors; or

c. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to subsection (b) or (i) of this section or is the subject of a pending proceeding instituted pursuant to subsection (b) or (i) of this section.

(3) "Minor" means any person under the age of 17 years.

(4) "Known minor" is any person known, in fact, to be under the age of 18 years, or any person, in fact, under the age of 18 years unless a reasonable, bona fide attempt has been made to ascertain the age of that minor.

(5) "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 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.

(6) "Sado-masochistic abuse" means flagellation or torture practiced 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 so clothed.

(7) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(8) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(b) Whenever the Attorney General of this State has reasonable cause to believe that any person is or may become engaged in any of the acts described in subsection (i)(1), (2) or (4) of this section, the Attorney General shall institute an action in the Court of Chancery for the county where such act is or will be performed for adjudication of the question of whether such material is harmful to minors.

(c) The action authorized by subsection (b) of this section shall be commenced by the filing of a complaint to which shall be attached as an exhibit a true copy of the allegedly harmful material. The complaint shall:

(1) Be directed against such material by name or description;

(2) Allege that such material is harmful to minors;

(3) Designate as respondents and list the names and addresses, if known, of any person in this State engaged or about to be engaged in any of the acts described in subsection (i)(1), (2) or (4) of this section with respect to such material;

(4) Seek an adjudication that such material is harmful to minors; and

(5) Seek a permanent injunction against any respondent prohibiting the respondent from performing any of the acts described in subsection (i)(1), (2) or (4) of this section.

(d) Upon the filing of the complaint described in subsection (c) of this section, the Attorney General shall present the same, together with the material attached thereto, as soon as practicable to the Court for its examination and reading. If after such examination and reading the Court finds no probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action. If after such examination and reading the Court finds probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint whereupon it shall be the responsibility of the Attorney General promptly to request the Register in Chancery to issue summons and to furnish to the Register in Chancery such number of copies of such complaint and endorsement as are needed for the service of summons. Service of such summons and endorsed complaint shall be made upon the respondents thereto in any manner provided by law.

(e) The author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or any person in this State preparing, selling, exhibiting or commercially distributing or possessing with intent to sell or commercially distribute or exhibit, the material exhibited

to the endorsed complaint, may appear and may intervene in accordance with the Rules of the Court of Chancery. If no person appears and files an answer, or moves to intervene within the time set by the rule or by an order of the Court of Chancery, the Court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment.

(f)(1) The public policy of this State requires that all proceedings prescribed in this section, other than criminal actions under subsection (i) of this section, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech.

(2) The Rules of the Court of Chancery shall be applicable, except as they may be modified by this section.

(3) Any party or intervenor shall be entitled, upon request, to a trial of any issue with an advisory jury and the Court, with the consent of all parties, may order a trial of any issue with a jury whose verdict shall have the same effect as in cases of law.

(4) In any action in which an injunction is sought under this section, any respondent or intervenor shall be entitled to a trial of the issues within 1 day, exclusive of Saturday, Sunday and holidays, after joinder of issue, and a decision shall be rendered by the Court or jury, as the case may be, within 2 days, exclusive of Saturday, Sunday and holidays, of the conclusion of the trial. If the issues are being tried before a jury and the jury shall not be able to render a decision within 2 days of the conclusion of the trial, then notwithstanding any other provision of this section, the jury shall be dismissed and a decision shall be rendered by the Court within 2 days of the conclusion of the trial.

(5) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint not to be harmful to minors, the Court shall enter judgment accordingly and shall dismiss the complaint.

(6) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint to be harmful to minors, the Court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting the respondent from engaging in any of the acts described in subsection (i)(1), (2) or (4) of this section.

(g) If the Court, pursuant to subsection (d) of this section, finds probable cause to believe the exhibited material to be harmful to minors, and so endorses the complaint, the Court may, upon the motion of the Attorney General and in accordance with the Chancery Court Rules, issue a temporary restraining order against any respondent prohibiting the respondent from selling, commercially distributing or giving away such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that 1 or more of the respondents are engaged in the sale of material harmful to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon. All proceedings for temporary

restraining order and preliminary injunction shall be governed by the Rules of the Court of Chancery.

(h) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to subsection (f) or (g) of this section, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction shall be guilty of a class A misdemeanor.

(i) Any person is guilty of a class A misdemeanor who:

(1) Exhibits for sale, sells, displays, transfers, gives gratis, loans, rents or advertises to a known minor any book, pamphlet, magazine or printed matter, however reproduced, or sound recording or picture, photograph, drawing, sculpture, motion picture film or similar visual representation that such person knows to be in whole or in part harmful to minors.

(2) Sells, gives gratis or transfers an admission ticket or pass to a known minor or admits a known minor to a premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, such person knows to be harmful to minors.

(3) Misrepresents the person's age as 17 years or older for the purpose of evading the restrictions of this section.

(4) Exhibits for sale, sells, displays, gives gratis, transfers, loans or rents any matter enumerated in paragraph (1) of this subsection that such person knows to be harmful to minors which does not prominently include in such advertisement the words "unlawful to persons under 17 years of age."

(j) No criminal proceeding shall be commenced against any person pursuant to subsection (i)(1), (2) or (4) of this section unless, prior to the act which is the subject of such proceeding, such person:

(1) Had written notice from the Attorney General that the material which is the subject of such proceeding has been adjudged harmful to minors pursuant to subsection (b) or (i) of this section; or

(2) Has been subject to an order entered pursuant to subsection (b) of this section relating to the material which is the subject of such criminal proceeding, or any other material harmful to minors.

(k) No person shall be subject to prosecution pursuant to this section:

(1) For any sale to a minor where such person had reasonable cause to believe that the minor involved was 17 years old or more, 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 was 17 years old or more; or



(2) For any sale where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian; or

(3) Where such person is a bona fide school, museum or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(l) In order to provide for the uniform application of this section to all minors within this State, it is intended that the sole and only regulation of the matters herein discussed shall be under this section and no municipality, county or other governmental unit within this State shall make any law, ordinance or regulation relating to the subject matter hereof as to minors. All such laws, ordinances and regulations, as they affect minors, whether enacted before or after this section shall become void, unenforceable and of no effect upon April 1, 1973; provided, however, that such prior laws, ordinances and regulations shall govern litigations commenced prior to April 1, 1973, and shall continue in effect solely for that purpose.

(m) This section may be known and cited as Delaware Law on the Protection of Minors From Harmful Materials, and may be referred to by that designation. (11 Del. C. 1953, § 1365; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 236, § 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

### **DEL. CODE ANN. tit. 11, § 1366 (2010). Outdoor motion picture theatres.**

(a) Whoever being the owner or operator of an outdoor motion picture theatre exhibits or permits to be exhibited any film not suitable for minors or harmful to minors and which film can be viewed by such minors not in attendance at the said outdoor motion picture theatre shall be guilty of a class A misdemeanor.

(b) Definitions as used in this section:

(1) "Code and Rating Administration of the Motion Picture Association of America" ratings are:

"G" -- All ages admitted. General audiences;

"PG" -- All ages admitted. Parental guidance suggested;

"R" -- Restricted. Under 17 requires accompanying parent or adult guardian;

"X" -- No one under 17 admitted.

(2) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(3) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect

to what is suitable material for minors, and taken as a whole the work lacks serious literary, artistic, political or scientific value for minors.

(4) "Minor" means any person under the age of 17 years.

(5) "Not suitable for minors" means any film, reel or view which has a rating of "R" or "X" according to the Code and Rating Administration of the Motion Picture Association of America.

(6) "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.

(7) "Sado-masochistic abuse" means flagellation or torture practiced 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 so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(9) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(10) "Suitable for minors" means any film, reel or view which has a rating of "G" or "PG" according to the Code and Rating Administration of the Motion Picture Association of America. (59 Del. Laws, c. 258, § 1.)

## **DISTRICT OF COLUMBIA**

### **D.C. CODE ANN. § 22-2201 (2010). Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception [Formerly § 22-2001]**

(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; or

(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.S. § 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 \$ 1,000 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 nor more than \$ 5,000 or imprisoned not less than 6 months or more than 3 years, or both.

## **FLORIDA**

### **FLA. STAT. ANN. § 847.001 (2010). Definitions**

As used in this chapter, the term:

(1) "Adult" means a person 18 years of age or older.

(2) "Adult entertainment establishment" means the following terms as defined:

(a) "Adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.

(b) "Adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.

(c) "Special Cabaret" means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.

(d) "Unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term "unlicensed massage establishment" does not include an establishment licensed under s. 480.043 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.

(3) "Child pornography" means any image depicting a minor engaged in sexual conduct.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or

operating in conjunction with such device. The term also includes: any online service, Internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

(5) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(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."

(7) "Masochism" means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death.

(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.

(10) "Obscene" means the status of material which:

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

(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

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

A mother's breastfeeding of her baby is not under any circumstance "obscene."

(11) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(12) "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or an animal.

(13) "Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(14) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(15) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(16) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(17) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(18) "Sexually oriented material" means any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(19) "Simulated" means the explicit depiction of conduct described in subsection (16) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(20) "Specific sexual activities" includes the following sexual activities and the exhibition of the following anatomical areas:

- (a) Human genitals in the state of sexual stimulation or arousal.
- (b) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.
- (c) The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.
- (d) Less than completely and opaquely covered:
  - 1. Human genitals or the pubic region.
  - 2. Buttocks.
  - 3. Female breasts below the top of the areola.
  - 4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**FLA. STAT. ANN. § 847.011 (2010). Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty**

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes 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, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of the paragraph.

(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) 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 one or more violations of paragraph (a) or subsection (2).

(2) Except as provided in paragraph (1)(c), a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in the defendant had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8) (a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made; however, such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion picture films permitted by s. 847.013.

**FLA. STAT. § 847.012 (2009). 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) 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.

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

(7) (a) The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney requests a judge of such court to set a hearing upon an application for a restraining order, the judge shall set the hearing for a time within 3 days after the making of the request. The order may not be made unless the judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for the restraining order is to be made.

(c) The person sought to be enjoined is entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) If a final decree of injunction is entered, it must contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or his compliance.

(e) In any action brought as provided in this section, a bond or undertaking may not be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and the state or the state attorney may not be held liable for costs or for damages sustained by reason of the restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(8) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(9) This section does not apply to the exhibition of motion pictures, shows, presentations, or other representations regulated under s. 847.013.

**FLA. STAT. ANN. § 847.0125 (2009). Retail display of materials harmful to minors prohibited**

(1) *[amended by s. 4, ch. 86-238.] "knowingly" defined.* --As used in this section, "knowingly" means having 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 herein which is reasonably susceptible of examination by the defendant, and

(b) The age of the minor; however, 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 minor.

(2) *Offenses and penalties.*

(a) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the cover of which depicts material which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such items shall, however, be displayed, either individually or collectively, behind an opaque covering which conceals the book, magazine, or other printed material.

(b) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of material which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

(c) A violation of any provision of this section constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

[Amended by s. 3, ch. 86-38.] Retail display of materials harmful to minors prohibited

(1) *Definitions.* --As used in this section:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Minor" means any person under the age of 18 years.

(c) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; 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.

(d) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(g) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

(h) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(i) "Simulated" means the explicit depiction of any of the conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(j) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, or sexual excitement when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of minors;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
3. Is without serious literary, artistic, political, or scientific value for minors.

(k) "Knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

2. The age of the minor; however, 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 minor.

(2) *Offenses and penalties.*

(a) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the cover of which depicts nudity which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such items may, however, be displayed behind an opaque covering which conceals the nudity, provided such items are not within the convenient reach of minors who may frequent the retail establishment.

(b) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of nudity which are harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

(c) A violation of any provision of this section constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**FLA. STAT. ANN. § 847.013 (2009). Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations**

(1) *"knowingly" defined.* --As used in this section "knowingly" means having 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 motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and

(b) The age of the minor.

(2) *Minor's age.* --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) *Offenses and penalties.* --A person may not knowingly exhibit for a monetary

consideration to a minor or knowingly sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

(b) A person may not knowingly rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

(c) The provisions of paragraph (a) do not apply to a minor when the minor is accompanied by his or her parents or either of them.

(d) A minor may not falsely represent to the owner of any premises mentioned in paragraph (a), or to the owner's agent, or to any person mentioned in paragraph (b), that the minor is 17 years of age or older, with the intent to procure the minor's admission to such premises, or the minor's purchase or rental of a videotape, for a monetary consideration.

(e) A person may not knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to the owner's agent, or to any person mentioned in paragraph (b), that he or she is the parent of any minor or that any minor is 17 years of age or older, with intent to procure the minor's admission to the premises or to aid the minor in procuring admission thereto, or to aid or enable the minor's purchase or rental of a videotape, for a monetary consideration.

(f) A violation of any provision of this subsection constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) *Injunctive proceedings.*

(a) The circuit court has jurisdiction to enjoin a threatened violation of subsection (2) upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator requests a judge of the court to set a hearing upon an application for a restraining order, the judge shall set the hearing for a time within 3 days after the making of the request. An order may not be made unless the judge is satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for the restraining order is to be heard. However, the notice shall be dispensed with when it is manifest to the judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the



relator or by some person associated with him or her in the field of law enforcement and filed by the relator, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person or persons sought to be enjoined are entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) In any action brought as provided in this section, a bond or undertaking is not required of the state or the relator state attorney before the issuance of a restraining order provided for by this section, and there is no liability on the part of the state or the relator state attorney for costs or damages sustained by reason of such restraining order in any case in which a final decree is rendered in favor of the person or persons sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

(5) *Legislative intent.* --In order to make the application and enforcement of this section uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons under 17 years of age to harmful motion pictures, exhibitions, shows, representations, presentations, and commercial or sexual exploitation. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1969, and relating to such subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipal government shall have the power to adopt any ordinance relating to that subject on or after such effective date.

### **FLA. STAT. ANN. § 847.0133 (2009). Protection of minors; prohibition of certain acts in connection with obscenity; penalty**

(1) A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. The term "obscene" has the same meaning as set forth in s. 847.001.

(2) As used in this section "knowingly" has the same meaning set forth in s. 847.012(1). A "minor" is any person under the age of 18 years.

(3) A violation of the provisions of this section constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

**FLA. STAT. ANN. § 847.06 (2009). Obscene matter; transportation into state prohibited; penalty**

(1) Whoever knowingly transports into the state or within the state for the purpose of sale or distribution any obscene book; magazine; periodical; pamphlet; newspaper; comic book; story; paper; written or printed story or article; writing; paper; card; picture; drawing; photograph; motion picture film; figure; image; phonograph record, or wire or tape or other recording, or other article capable of producing sound; or any other matter of obscene character shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his or her arrest.

**FLA. STAT. ANN. § 847.07 (2009). Wholesale promotion of obscene materials; penalties**

(1) As used in this section, "wholesale promote" means to manufacture, issue, sell, provide, deliver, transfer, transmit, publish, distribute, circulate, or disseminate, or offer or agree to do the same, with or without consideration, for purposes of resale or redistribution.

(2) Any person who knowingly wholesale promotes any obscene matter or performance, or in any manner knowingly hires, employs, uses, or permits any person to wholesale promote or assist in wholesale promoting any obscene matter or performance, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) No person shall, as a condition to sale, allocation, consignment, or delivery for resale of any matter or performance, require that the purchaser or consignee receive for resale any other matter or performance reasonably believed by the purchaser or consignee to be obscene; and no person shall deny or revoke any franchise, or threaten to do so, or impose or threaten to impose any penalty, financial or otherwise, by reason of the refusal or failure of any person to accept any such matter or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## **GEORGIA**

### **GA. CODE ANN. § 16-12-80 (2010). Distributing obscene material; obscene material defined; penalty**

(a) A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word "knowing," as used in this Code section, shall be deemed to be 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; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if a commercial dissemination of obscene material 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 this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(b) Material is obscene if:

(1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;

(2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and

(3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:

(A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(B) Acts of masturbation;

(C) Acts involving excretory functions or lewd exhibition of the genitals;

(D) Acts of bestiality or the fondling of sex organs of animals; or

(E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.

(c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.

(d) Material not otherwise obscene may be obscene under this Code section if the distribution thereof, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.

(e) It is an affirmative defense under this Code section that dissemination of the material was restricted to:

(1) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing a course of study related to such material; or

(2) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.

(f) A person who commits the offense of distributing obscene material shall be guilty of a misdemeanor of a high and aggravated nature.

**GA. CODE ANN. § 16-12-81 (2009). Distribution of material depicting nudity or sexual conduct; penalty**

(a) A person commits the offense of distributing material depicting nudity or sexual conduct when he sends unsolicited through the mail or otherwise unsolicited causes to be delivered material depicting nudity or sexual conduct to any person or residence or office unless there is imprinted upon the envelope or container of such material in not less than eight-point boldface type the following notice:

"Notice -- The material contained herein depicts nudity or sexual conduct. If the viewing of such material could be offensive to the addressee, this container should not be opened but returned to the sender."

(b) As used within this Code section, the term:

(1) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering or the depiction of covered male genitals in a discernibly turgid state.

(2) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast.

(c) A person who commits the offense of distributing material depicting nudity or sexual conduct, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years or by a fine not to exceed \$10,000.00, or both.

## **GA. CODE ANN. § 16-12-82 (2009). Public nuisances**

The use of any premises in violation of any of the provisions of this part shall constitute a public nuisance.

## **GA. CODE ANN. § 16-12-83 (2009). Contraband**

Any materials declared to be obscene by this part and advertisements for such materials are declared to be contraband.

## **HAWAII**

### **HAW. REV. STAT. ANN. § 712-1210 (2010). Definition of terms in this part**

In this part, unless a different meaning is required:

"Age verification records of sexually exploited individuals" means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

- (1) Each sexually exploited individual's name and date of birth, as ascertained by an examination of the individual's valid driver's license, official state identification card, or passport;
- (2) A certified copy of each sexually exploited individual's driver's license, official state identification card, or passport; and
- (3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.

"Age verification records of sexual performers" means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

- (1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;
- (2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and
- (3) Any name ever used by each performer including, but not limited to, maiden name,

alias, nickname, stage name, or professional name.

"Community standards" means the standards of the State.

"Disseminate" means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same.

"Erotic or nude massager" means a nude person providing massage services with or without a license.

"Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.

"Intent to profit" means the intent to obtain monetary gain.

"Material" means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, sculptures, and tape or wire recordings.

"Minor" means any person less than sixteen years old.

"Nude" means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola.

"Performance" means any play, motion picture film, dance, or other exhibition performed before an audience.

"Pornographic." Any material or performance is "pornographic" if all of the following coalesce:

(1) The average person, applying contemporary community standards would find that, taken as a whole, it appeals to the prurient interest.

(2) It depicts or describes sexual conduct in a patently offensive way.

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

"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.

"Produces" means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.

"Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

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

"Sexually exploited individuals" means erotic or nude massagers and exotic or nude dancers.

"Sexual performer" includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.

### **HAW. REV. STAT. ANN. § 712-1211 (2010). Displaying indecent matter**

(1) A person commits the offense of displaying indecent matter if the person knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk, a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or

engaged in an act of sexual conduct or sadomasochistic abuse; and

(b) Which is presented in such a manner as to exploit lust; and

(c) Which lacks serious literary, artistic, political, or scientific value.

(2) Displaying indecent material is a petty misdemeanor.

**HAW. REV. STAT. ANN. § 712-1213 (2010). Displaying indecent material; prima facie evidence**

The fact that a person engaged in the conduct specified by section 712-1211 is prima facie evidence that the person engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material which is displayed.

**HAW. REV. STAT. ANN. § 712-1214 (2010). Promoting pornography**

(1) A person commits the offense of promoting pornography if, knowing its content and character, the person:

(a) Disseminates for monetary consideration any pornographic material; or

(b) Produces, presents, or directs pornographic performances for monetary consideration; or

(c) Participates for monetary consideration in that portion of a performance which makes it pornographic.

(2) Promoting pornography is a misdemeanor.

**HAW. REV. STAT. ANN. § 712-1215 (2010). 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.

**HAW. REV. STAT. ANN. § 712-1216 (2010). Promoting pornography; prima facie evidence**

(1) The fact that a person engaged in the conduct specified by sections 712-1214 or 712-1215 is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(2) In a prosecution under section 712-1215, the fact that the person:

(a) To whom material pornographic for minors was disseminated, or

(b) To whom a performance pornographic for minors was exhibited, or

(c) To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance, or

(d) Who was admitted to premises where there was or was to have been such performance,

was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

**HAW. REV. STAT. ANN. § 712-1217 (2010). Open lewdness**

(1) A person commits the offense of open lewdness if in a public place the person does any lewd act which is likely to be observed by others who would be affronted or alarmed.

(2) Open lewdness is a petty misdemeanor.

**HAW. REV. STAT. ANN. § 712-1219.5 (2010). Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers**

(1) A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depictions made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-1218 may be located; provided that this section shall not be construed to impose a duty upon any persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

(2) Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor.

**IDAHO**

**IDAHO CODE ANN. § 18-4101 (2010). Definitions**

The following definitions are applicable to this act:

(A) "Obscene" material means any matter:

(1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(2) which depicts or describes patently offensive representations or descriptions of:

(a) ultimate sexual acts, normal or perverted, actual or simulated; or

(b) 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 the context in which it is used, possesses serious literary, artistic, political or scientific value.

In prosecutions under this act, where circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant 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, in the context in which it is

used, the matter has no serious literary, artistic, political, or scientific value.

(B) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group.

(C) "Matter" or "material" means any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials.

(D) "Person" means any individual, partnership, firm, association, corporation, or other legal entity; or any agent or servant thereof.

(E) "Distribute" means to transfer possession of, whether with or without consideration, by any means.

(F) "Knowingly" means having actual or constructive knowledge of the character of the subject matter or live conduct. A person shall be deemed to have constructive knowledge of the character of the subject matter or live conduct if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the matter, and the failure to inspect the contents is either for the purpose of avoiding such disclosure or is due to reckless conduct.

(G) "Reckless conduct" is conduct which consciously disregards a substantial and unjustifiable risk that matter may be obscene. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that an average law-abiding person would observe in the actor's situation under like circumstances.

(H) "Exhibit" means to show or display.

(I) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, where:

(1) the average person, applying contemporary community standards, would find such conduct, when considered as a whole, appeals to the prurient interest; and

(2) the conduct is patently offensive because it consists of:

(a) ultimate sexual acts, normal or perverted, actual or simulated; or

(b) masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any conduct which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value. In prosecutions under this act, where circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value.

**IDAHO CODE ANN. § 18-4102 (2010). Affirmative defense**

It is not innocent but calculated purveyance which is prohibited. This act shall not apply to any persons who may possess or distribute obscene matter or participate in conduct otherwise proscribed by this act when such possession, distribution, or conduct occurs:

(A) within the scope of employment of law enforcement and judicial activities; or

(B) within the scope of employment of bona fide school, college, university, museum or public library activities or within the scope of employment of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization; or

(C) within the scope of employment as a moving picture machine operator, assistant operator, usher, or ticket taker 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 he is so employed other than his wages received or owed, and such person consents to give testimony regarding such employment in all judicial proceedings brought under this act, when granted immunity by the trial judge; or

(D) under like circumstances of justification where the possession, distribution or conduct possesses serious literary, artistic, political or scientific value.

If this issue is not presented by the prosecution's evidence, the defendant may raise the same as an affirmative defense by presenting

some evidence thereon. Where raised, the prosecution must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue.

**IDAHO CODE ANN. § 18-4103 (2010). General sale or distribution, etc., of obscene matter - - Penalty**

Every person in this state who knowingly: brings or causes to be brought into this state for sale or distribution; or in this state prepares for distribution, publishes, prints, exhibits, distributes, or offers to distribute; or has in his possession with intent to distribute, exhibit, or offer to distribute, any obscene matter is guilty of a misdemeanor. Each sale, distribution, etc., is a separate violation.

**IDAHO CODE ANN. § 18-4103A (2010). Advertisement, promotion of sale, etc., of matter represented to be obscene - - Penalty**

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material for, or who otherwise advertises or promotes the sale, distribution, or exhibition of matter represented or held out by him to be obscene, whether or not such matter exists in fact, or is obscene, is guilty of a misdemeanor.

**IDAHO CODE ANN. § 18-4104 (2010). Participation in, or production or presentation of, obscene live conduct in public place - - Penalty**

(A) Every person who knowingly engages or participates in, manages, produces, sponsors, presents, or exhibits obscene live conduct to or before an assembly or audience consisting of at least one (1) person or spectator in any public place, or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

(B) Every person who procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits, or procures, counsels, or assists in the exhibition of a motion picture, television production, or other mechanical reproduction containing such conduct, is guilty of a misdemeanor.

**IDAHO CODE ANN. § 18-4105 (2010). Public display of offensive sexual material - - Penalty**

Any person who knowingly exhibits or displays or permits to be exhibited or displayed any of the following in such a manner that such exhibit or display is easily visible from

any street, sidewalk, thoroughfare, or other public area; or is visible from any transportation facility; or is visible from any residence when the person knows that the owner or occupant of such residence objects to such exhibit or display:

(a) Human genitals or pubic area without a full opaque covering, or any graphic or pictorial depiction thereof, or any depiction of covered male genitals in a discernibly erect state;

(b) An actual or simulated sex act, or sexual contact between humans and animals, or masturbation, or any graphic or pictorial display thereof; or

(c) Any depiction of sado-masochistic abuse, as defined in section 18-1514(5), Idaho Code, is guilty of a misdemeanor.

### **IDAHO CODE ANN. § 18-4105A (2010). Requiring purchaser or consignee to receive obscene matter as condition to sale, etc. - - Penalty**

Every person, who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter, is guilty of a misdemeanor.

### **IDAHO CODE ANN. § 18-4105A (2010). Distribution to minors - - Law governing**

Notwithstanding any of the provisions of this act, the distribution of obscene matter to minors shall be governed by sections 18-1513 to 18-1521, Idaho Code.

## **ILLINOIS**

### **325 ILL. COMP. STAT. ANN. § 720 ILCS 5/11-9 (2010). Public indecency**

Sec. 11-9. Public indecency. (a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

(1) An act of sexual penetration or sexual conduct as defined in Section 12-12 of this Code [720 ILCS 5/12-12]; or

(2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire

of the person.

Breast-feeding of infants is not an act of public indecency.

(b) "Public place" for purposes of this Section means any place where the conduct may reasonably be expected to be viewed by others.

(c) Sentence.

Public indecency is a Class A misdemeanor. A person convicted of a third or subsequent violation for public indecency is guilty of a Class 4 felony.

### **325 ILL. COMP. STAT. ANN. § 720 ILCS 5/11-20 (2010). Obscenity**

Sec. 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:

(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 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 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) Prima Facie Evidence. 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 shall be prima facie evidence of an intent to disseminate.

(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 [725 ILCS 5/124B-5 et seq.].

## **INDIANA**

### **IND. CODE ANN. § 35-49-2-1 (2010). Obscene matter or performance**

A matter or performance is obscene for purposes of this article if:

(1) The average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;

(2) The matter or performance depicts or describes, in a patently offensive way, sexual conduct; and

(3) The matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

### **IND. CODE ANN. § 35-49-2-2 (2010). Matter or performance 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 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. § 35-49-2-3 (2010). Warrant required for search or arrest**

(a) Whenever a person:

(1) Offers matter for distribution to the public as stock-in-trade of a lawful business or activity; or

(2) Exhibits matter at a commercial theater showing regularly scheduled performances to the general public;

the person may be arrested under this article only if the arresting officer has first obtained an arrest warrant, and matter may be seized as evidence only if a search warrant has first been obtained.

(b) The quantity of matter seized may encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

(c) If:

(1) The subject of a seizure under this chapter is a motion picture that is allegedly harmful to minors; and

(2) The defendant or owner of the motion picture proves that other copies of the motion picture are not available for exhibition;

the court shall order that the defendant or owner may, at his own expense, copy the motion picture and continue showing the motion picture to adults pending a preliminary determination under section 4(b) [IC 35-49-2-4(b)] of this chapter.

**IND. CODE ANN. § 35-49-2-4 (2010). Preliminary determination of obscenity at adversary hearing**

(a) Within ten (10) days after:

(1) Matter is obtained by seizure or by purchase under this article; or

(2) The defendant is arrested under this article;

whichever is later, and before trial, the state, the defendant, an owner, or any other party in interest of any matter seized or purchased may apply for and obtain a prompt adversary hearing for the purpose described in subsection (b).

(b) At the adversary hearing, the court shall make a preliminary determination of whether the matter is:

(1) Probably obscene; or

(2) Probably harmful to minors.

# IOWA

## IOWA CODE § 728.1 (2010). Definitions

As used in this chapter, unless the context otherwise requires:

1. "Disseminate" means to transfer possession, with or without consideration.
2. "Knowingly" means being aware of the character of the matter.
3. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.
4. "Minor" means any person under the age of eighteen.
5. "Obscene material" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.
6. "Place of business" means the premises of a business required to obtain a sales tax permit pursuant to chapter 423, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.
7. Unless otherwise provided, "prohibited sexual act" means any of the following:
  - a. A sex act as defined in section 702.17.
  - b. An act of bestiality involving a minor.
  - c. Fondling or touching the pubes or genitals of a minor.
  - d. Fondling or touching the pubes or genitals of a person by a minor.
  - e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
  - f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.

8. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.

9. "Sadomasochistic abuse" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.

10. "Sex act" means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

### **IOWA CODE § 728.2 (2010). 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.

### **IOWA CODE § 728.3 (2010). Admitting minors to premises where obscene material is exhibited**

1. A person who knowingly sells, gives, delivers, or provides a minor who is not a child with a pass or admits the minor to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of a serious misdemeanor.

2. A person who knowingly sells, gives, delivers, or provides a child with a pass or admits a child to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of an aggravated misdemeanor.

### **IOWA CODE § 728.4 (2010). Rental or sale of hard-core pornography**

A person who knowingly rents, sells, or offers for rental or sale material depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary

community standards would find appeals to the prurient interest; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value, upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent violations of this section by a person who has been previously convicted of violating this section are class "D" felonies. Charges under this section may only be brought by a county attorney or by the attorney general.

## **KANSAS**

### **KAN. STAT. ANN. § 21-4301 (2009). Promoting obscenity**

(a) Promoting obscenity is knowingly or recklessly:

(1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;

(2) possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device;

(3) offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, 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) 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 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.

(c) (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" have the meanings provided by K.S.A. 21-3501 and amendments thereto.

(6) "Wholesaler" means a person who sells, distributes or offers for sale or 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.

(d) It is a defense to a prosecution for obscenity that:

(1) The persons to whom the 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;

(2) the 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) the 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 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 incident to an approved course or program of instruction at such school.

(e) 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.

(f) (1) Promoting obscenity is a class A nonperson misdemeanor on conviction of a first offense.

(2) Promoting obscenity is a severity level 9, person felony on conviction of a second or subsequent offense.

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

(g) Upon any conviction of promoting obscenity, 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 within two years after such conviction, the defendant shall forfeit the recognizance.

**KAN. STAT. ANN. § 21-4301a (2009). Promoting obscenity to minors**

(a) Promoting obscenity to minors is promoting obscenity, as defined by K.S.A. 21-4301 and amendments thereto, where the 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.

(b) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section 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.

(2) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material 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 incident to an approved course or program of instruction at such school.

(3) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in

accordance with regular library policies approved by its governing body.

(4) 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.

(c) (1) Promoting obscenity to minors is a class A nonperson misdemeanor on conviction of the first offense.

(2) Promoting obscenity to minors is a severity level 8, person felony on conviction of a second or subsequent offense.

(3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity to minors shall be considered a conviction of 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 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 to minors within two years after such conviction, the defendant shall forfeit the recognizance.

(e) This section shall be a part of and supplemental to the Kansas criminal code.

**KAN. STAT. ANN. § 21-4301c (2009). Promotion to minors of obscenity harmful to minors**

(a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any 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 or device;

(2) sell, furnish, present, distribute or disseminate to a minor, or otherwise allowing a minor to view, 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.

(b) Violation of subsection (a) is a class B nonperson misdemeanor.

(c) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or 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.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

(3) 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.

(4) With respect to a prosecution for an act described by subsection (a)(1), the allegedly harmful material was kept behind blinder racks.

(5) With respect to a prosecution for an act described by subsection (a)(2) or (3), 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.

(6) With respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) "Blinder rack" means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view.

(2) "Harmful to minors" means 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 or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:

(A) The average adult person 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;

(B) the average adult person 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

- (C) a reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.
- (3) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.
- (4) "Minor" means any unmarried person under 18 years of age.
- (5) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; 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 discernible state of sexual excitement.
- (6) "Performance" means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
- (7) "Sodomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
- (9) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (e) The provisions of this act shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting, distributing or disseminating such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.
- (f) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.
- (g) This section shall be part of and supplemental to the Kansas criminal code.

# KENTUCKY

## **KY. REV. STAT. ANN. § 531.010 (2010). Definitions**

As used in this chapter:

(1) "Distribute" means to transfer possession of, whether with or without consideration.

(2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials.

(3) "Obscene" means:

(a) To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and

(b) The matter depicts or describes the sexual conduct in a patently offensive way; and

(c) The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(4) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

## **KY. REV. STAT. ANN. § 531.020 (2010). Distribution of obscene matter**

(1) A person is guilty of distribution of obscene matter when, having knowledge of its content and character, he:

(a) Sends or causes to be sent into this state for sale or distribution; or

(b) Brings or causes to be brought into this state for sale or distribution; or

(c) In this state, he:

1. Prepares, or

2. Publishes, or

3. Prints, or
4. Exhibits, or
5. Distributes, or
6. Offers to distribute, or
7. Has in his possession with intent to distribute, exhibit or offer to distribute,  
any obscene matter.

(2) Distribution of obscene matter is a Class B misdemeanor unless the defendant has in his possession more than one unit of material coming within the provisions of this chapter, in which case it shall be a Class A misdemeanor.

**KY. REV. STAT. ANN. § 531.030 (2010). 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.

**KY. REV. STAT. ANN. § 531.040 (2010). Using minors to distribute obscene material**

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

- (a) Hires; or

(b) Employs; or

(c) Uses,

a minor to do or assist in doing any of the acts prohibited by KRS 531.020.

(2) Using minors to distribute obscene material is a Class A misdemeanor unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class D felony.

### **KY. REV. STAT. ANN. § 531.050 (2010). Advertising obscene material**

(1) A person is guilty of advertising obscene material when, having knowledge of its content and character thereof, he writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of obscene matter.

(2) Advertising obscene material is a Class B misdemeanor.

### **KY. REV. STAT. ANN. § 531.060 (2010). Promoting sale of obscenity**

(1) A person is guilty of promoting sale of obscenity when he knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or he denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.

(2) Promoting sale of obscenity is a Class B misdemeanor for the first offense, a Class A misdemeanor for the second offense, and a Class D felony for each subsequent offense.

### **KY. REV. STAT. ANN. § 531.070 (2010). 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.

## **LOUISIANA**

### **LA. REV. STAT. ANN. § 14:106 (2010). 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) Sadomasochistic 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) above.

(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) No person, knowing the content of an advertisement to be sexually explicit as defined in this Paragraph shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication to one or more persons within this state that contains sexually explicit materials 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.

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 Paragraph, the following words and terms shall have the

respective meanings defined as follows:

(a) "Recognized and established schools" means schools having a full time faculty and pupils, gathered together for instruction in a diversified curriculum.

(b) "Churches" means any church, affiliated with a national or regional denomination.

(c) "Physicians" means any licensed physician or psychiatrist.

(d) "Medical clinics and hospitals" means any clinic or hospital of licensed physicians or psychiatrists used for the reception and care of the sick, wounded or infirm.

E. This Section does not preempt, nor shall anything in this Section be construed to preempt, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments; however, in order to promote uniform obscenity legislation throughout the state, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this Section.

F. (1) Except for those motion pictures, printed materials, electronic communication and photographic materials showing actual ultimate sexual acts or simulated or animated ultimate sexual acts when there is an explicit, close-up depiction of human genital organs so as to give the appearance of the consummation of ultimate sexual acts, no person, firm, or corporation shall be arrested, charged, or indicted for any violations of a provision of this Section until such time as the material involved has first been the subject of an adversarial hearing under the provisions of this Section, wherein such person, firm, or corporation is made a defendant and, after such material is declared by the court to be obscene, such person, firm, or corporation continues to engage in the conduct prohibited by this Section. The sole issue at the hearing shall be whether the material is obscene.

(2) The hearing shall be held before the district court having jurisdiction over the proceedings within seventy-two hours after receipt of notice by the person, firm, or corporation. The person, firm, or corporation shall be given notice of the hearing by registered mail or by personal service on the owner, manager, or other person having a financial interest in the material; provided, if there is no such person on the premises, then notice may be given by personal service on any employee of the person, firm, or corporation on such premises. The notice shall state the nature of the violation, the date, place, and time of the hearing, and the right to present and cross-examine witnesses.

(3) The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this Section subsequent to notice of the judgment, finding the material to be obscene, shall be subject to criminal prosecution notwithstanding the appeal from the judgment.

(4) No determination by the district court pursuant to this Section shall be of any force and effect outside the judicial district in which made and no such determination shall be



res judicata in any proceeding in any other judicial district. In addition, evidence of any hearing held pursuant to this Section shall not be competent or admissible in any criminal action for the violation of any other Section of this Title; provided, however, that in any criminal action, charging the violation of any other Section of this Title, against any person, firm, or corporation that was a defendant in such hearing, involving the same material declared to be obscene under the provisions of this Section, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only.

G. (1) On a first conviction, whoever commits the crime of obscenity shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned, with or without hard labor, for not less than six months nor more than three years, or both.

(2) (a) On a second conviction, the offender shall be imprisoned, with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

(b) The imprisonment provided for in Subparagraph (a), may be imposed at court discretion if the court determines that the offender, due to his employment, could not avoid engagement in the offense. This Subparagraph (b) shall not apply to the manager or other person in charge of an establishment selling or exhibiting obscene material.

(3) On a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than two years nor more than five years, and in addition may be fined not less than five thousand dollars nor more than ten thousand dollars.

(4) When a violation of Paragraph (1), (2), or (3) of Subsection A of this Section is with or in the presence of an unmarried person under the age of seventeen years, the offender shall be fined not more than ten thousand dollars and shall be imprisoned, with or without hard labor, for not less than two years nor more than five years, without benefit of parole, probation, or suspension of sentence.

H. (1) When a corporation is charged with violating this Section, the corporation, the president, the vice president, the secretary, and the treasurer may all be named as defendants. Upon conviction for a violation of this Section, a corporation shall be sentenced in accordance with Subsection G hereof. All corporate officers who are named as defendants shall be subject to the penalty provisions of this Section as set forth in Subsection G.

(2) If the corporation is domiciled in this state, upon indictment or information filed against the corporation, a notice of arraignment shall be served upon the corporation, or its designated agent for service of process, which then must appear before the district court in which the prosecution is pending to plead to the charge within fifteen days of service. If no appearance is made within fifteen days, an attorney shall be appointed by the court to represent the defendant corporation with respect to the charge or to show cause why the corporation should not be enjoined from continuing in business during the

pendency of the criminal proceedings. Appearance for arraignment may be made through private counsel.

(3) If the corporation is domiciled out of state and is registered to do business in Louisiana, notice of arraignment shall be served upon the corporate agent for service of process or the secretary of state, who shall then notify the corporation charged by indictment or information to appear before the district court in which the prosecution is pending for arraignment within sixty days after the notice is mailed by the secretary of state. If no appearance is made within sixty days the court shall appoint an attorney to represent the defendant corporation with respect to the charge or to show cause why the corporation should not be enjoined from continuing in business during the pendency of the criminal proceedings. Appearance for arraignment may be made by private counsel.

(4) If the corporation is domiciled out of state and is not registered to do business in Louisiana, notice of arraignment of the corporation shall be served upon the secretary of state and an employee, officer, or agent for service of process of the corporation found within the parish where the violation of this Section has allegedly occurred. Such notice shall act as a bar to that corporation registering to do business in Louisiana until it appears before the district court in which the prosecution is pending to answer the charge.

#### **LA. REV. STAT. ANN. § 14:106.1 (2010). Promotion or wholesale promotion of obscene devices**

A. For the purposes of this Section, the following definitions shall apply unless the context clearly requires otherwise:

(1) "Obscene device" means a device, including an artificial penis or artificial vagina, which is designed or marketed as useful primarily for the stimulation of human genital organs.

(2) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, distribute, circulate, disseminate, present, or exhibit, including the offer or agreement to do any of these things, for the purpose of sale or resale.

B. No person shall knowingly and intentionally promote an obscene device.

C. (1) On a first conviction, whoever commits the crime of promoting an obscene device shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned with or without hard labor for not less than six months nor more than three years, or both.

(2) On a second conviction, the offender shall be imprisoned with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

**LA. REV. STAT. ANN. § 14:106.2 (2010). Sexual acts prohibited in public; penalties**

A. It shall be unlawful for any person to engage in vaginal, anal, or oral sexual intercourse in any public place or place open to the public view for the purpose of gaining the attention of the public.

B. Whoever violates a provision of this Section shall be fined not more than one thousand dollars and imprisoned for not less than ten days nor more than one year. At least ten days of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

**LA. REV. STAT. ANN. § 14:106.3 (2010). Unlawful exhibition of sexually explicit material in a motor vehicle; penalties**

A. It shall be unlawful for any person to knowingly exhibit sexually explicit material in a motor vehicle on a public street, highway, public place, or any place open to public view knowing that the material is visible to the public from outside the motor vehicle.

B. For the purposes of this Section the term "exhibit sexually explicit material" means to present, exhibit, project, or display a motion picture, film, videotape, compact disc, digital versatile disc, digital video disc, or any other form of visual technology of any of the following:

(1) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being.

(2) The graphic depiction of sex, including but not limited to the visual depiction of sexual activity or nudity.

C. (1) Whoever violates a provision of this Section upon a first conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) Upon a second conviction, the offender shall be fined not more than one thousand dollars and imprisoned for not more than one year, or both.

(3) Upon a third or subsequent conviction, the offender shall be fined not more than one thousand dollars and shall be imprisoned for not more than one year, or both. At least ten days of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

# MAINE

## **ME. REV. STAT. ANN. 93-A § 2911 (2009). 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 which is obscene, he 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 he reasonably believes to be disseminating that matter to minors as parties to the action. The hearing on such petition shall be held not more than 10 days from the filing of the petition.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others disseminating the same matter shall be freely allowed.

C. Determination by a court pursuant to this subsection that a matter is obscene shall 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.

**ME. REV. STAT. ANN. 93-A § 2912 (2009). Magazines containing obscene material on their covers not to be displayed to minors**

1. **PROHIBITION.** No book, magazine or newspaper containing obscene material on its cover and offered for sale shall be displayed in a location accessible to minors unless the cover of that book, magazine or newspaper is covered with an opaque material sufficient to prevent the obscene material from being visible.

2. **DEFINITIONS.** For purposes of this section, the following terms shall have the following meanings.

A. "Minor" means any person who has not attained his 18th birthday.

B. "Obscene material" means material 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 prurient interests;

2) Depicts or describes in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and

3) When considered as a whole, lacks serious literary, artistic, political or scientific value.

3. CIVIL VIOLATION. Any person violating this section shall be subject to a forfeiture of not more than \$ 250.

**ME. REV. STAT. ANN. 93-A § 2913 (2009). Exhibiting obscene motion pictures to minors at outdoor motion picture theaters**

1. DEFINITIONS. For purposes of this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Exhibit" means to display for viewing by the public.

B. "Obscene motion picture" means a motion picture 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 prurient interests;

2) Depicts or describes in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and

3) When considered as a whole, lacks serious literary, artistic, political or scientific value.

2. EXHIBITING OBSCENE MOTION PICTURES. A person is guilty of exhibiting obscene motion pictures to a minor at an outdoor motion picture theater if he knowingly exhibits an obscene motion picture declared obscene in an action to which he was a party pursuant to subsection 3, at an outdoor motion picture theater in such a manner that the exhibition is visible by minors from or in any public street, highway, sidewalk, thoroughfare, private residence or place of public accommodation.

3. PROCEDURE FOR ADJUDICATING OBSCENITY. Whenever the Attorney General, or any district attorney, reasonably believes a person is exhibiting at an outdoor motion picture theater a motion picture which is obscene, he may petition the Superior Court to declare the motion picture obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General, or district attorney, may join all persons he reasonably believes to be exhibiting that motion picture to minors as parties to the action. The hearing on that petition shall be held not more than 10 days from the filing of the petition.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others exhibiting the same motion picture shall be freely allowed.

C. Determination by a court, pursuant to this subsection, that a motion picture is obscene shall not bar relitigation of that issue in a criminal prosecution under this section.

4. PENALTY. Exhibiting obscene motion pictures to a minor at an outdoor motion picture theater is a Class D crime.

## **MARYLAND**

### **MD. CODE ANN., CRIM. LAW § 11-201 (2010). Definitions**

(a) In general. -- In this subtitle the following words have the meanings indicated. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from the introductory language of former Art. 27, § 417.

(b) Distribute. -- "Distribute" means to transfer possession. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 417(3). \*\* REVISOR'S NOTE

The former phrase "whether with or without consideration" is deleted because it does not limit the transfers that are included in the scope of the definition.

(c) Knowingly. -- "Knowingly" means having knowledge of the character and content of the matter. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 417(4).

(d) Matter. -- "Matter" means:

- (1) a book, magazine, newspaper, or other printed or written material;
- (2) a picture, drawing, photograph, motion picture, or other pictorial representation;
- (3) a statue or other figure;
- (4) a recording, transcription, or mechanical, chemical, or electrical reproduction; or
- (5) any other article, equipment, machine, or material. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 417(1).

(e) Sadomasochistic abuse. -- "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from the references in former Art. 27, §§ 419A(b), (c), (d), (e), and (g) and 419B(a) to the definitions in former Art. 27, § 416A -- now § 11-101 of this title -- to avoid repetition of the phrase "as defined in § 11-101 of this title".

(f) Sexual conduct. -- "Sexual conduct" has the meaning stated in § 11-101 of this title.

\*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from the references in former Art. 27, §§ 419A(b), (c), (d), (e), and (g) and 419B(a) to the definitions in former § 416A -- now § 11-101 of this title -- to avoid repetition of the phrase "as defined in § 11-101 of this title".

(g) Sexual excitement. -- "Sexual excitement" has the meaning stated in § 11-101 of this title. \*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 419B(a) as it related to a definition of "sexual excitement".

**MD. CODE ANN., CRIM. LAW § 11-202 (2010). Obscene matter - -  
Distribution, exhibition, importation, and publication**

(a) Prohibited. -- A person may not:

(1) knowingly send or cause to be sent any obscene matter into the State for sale or distribution;

(2) knowingly bring or cause to be brought any obscene matter into the State for sale or distribution;

(3) in the State prepare, publish, print, exhibit, distribute, or offer to distribute any obscene matter; or

(4) possess any obscene matter in the State with the intent to distribute, offer to distribute, or exhibit.

(b) Penalty. -- 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.

(c) Injunction. --



(1) The State's Attorney may maintain an action for an injunction in the circuit court against a person to prevent the sale, further sale, distribution, further distribution, acquisition, publication, or possession within the State of any book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing, photograph, motion picture film or showing, or any article, item, or instrument the use of which is obscene.

(2) The circuit court may enjoin the sale or distribution of a book, magazine, motion picture film or showing, or other publication or item that is prohibited under this section from sale or distribution.

(3) After being served a summons and complaint in an action by the State's Attorney under this section, a person who sells, distributes, or acquires the enjoined material is chargeable with knowledge of the contents of the materials described in this section.

(4) The defendant is entitled to a trial of the issues within 1 day after joinder of issue.

(5) The court shall render a decision within 2 days after the conclusion of the trial.

(6) If an order or judgment is entered in favor of the State's Attorney, the final order or judgment shall contain provisions:

(i) directing the person to surrender the obscene matter to the peace officer designated by the court or the county sheriff; and

(ii) directing the peace officer or county sheriff to seize and destroy the obscene matter.

(7) In an action brought under this section, the State's Attorney is not:

(i) required to file a bond before an injunction order is issued;

(ii) liable for costs; or

(iii) liable for damages sustained because of the injunction order if judgment is rendered in favor of the defendant.

**MD. CODE ANN., CRIM. LAW § 11-203 (2009). Sale or display of obscene item to minor**

(a) Definitions. --

(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.

(b) Prohibited. --

(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.

(c) Exception. -- 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.

(d) Penalty. -- 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.

### **MD. CODE ANN., CRIM. LAW § 11-204 (2009). Obscene performance in certain counties**

(a) Scope of section. -- This section applies only in Allegany, Anne Arundel, Charles, Howard, Somerset, Wicomico, and Worcester counties.

(b) Prohibited. --

(1) A person may not prepare, give, direct, present, perform or participate in an obscene performance, exhibition, drama, play, show, dancing exhibition, tableau, or other entertainment in which individuals perform or participate live in an obscene manner in the presence of individuals who have paid any kind of consideration to observe the exhibition or performance.

(2) An owner, lessee, or manager of a building, garden, place, room, structure, or theater may not knowingly allow or assent to the use of the premises for the types of exhibitions prohibited by paragraph (1) of this subsection.

(c) Penalty. -- 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.

**MD. CODE ANN., CRIM. LAW § 11-205 (2009). Obscene matter - - Advertising**

(a) Prohibited. -- A person may not knowingly:

(1) write or create advertising or otherwise promote the sale or distribution of matter the person represents or holds out to be obscene; or

(2) solicit the publication of advertising that promotes the sale or distribution of matter the person represents or holds out to be obscene.

(b) Penalty. -- 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.

**MD. CODE ANN., CRIM. LAW § 11-206 (2009). Same - - Requiring acceptance**

(a) Prohibited. --

(1) A person may not knowingly require a purchaser or consignee to receive obscene matter as a condition to a sale, allocation, consignment, or delivery for resale of a paper, magazine, book, periodical, publication, or other merchandise.

(2) In response to a person's return of or failure to accept obscene matter, a person may not knowingly:

(i) deny or revoke a franchise;

(ii) threaten to deny or revoke a franchise; or

(iii) impose a financial or other penalty.

(b) Penalty. -- 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.

## **MASSACHUSETTS**

### **MASS. ANN. LAWS ch. 272, § 29 (2010). Dissemination of, and Possession with Intent to Disseminate, Obscene Matter; Penalty; 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.

## **MICHIGAN**

### **MICH. COMP. LAWS SERV. § 752.365 (2010). Obscenity; elements; misdemeanor; penalty; second or subsequent offense as a felony**

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.

## **MINNESOTA**

### **MINN. STAT. § 617.241 (2009). Obscene materials and performances; distribution and exhibition prohibited; penalty**

Subdivision 1. Definitions.

For purposes of this section, the following terms have the meanings given them:

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(1) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;

(2) that the work depicts sexual conduct specifically defined by paragraph (b) in a patently offensive manner; and

(3) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Sexual conduct" means any of the following:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed or who is nude.

(3) Masturbation, excretory functions, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a criminal proceeding are chosen.

(d) "Work" means "material" or "performance."

(e) "Material" means a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing, or other article.

(f) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

#### Subd. 2. Crime.

It is unlawful for a person, knowing or with reason to know its content and character, to:

(a) exhibit, sell, print, offer to sell, give away, circulate, publish, distribute or attempt to distribute any obscene material; or

(b) produce, present, participate in, or direct an obscene performance.

#### Subd. 3. Penalty.

A person violating subdivision 2 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than \$3,000, or both.

#### Subd. 4. Second or subsequent violations.

Whoever violates the provisions of subdivision 2 within five years of a previous conviction under that subdivision is guilty of a felony and may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than \$10,000, or both.

### **MINN. STAT. § 617.243 (2009). Indecent literatures, Distribution**

#### Subdivision 1. Prohibited activity.

No person, copartnership or corporation shall, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

Subd. 2. Penalty.

A violation of subdivision 1 is a gross misdemeanor.

**MINN. STAT. § 617.26 (2009). Mailing and Carrying Obscene Matter**

Every person who shall deposit or cause to be deposited in any post office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.201 or 617.241, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or willfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.201 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

**MINN. STAT. § 617.291 (2009). Sexually Explicit Material and Exhibitions; Purpose and Policy**

Subdivision 1. Finding.

The legislature finds that sexually explicit materials and exhibitions presented before an audience are harmful to minors.

Subd. 2. Best interest.

It is in the best interest of the health, welfare, and safety of the citizens of this state, and especially of minors within the state, that commercial dissemination, and dissemination without monetary consideration in a place of public accommodation, of sexually explicit written, photographic, printed, sound or published materials, and of plays, dances, or other exhibitions presented before an audience, that are deemed harmful to minors, be restricted to persons over the age of 17 years; or, if available to minors under the age of 18 years, that the availability of the materials be restricted to sources within established and recognized schools, churches, museums, medical clinics and physicians, hospitals, public libraries, or government sponsored organizations.

**MINN. STAT. § 617.292 (2009). Definitions**

Subdivision 1. Scope.

As used in sections 617.291 to 617.297, the terms defined in this section have the meanings given them.



Subd. 2. Minor.

"Minor" means any person under the age of 18 years.

Subd. 3. Nudity.

"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.

Subd. 4. Sexual conduct.

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

Subd. 5. Sexual excitement.

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

Subd. 6. Sadomasochistic abuse.

"Sadomasochistic 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 so clothed.

Subd. 7. Harmful to minors.

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

- (1) predominantly appeals to the prurient, shameful or morbid interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) is utterly without redeeming social importance for minors.

Subd. 8. Knowingly.

"Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both:

- (1) the character and content of any material which is reasonably susceptible of

examination by the defendant; and

(2) the age of the minor, 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 minor.

### **MINN. STAT. § 617.293 (2009). Harmful Materials; Disseminations 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.

## **MINN. STAT. § 617.295 (2009). 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.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 97-29-45 (2009). Obscene electronic communications**

(1) It shall be unlawful for any person or persons:

(a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;

(b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;

(c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

(d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;

(e) To make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.

(2) Upon conviction of any person for the first offense of violating subsection (1) of this section, such person shall be fined not more than Five Hundred Dollars (\$ 500.00) or imprisoned in the county jail for not more than six (6) months, or both.

(3) Upon conviction of any person for the second offense of violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$ 1,000.00) or imprisoned in the county jail for not more than one (1) year, or both.

(4) For any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not more than Two Thousand Dollars (\$ 2,000.00) and/or imprisoned in the State Penitentiary for not more than two (2) years, or both.

(5) The provisions of this section do not apply to a person or persons who make a telephone call that would be covered by the provisions of the federal Fair Debt Collection Practices Act, 15 USCS Section 1692 et seq.

(6) Any person violating this section may be prosecuted in the county where the telephone call, conversation or language originates in case such call, conversation or language originates in the State of Mississippi. In case the call, conversation or language originates outside of the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted.

(7) For the purposes of this section, telecommunication and electronic communication mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet.

(8) No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations,

telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

**MISS. CODE ANN. § 97-29-101 (2009). Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor's bond**

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.

## **MISSOURI**

**MO. REV. STAT. § 573.010 (2010). Definitions**

As used in this chapter the following terms shall mean:

- (1) "Child", any person under the age of fourteen;
- (2) "Child pornography":

(a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or

(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct;

(3) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(4) "Explicit sexual material", any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(5) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(6) "Graphic", when used with respect to a depiction of sexually explicit conduct, that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted;

(7) "Identifiable minor":

(a) A person:

a. (i) Who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

b. Who is recognizable as an actual person by the person's face, likeness, or other

distinguishing characteristic, such as a unique birthmark or other recognizable feature;  
and

(b) The term shall not be construed to require proof of the actual identity of the identifiable minor;

(8) "Indistinguishable", when used with respect to a depiction, virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. Indistinguishable does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults;

(9) "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

(10) "Minor", any person under the age of eighteen;

(11) "Nudity", the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering;

(12) "Obscene", any material or performance is obscene if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

(13) "Performance", any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

(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;

(15) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

(16) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

(17) "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

(18) "Sexually explicit conduct", actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) Bestiality;

(c) Masturbation;

(d) Sadistic or masochistic abuse; or

(e) Lascivious exhibition of the genitals or pubic area of any person;

(19) "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(20) "Visual depiction", includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

(21) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or redistribution.



**MO. REV. STAT. § 573.020 (2010). Promoting obscenity in the first degree**

1. A person commits the crime of promoting obscenity in the first degree if:

(1) He or she wholesale promotes or possesses with the purpose to wholesale promote any obscene material; or

(2) He or she wholesale promotes for minors or possesses with the purpose to wholesale promote for minors any material pornographic for minors; or

(3) He or she promotes, wholesale promotes or possesses with the purpose to wholesale promote for minors material that is pornographic for minors via computer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. Promoting obscenity in the first degree is a class D felony.

**MO. REV. STAT. § 573.030 (2010). Promoting obscenity in the second degree**

1. A person commits the crime of promoting pornography for minors or obscenity in the second degree if he or she:

(1) Promotes or possesses with the purpose to promote any obscene material for pecuniary gain; or

(2) Produces, presents, directs or participates in any obscene performance for pecuniary gain; or

(3) Promotes or possesses with the purpose to promote any material pornographic for minors for pecuniary gain; or

(4) Produces, presents, directs or participates in any performance pornographic for minors for pecuniary gain; or

(5) Promotes, possesses with the purpose to promote, produces, presents, directs or participates in any performance 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. Promoting pornography for minors or obscenity in the second degree is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense pursuant to this section committed at a different time, in which case it is a class D felony.

**MO. REV. STAT. § 573.050 (2009). Evidence in obscenity and child pornography cases**

1. In any prosecution under this chapter evidence shall be admissible to show:

(1) What the predominant appeal of the material or performance would be for ordinary adults or minors;

(2) The literary, artistic, political or scientific value of the material or performance;

(3) The degree of public acceptance in this state and in the local community;

(4) The appeal to prurient interest in advertising or other promotion of the material or performance;

(5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.

2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than eighteen years of age may be made as set forth in section 568.100, RSMo, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

**MO. REV. STAT. § 573.060 (2009). Public display of explicit sexual material**

1. A person commits the crime of public display of explicit sexual material if he knowingly or recklessly:

(1) Displays publicly explicit sexual material; or

(2) Fails to take prompt action to remove such a display from property in his possession after learning of its existence.

2. Public display of explicit sexual material is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section committed at a different time, in which case it is a class D felony.

3. For purposes of this section, each day there is a violation of this section shall constitute a separate offense.

**MO. REV. STAT. § 573.065 (2009). Coercing acceptance of obscene material**

1. A person commits the crime of coercing acceptance of obscene material if:

(1) He requires acceptance of obscene material as a condition to any sale, allocation, consignment or delivery of any other material; or

(2) He denies any franchise or imposes any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept any material obscene or pornographic for minors.

2. Coercing acceptance of obscene material is a class D felony.

**MO. REV. STAT. § 573.100 (2009). Telephones, obscene or indecent commercial messages, direct or electronic recording penalties, exceptions**

1. As used in this section, the following terms mean:

(1) "Indecent", language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs;

(2) "Obscene", any comment, request, suggestion or proposal is obscene if:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) Taken as a whole with respect to the average person, applying contemporary community standards, it depicts or describes sexual conduct in a patently offensive way; and

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

Obscenity shall be judged with reference to its impact upon ordinary adults.

2. It shall be unlawful for any person, by means of a telephone communication for

commercial purposes, to make directly or by means of an electronic recording device, any comment, request, suggestion, or proposal which is obscene or indecent. Any person who makes any such comment, request, suggestion, or proposal shall be in violation of the provisions of this section regardless of whether such person placed or initiated the telephone call.

3. It shall be unlawful for any person to permit knowingly any telephone or telephone facility connected to a local exchange telephone under such person's control to be used for any purpose prohibited by subsection 2 of this section.

4. Any person who violates any provision of this section is guilty of a class A misdemeanor unless such person has pleaded guilty to or has been found guilty of the same offense committed at a different time, in which case the violation is a class D felony. For purposes of this subsection, each violation constitutes a separate offense.

5. The prohibitions and penalties contained herein are not applicable to a telecommunications company as defined in section 386.020, RSMo, over whose facilities prohibited communications may be transmitted.

## **MONTANA**

### **MONT. CODE ANN. § 45-8-201 (2010). 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.

**MONT. CODE ANN. § 45-8-206 (2010). Public display or dissemination of obscene materials 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.

# NEBRASKA

## NEB. REV. STAT. ANN. § 28-807 (2010). Terms, defined

As used in sections 28-807 to 28-829, unless the context otherwise requires:

(1) Adult shall mean any married person or any unmarried person of the age of eighteen years or older;

(2) Commercial film and photographic print processor shall mean any person who for compensation develops exposed photographic film into negatives, slides, or prints or who for compensation makes prints from negatives or slides. The term shall include, but not be limited to, any employee of such a person but shall not include employees of law enforcement agencies and prosecuting attorneys involved in the investigation and prosecution of criminal offenses or to persons involved in legitimate medical, scientific, or educational activities;

(3) Distribute shall mean to transfer possession, whether with or without consideration, by any means;

(4) Disseminate shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, whether with or without consideration, or agree to do the same;

(5) Knowingly shall mean having general knowledge of, reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry of the character and content of any material, taken as a whole, described in this section, which is reasonably susceptible to examination by the defendant;

(6) Harmful to minors shall mean 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 minors, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) is lacking in serious literary, artistic, political, or scientific value for minors;

(7) Material or work shall mean any book, magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, nightclub, live performance, television production, other pictorial representation or electric reproduction, recording transcription, mechanical or otherwise, or other articles, equipment, machines, or materials;

(8) Minor shall mean any unmarried person under the age of eighteen years;

(9) Nudity shall mean the showing of the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, the depiction of covered male genitals in a discernibly turgid state, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple;

(10) Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct, or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex, or excretion, (b) the work, material, conduct, or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 28-807 to 28-829, and (c) the work, conduct, material, or live performance taken as a whole lacks serious literary, artistic, political, or scientific value;

(11) Place shall mean any building, structure, or place or any separate part or portion thereof or the ground itself;

(12) Person shall mean any individual, partnership, limited liability company, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;

(13) Performance, whether with or without consideration, shall mean any play, motion picture, dance, or other exhibition performed before an audience;

(14) Promote shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising or to knowingly offer in person or through an agent or agree to do the same;

(15) Sexual conduct shall mean acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person is female, breast;

(16) Sexual excitement shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal; and

(17) Sadoomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest.

**NEB. REV. STAT. ANN. § 28-808 (2010). 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. STAT. ANN. § 28-809 (2010). Obscene motion picture, show, or presentation; admit minor; unlawful; penalty**

(1) It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide 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, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse 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. STAT. ANN. § 28-810 (2010). 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. STAT. ANN. § 28-813 (2010). 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. 28-813

**NEVADA**

**NEV. REV. STAT. ANN. § 201.235 (2009). Definitions**

In NRS 201.235 to 201.254, inclusive, unless the context otherwise requires:

1. "Community" means the area from which a jury is or would be selected for the court in which the action is tried.

2. "Item" includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, phonograph record or tape recording, videotape or videodisc, with or without music, or other similar items.

3. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

4. "Obscene" means any item, material or performance which:

(a) An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;

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

(c) Does one of the following:

(1) Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated.

(2) Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism.

(3) Lewdly exhibits the genitals.

Appeal shall be judged with reference to ordinary adults, unless it appears, from the character of the material or the circumstances of its dissemination, to be designed for children or a clearly defined deviant group.

5. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

#### **NEV. REV. STAT. ANN. § 201.237 (2009). 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.

#### **NEV. REV. STAT. ANN. § 201.239 (2009). Power of county, city or town to regulate obscenity**

The provisions of NRS 201.235 to 201.254, inclusive, do not preclude any county, city or town from adopting an ordinance further regulating obscenity if its provisions do not conflict with these statutes.

#### **NEV. REV. STAT. ANN. § 201.241 (2009). Action to declare item or material obscene and obtain injunction**

1. The district attorney or city attorney of any county or city, respectively, in which there is an item or material which he believes to be obscene, may file a complaint in the district court seeking to have the item or material declared obscene and to enjoin the possessor

and the owner from selling, renting, exhibiting, reproducing, manufacturing or distributing it and from possessing it for any purpose other than personal use.

2. In such an action, no temporary restraining order may be issued.

3. A trial on the merits must be held not earlier than 5 days after the answer is filed nor later than 35 days after the complaint is filed. The court shall render a decision within 2 days after the conclusion of the trial.

**NEV. REV. STAT. ANN. § 201.243 (2009). Evidence probative of obscenity of material or item**

In prosecutions under NRS 201.235 to 201.254, inclusive, evidence of circumstances of production, dissemination, sale or publicity of the material or item, which indicates it is being commercially exploited by the defendant for its prurient appeal, is probative of the obscenity of the material or item and can justify the conclusion that it is, taken as a whole, without serious literary, artistic, political or scientific value.

**NEV. REV. STAT. ANN. § 201.249(2009). 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 possession with intent to sell, rent, transport or commercially distribute any obscene item or material.

**NEV. REV. STAT. ANN. § 201.251 (2009). Coercing acceptance of obscene articles or publications; penalty**

1. A person, firm, association or corporation shall not, as a condition to any sale, allocation, consignment or delivery for resale of any item or material, require that the purchaser or consignee receive for resale any other item or material which is obscene. A person, firm, association or corporation shall not deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, for the failure or refusal of any person to accept any obscene item or material or for the return thereof.

2. A person, firm, association or corporation who violates any provision of this section is guilty of a misdemeanor.

**NEV. REV. STAT. ANN. § 201.253 (2009). Obscene, indecent or immoral shows, acts or performances; penalty**

Except under the circumstances described in NRS 200.710, every person who knowingly causes to be performed or exhibited, or engages in the performance or exhibition of, any obscene, indecent or immoral show, act or performance is guilty of a misdemeanor.

**NEV. REV. STAT. ANN. § 201.256 (2009). Definitions**

As used in NRS 201.256 to 201.2655, inclusive, unless the context otherwise requires, the words and terms defined in NRS 201.257 to 201.264, inclusive, have the meanings ascribed to them in those sections.

**NEV. REV. STAT. ANN. § 201.2565 (2009). “Distribute” defined**

"Distribute" means to transfer possession with or without consideration.

**NEV. REV. STAT. ANN. § 201.257 (2009). “Harmful to minors” defined**

"Harmful to minors" means that quality of any description or representation, whether constituting all or a part of the material considered, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and is without serious literary, artistic, political or scientific value.

**NEV. REV. STAT. ANN. § 201.2581 (2009). “Material” defined**

"Material" means:

1. A book, pamphlet, magazine, newspaper, printed advertising or other printed or written material;
2. A motion picture, photograph, picture, drawing, statue, sculpture or other visual representation or image; or
3. A transcription, recording or live or recorded telephone message.

**NEV. REV. STAT. ANN. § 201.259 (2009). “Minor” defined**

"Minor" means any person under the age of 18 years, but as applied to the showing of a motion picture excludes any person employed on the premises where the motion picture is shown.

**NEV. REV. STAT. ANN. § 201.2595 (2009). “Motion picture” defined**

"Motion picture" means a film or a video recording, whether or not it has been rated appropriate for a particular audience, that is:

1. Placed on a videodisc or videotape; or
2. To be shown in a theater or on television,

and includes, without limitation, a cartoon or an animated film.

**NEV. REV. STAT. ANN. § 201.261 (2009). “Nudity” defined**

"Nudity" means:

1. The showing of the human female breast with less than a fully opaque covering of any portion of the areola and nipple;
2. The showing of the human male or female genitals or pubic area with less than a fully opaque covering of any portion thereof; or
3. The depiction of the human male genitals in a discernible turgid state, whether or not covered.

**NEV. REV. STAT. ANN. § 201.262 (2009). “Sado-masochistic abuse” defined**

"Sado-masochistic abuse" means:

1. Flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or
2. The condition of being fettered, bound or otherwise physically restrained.

**NEV. REV. STAT. ANN. § 201.263 (2009). “Sexual conduct” defined**

"Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area.

**NEV. REV. STAT. ANN. § 201.264 (2009). “Sexual excitement” defined**

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

**NEV. REV. STAT. ANN. § 201.265 (2009). Unlawful acts; penalty**

Except as otherwise provided in NRS 200.720; and 201.2655, and unless a greater penalty is provided pursuant to NRS 201.560, a person is guilty of a misdemeanor if the person knowingly:

1. Distributes or causes to be distributed to a minor material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.
2. Exhibits for distribution to an adult in such a manner or location as to allow a minor to view or to have access to examine material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.
3. Sells to a minor an admission ticket or pass for or otherwise admits a minor for monetary consideration to any presentation of material that is harmful to minors, unless the minor is accompanied by his parent, guardian or spouse.
4. Misrepresents that he is the parent, guardian or spouse of a minor for the purpose of:
  - (a) Distributing to the minor material that is harmful to minors; or
  - (b) Obtaining admission of the minor to any presentation of material that is harmful to minors.
5. Misrepresents his age as 18 or over for the purpose of obtaining:
  - (a) Material that is harmful to minors; or
  - (b) Admission to any presentation of material that is harmful to minors.
6. Sells or rents motion pictures which contain material that is harmful to minors on the premises of a business establishment open to minors, unless the person creates an area within the establishment for the placement of the motion pictures and any material that advertises the sale or rental of the motion pictures which:
  - (a) Prevents minors from observing the motion pictures or any material that advertises the sale or rental of the motion pictures; and
  - (b) Is labeled, in a prominent and conspicuous location, "Adults Only."

## **NEV. REV. STAT. ANN. § 201.2655(2009). Exemptions**

The provisions of NRS 201.256 to 201.2655, inclusive, do not apply to:

1. A university, community college, school, museum or library which is operated by or which is under the direct control of this state or a political subdivision of this state; or
2. An employee or independent contractor of an institution listed in subsection 1, if the employee or independent contractor is acting within the scope of his employment or contractual relationship.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 650:1 (2010). Definitions**

In this chapter:

I. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

II. "Knowledge" means general awareness of the nature of the content of the material.

III. "Material" means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

IV. Material is "obscene" if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive; and

(c) It lacks serious literary, artistic, political or scientific value.

V. "Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be



designed for children or other specially susceptible audience.

VI. "Sexual conduct" means human masturbation, sexual intercourse, actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

VII. "Child" means a person under the age of 18.

### **N.H. REV. STAT. ANN. § 650:2 (2010). 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. ANN. § 650:3 (2010). Exemption**

A motion picture projectionist or motion picture machine operator who is regularly employed by anybody to operate a projecting machine in a public motion picture theatre shall not be guilty of a violation under this chapter because of the picture which is being projected if he is required to project it as part of his employment.

**N.H. Rev. Stat. Ann. § 650-4 (2010). 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.

**N.H. REV. STAT. ANN. § 650:5 (2010). Evidence: Adjudication of Obscenity**

In any prosecution under this chapter, evidence shall be admissible to show:

I. The character of the audience for which the material was designed or to which it was directed;

II. What the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed;

III. The degree of public acceptance of the material in this state;

IV. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and

V. The good repute of the author, creator, publisher or other person from whom the material originated;

VI. Expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into determination of the issue of obscenity.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2C:34-2 (2010). Obscenity for persons 18 years of age or older**

a. Definitions for purpose of this section:

(1) "Obscene material" means any description, narrative account, display, or depiction of sexual activity or anatomical area 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:

(a) Depicts or describes in a patently offensive way, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, or lewd exhibition of the genitals,

(b) Lacks serious literary, artistic, political, or scientific value, when taken as a whole, and

(c) Is a part of a work, which to the average person applying contemporary community standards, has a dominant theme taken as a whole, which appeals to the prurient interest.

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

b. A person who sells, distributes, rents or exhibits obscene material to a person 18 years of age or older commits a crime of the fourth degree. Sale of obscene material shall be deemed to include any form of transaction which results in the admission to a display or depiction of obscene material or temporary or permanent access to any obscene material.

Nothing contained herein or in section 3 of P.L.1995, c.230 (C.2C:34-7) shall be construed to prohibit a municipality from adopting as a part of its zoning ordinances an ordinance permitting the sale, distribution, rental or exhibition of obscene material in which event such sale, distribution, rental or exhibition shall be deemed legal.

### **N.J. STAT. ANN. § 2C:34-3 (2010). 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.

### **N.J. STAT. ANN. § 2C:34-3.1 (2010). Retailer defined**

"Retailer," as used in this act, means any person who operates a store, newsstand, booth, concession or similar business with unimpeded access for persons under 18 years old, who is in the business of making sales of periodicals or other publications at retail containing pictures, drawings or photographs.

## **N.J. STAT. ANN. § 2C:34-3.2 (2010). Display of obscene material**

A municipality may enact an ordinance making it a petty disorderly persons offense for a retailer to display or permit to be displayed at his business premises any obscene material as defined in N.J.S. 2C:34-3, at a height of less than 5 feet or without a blinder or other covering placed or printed on the front of the material displayed. Any such ordinance shall contain a provision stating that public display of the obscene material shall constitute presumptive evidence that the retailer knowingly made or permitted the display.

## **N.J. STAT. ANN. § 2C:34-4 (2010). Public communication of obscenity**

a. "Publicly communicate" means to display, post, exhibit, give away or vocalize material in such a way that its character and content may be readily and distinctly perceived by the public by normal unaided vision or hearing when viewing or hearing it in, on or from a public street, road, thoroughfare, recreation or shopping center or area, public transportation facility or vehicle used for public transportation.

b. A person who knowingly publicly communicates obscene material, as defined in section 2C:34-3 or causes or permits it to be publicly communicated on property he owns or leases or operates is guilty of a crime of the fourth degree.

c. Public communication of obscene material shall constitute presumptive evidence that the defendant made the communication or caused or permitted it to be made knowingly.

## **NEW MEXICO**

No obscenity laws.

## **NEW YORK**

### **N.Y. PENAL LAW § 235.00 (2010). Obscenity; definitions of terms**

The following definitions are applicable to sections 235.05, 235.10 and 235.15:

1. "Obscene." Any material or performance is "obscene" if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, [fig 1] criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults

unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

2. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.
3. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
4. "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.
5. "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate or to offer or agree to do the same for purposes of resale.
6. "Simulated" means the explicit depiction or description of any of the types of conduct set forth in clause (b) of subdivision one of this section, which creates the appearance of such conduct.
7. "[fig 1] Criminal sexual act" means any of the types of sexual conduct defined in subdivision two of section 130.00 provided, however, that in any prosecution under this article the marital status of the persons engaged in such conduct shall be irrelevant and shall not be considered.

### **N.Y. PENAL LAW § 235.05 (2010). Obscenity in the third degree**

A person is guilty of obscenity in the third degree when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material; or
2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

Obscenity in the third degree is a class A misdemeanor.

### **N.Y. PENAL LAW § 235.06 (2010). Obscenity in the second degree**

A person is guilty of obscenity in the second degree when he commits the crime of obscenity in the third degree as defined in subdivisions one and two of section 235.05 of this chapter and has been previously convicted of obscenity in the third degree.

Obscenity in the second degree is a class E felony.

### **N.Y. PENAL LAW § 235.07 (2010). Obscenity in the first degree**

A person is guilty of obscenity in the first degree when, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote, any obscene material.

Obscenity in the first degree is a class D felony.

### **N.Y. PENAL LAW § 235.10 (2010). Obscenity; presumptions**

1. A person who promotes or wholesale promotes obscene material, or possesses the same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.
2. A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

The provisions of this section shall not apply to public libraries or association libraries as defined in subdivision two of section two hundred fifty-three of the education law, or trustees or employees of such public libraries or association libraries when acting in the course and scope of their duties or employment.

### **N.Y. PENAL LAW § 235.15 (2010). Obscenity or disseminating indecent materials 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.



## **N.Y. PENAL LAW § 235.20 (2010). Disseminating indecent material to minors; definitions of terms**

The following definitions are applicable to sections 235.21, 235.22, 235.23 and 235.24 of this article:

1. "Minor" means any person less than seventeen years old.
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 fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
3. "Sexual conduct" means acts 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, 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 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 minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
  - (a) Considered as a whole, appeals to the prurient interest in sex of minors; and
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.
7. The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:
  - (a) filter, screen, allow or disallow content;
  - (b) pick, choose, analyze or digest content; or
  - (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize or translate content.

## **N.Y. PENAL LAW § 235.21 (2010). Disseminating indecent material to minors in the second degree**

A person is guilty of disseminating indecent material to minors in the second degree when:

1. With knowledge of its character and content, he 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
2. Knowing 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, he:
  - (a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or
  - (b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or
  - (c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture show or other presentation; or
3. Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor.

Disseminating indecent material to minors in the second degree is a class E felony.

### **N.Y. PENAL LAW § 235.22 (2010). Disseminating indecent material to minors in the first degree**

A person is guilty of disseminating indecent material to minors in the first degree when:

1. knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor; and
2. by means of such communication he importunes, invites or induces a minor to engage in sexual intercourse, [fig 1] oral sexual conduct or anal sexual conduct, or sexual contact

with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit.

Disseminating indecent material to minors in the first degree is a class D felony.

**N.Y. PENAL LAW § 235.23 (2010). Disseminating indecent material to minors; presumption and defenses**

1. A person who engages in the conduct proscribed by section 235.21 is presumed to do so with knowledge of the character and content of the material sold or loaned, or the motion picture, show or presentation exhibited or to be exhibited.

2. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision one or two of section 235.21 of this article, it is an affirmative defense that:

(a) The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and

(b) 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 seventeen years old or more.

3. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article, it shall be a defense that:

(a) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(b) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to materials specified in such subdivision, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(c) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(d) The defendant has in good faith established a mechanism such that the labelling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

## **N.Y. PENAL LAW § 235.24 (2010). Disseminating indecent material to minors; limitations**

In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article:

1. No person shall be held to have violated such provisions solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(a) The limitations provided by this subdivision shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications.

(b) The limitations provided by this subdivision shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of such provisions that is owned or controlled by such person.

2. No employer shall be held liable under such provisions for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

## **NORTH CAROLINA**

### **N.C. GEN. STAT. § 14-190.1 (2010). Obscene literature and exhibitions**

(a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

(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) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material

of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if:

(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and

(2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and

(3) The material lacks serious literary, artistic, political, or scientific value; and

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) As used in this Article, "sexual conduct" means:

(1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or

(2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or

(3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

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

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Violation of this section is a Class I felony.

(h) Obscene material disseminated, procured, or promoted in violation of this section is contraband.

(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech.

**N.C. GEN. STAT. § 14-190.4 (2010). Coercing acceptance of obscene articles or publications**

No person, firm or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other article, book, or publication which is obscene within the meaning of G.S. 14-190.1; nor shall any person, firm or corporation deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof. Violation of this section is a Class 1 misdemeanor.

**N.C. GEN. STAT. § 14-190.5 (2010). Preparation of obscene photographs, slides and motion pictures**

Every person who knowingly:

(1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for the purpose of dissemination; or

(2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for the purpose of dissemination,

shall be guilty of a Class 1 misdemeanor.

**N.C. GEN. STAT. § 14-190.6 (2010). Employing or permitting minor to assist in offense under Article**

Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a Class I felony.

**N.C. GEN. STAT. § 14-190.7 (2010). Dissemination to minors under the age of 16 years**

Every person 18 years of age or older who knowingly disseminates to any minor under the age of 16 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class I felony.

**N.C. GEN. STAT. § 14-190.8 (2010). Dissemination to minors under the age of 13 years**

Every person 18 years of age or older who knowingly disseminates to any minor under the age of 13 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a Class I felon.

**N.C. GEN. STAT. § 14-190.13 (2010). Definitions for certain offenses concerning minors**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. -- That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. -- Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. -- An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. -- Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. -- Any of the following acts:

- a. Masturbation, whether done alone or with another human or an animal.
- b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
- c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
- d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
- e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.
- f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.
- g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. -- The showing of:

- a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or
- b. Covered human male genitals in a discernibly turgid state.

**N.C. GEN. STAT. § 14-190.14 (2010). Displaying material harmful to minors**

(a) Offense. -- A person commits the offense of displaying material that is harmful to minors if, having custody, control, or supervision of a commercial establishment and knowing the character or content of the material, he displays material that is harmful to minors at that establishment so that it is open to view by minors as part of the invited general public. Material is not considered displayed under this section if the material is placed behind "blinder racks" that cover the lower two thirds of the material, is wrapped, is placed behind the counter, or is otherwise covered or located so that the portion that is harmful to minors is not open to the view of minors.

(b) Punishment. -- Violation of this section is a Class 2 misdemeanor. Each day's violation of this section is a separate offense.



**N.C. GEN. STAT. § 14-190.8 (2010). 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.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 12.1-27.1-01 (2010). Obscenity - - Definitions - - Dissemination - - Classification of offenses**

1. A person is guilty of a class C felony if, knowing of its character, the person disseminates obscene material or if the person produces, transports, or sends obscene material with intent that it be disseminated.
2. A person is guilty of a class C felony if the person presents or directs an obscene performance for pecuniary gain or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.
3. A person is guilty of a class C felony if the person, as owner or manager of an establishment licensed under section 5-02-01, permits an obscene performance in the establishment. A person is guilty of a class C felony if that person participates, whether or not for compensation, in an obscene performance in an establishment licensed under section 5-02-01.
4. a. In addition to the penalty provided in subsection 1, 2, or 3, any person who violates subsection 1, 2, or 3 in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
  - (1) For an individual, a fine not to exceed ten thousand dollars; or
  - (2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
- b. In addition to the penalty provided in subsection 1, 2, or 3, the court shall impose the following penalty upon the conviction of a person or entity described in subdivision a for a second or subsequent offense under subsection 1, 2, or 3:
  - (1) For an individual, a fine not to exceed fifty thousand dollars; or
  - (2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.
5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
  - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
  - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal

or perverted; and

c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

6. As used in this chapter, "disseminate" means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain. "Disseminate" includes any transmission of visual material shown on a cable television system, whether or not accompanied by a soundtrack, and any sound recording played on a cable television system.

7. As used in this chapter, the term "material" means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.

8. As used in this chapter, the term "patently offensive" means so offensive on its face as to affront the contemporary North Dakota standards of decency.

9. As used in this chapter, the term "performance" means any play, dance, or other exhibition presented before an audience.

10. As used in this chapter, the term "prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.

11. As used in this chapter, the term "sexual conduct" means actual or simulated:

- a. Sexual intercourse;
- b. Sodomy;
- c. Sexual bestiality;
- d. Masturbation;
- e. Sadomasochistic abuse;
- f. Excretion; or

g. Lewd exhibition of the male or female genitals.

As used in this subsection, the term "sodomy" means contact between the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus. As used in this subsection, the term "sodomasochistic abuse" means a depiction or description of flagellation or torture by or upon a person who is nude or clad in undergarments or in a bizarre or revealing costume; or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

12. As used in this chapter, the term "book" means any book, magazine, pamphlet, newspaper, or other article made out of paper and containing printed, typewritten, or handwritten words.

13. As used in this chapter, "sexually expressive image" means a photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

### **N.D. CENT. CODE § 12.1-27.1-02 (2010). Promoting obscenity to minors - - Definitions**

As used in this section and in section 12.1-27.1-03:

1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.

2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation:

a. Considered as a whole, appeals to the prurient sexual interest of minors;

b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and

c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.

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

**N.D. CENT. CODE § 12.1-27.1-03 (2009). Promoting obscenity to minors - - Minor performing in obscene performance - - Classification of offenses**

1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.
2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.

**N.D. CENT. CODE § 12.1-27.2-04.2 (2009). Creation, possession, or performance - - Display to minors - - Definitions - - Penalty**

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
  - a. Without written consent from each individual in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
  - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

**N.D. CENT. CODE § 12.1-27.1-12 (2009). State preemption of local laws regulating obscenity**

This chapter shall be applicable and uniform throughout the state, and no political subdivision shall enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

**OHIO**

**OHIO REV. CODE ANN. § 2907.31 (2010). 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.

(D) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance 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 in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question 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 in violation of this section if either of the following applies:

(a) The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

(F) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, except as otherwise provided in this division, a violation of this section is a felony of the fifth degree. If the material or performance involved is obscene and the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is

made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under thirteen years of age, violation of this section is a felony of the fourth degree.

**OHIO REV. CODE ANN. § 2907.311 (2010). Displaying matter harmful to juveniles**

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense.

**OHIO REV. CODE ANN. § 2907.32 (2010). Pandering obscenity**

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material, when the offender knows that the material is to be used for commercial exploitation or will be publicly disseminated or displayed, or when the offender is reckless in that regard;

(2) Promote or advertise for sale, delivery, or dissemination; sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide, any obscene material;

(3) Create, direct, or produce an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when the offender is reckless in that regard;

(4) Advertise or promote an obscene performance for presentation, or present or participate in presenting an obscene performance, when the performance is presented publicly, or when admission is charged;

(5) Buy, procure, possess, or control any obscene material with purpose to violate



division (A)(2) or (4) of this section.

(B) It is an affirmative defense to a charge under this section, that the material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(C) Whoever violates this section is guilty of pandering obscenity, a felony of the fifth degree. If the offender previously has been convicted of a violation of this section or of section 2907.31 of the Revised Code, then pandering obscenity is a felony of the fourth degree.

**OHIO REV. CODE ANN. § 2907.321 (2010). Pandering obscenity involving a minor**

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or

performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

## **OKLAHOMA**

### **OKLA. STAT. ANN. tit. 21, § 1021 (2010). Indecent exposure--Indecent exhibitions--Obscene material or child pornography--Solicitation of minors**

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree. (A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this

state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree. (A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian,

clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree. (A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

**OKLA. STAT. ANN. tit. 21, § 1021.1 (2010). Persons to whom act does not apply--Civil or injunctive relief**

A. Sections 1021 through 1024.4 of this title shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the district attorney from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

**OKLA. STAT. ANN. tit. 21, § 1021.4 (2010). Disclosure of obscene materials containing minors**

A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-ROM, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and whether directly viewable, compressed or encoded depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in Section 1024.1 of this title shall immediately or as soon as possible report by telephone such instance of suspected child abuse or child pornography to the law enforcement agency having jurisdiction over the case and shall prepare and send a written report of the incident with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.

For the purposes of this section:

1. "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency; and

2. "Commercial computer technician" means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee of such person.

B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail not to exceed one (1) year, or both such fine and imprisonment.

C. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person's professional capacity or employment by searching for prohibited materials or media.

**OKLA. STAT. ANN. tit. 21, § 1023 (2010). Finding by magistrate that material is obscene or child pornography - - Issuance of factual and legal basis - - Delivery to district attorney**

The magistrate to whom any child pornography, or any obscene material, is delivered pursuant to Section 1022 of this title, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography, the magistrate shall cause the same to be delivered to the district attorney of the county in which the accused is liable to indictment or trial. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material.

**OKLA. STAT. ANN. tit. 21, § 1040.8 (2010). Publication, distribution or participation in preparation of obscene material or child pornography-- Unsolicited mailings**

A. No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement,

circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing the materials specified in this section may be indicted and tried in any county wherein such material is deposited or delivered, or in which it is received by the person to whom it is addressed.

B. Any person who violates any provision of this section involving obscene materials, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding One Thousand Dollars (\$ 1,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than twenty (20) years, or by a fine of not exceeding Ten Thousand Dollars (\$ 10,000.00), or by both such fine and imprisonment. The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

## **OREGON**

### **OR. REV. STAT. § 167.051 (2010). Definitions for ORS 167.054 to 167.057**

As used in ORS 167.054 and 167.057:

- (1) "Child" means a person under 13 years of age.
- (2) "Furnishes" means to sell, give, rent, loan or otherwise provide.
- (3) "Minor" means a person under 18 years of age.
- (4) "Sexual conduct" means:
  - (a) Human masturbation or sexual intercourse;
  - (b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;



(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or as part of a personal hygiene practice; or

(d) Touching of the genitals, pubic areas or buttocks of the human male or female or of the breasts of the human female.

(5) "Sexually explicit material" means material containing visual images of:

(a) Human masturbation or sexual intercourse;

(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals; or

(c) Penetration of the vagina or rectum by any object other than as part of a personal hygiene practice.

**OR. REV. STAT. § 167.054 (2010). Furnishing sexually explicit material to a child**

167.051, 167.054 and 167.057 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(1) A person commits the crime of furnishing sexually explicit material to a child if the person intentionally furnishes a child, or intentionally permits a child to view, sexually explicit material and the person knows that the material is sexually explicit material.

(2) A person is not liable to prosecution for violating subsection (1) of this section if:

(a) The person is an employee of a bona fide museum, school, law enforcement agency, medical treatment provider or public library, acting within the scope of regular employment; or

(b) The person furnishes, or permits the viewing of, material the sexually explicit portions of which form merely an incidental part of an otherwise nonoffending whole and serve some purpose other than titillation.

(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

(a) That the sexually explicit material was furnished, or the viewing was permitted, solely for the purpose of sex education, art education or psychological treatment and was furnished or permitted by the child's parent or legal guardian, by an educator or treatment provider or by another person acting on behalf of the parent, legal guardian, educator or treatment provider;

(b) That the defendant had reasonable cause to believe that the person to whom the

sexually explicit material was furnished, or who was permitted to view the material, was not a child; or

(c) That the defendant was less than three years older than the child at the time of the alleged offense.

(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the sexually explicit material was furnished or who was permitted to view the material was not a child but was a law enforcement officer posing as a child.

(5) Furnishing sexually explicit material to a child is a Class A misdemeanor.

**OR. REV. STAT. § 167.060 (2010). Definitions for ORS 167.060 to 167.095**

See note under 167.051.

As used in ORS 167.060 to 167.095, unless the context requires otherwise:

(1) Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(2) Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

(3) Furnishes" means to sell, give, rent, loan or otherwise provide.

(4) Minor" means an unmarried person under 18 years of age.

(5) Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered.

(6) Obscene performance" means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

(7) Obscenities" means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or

excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

(8) Public thoroughfare, depot or vehicle" means any street, highway, park, depot or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public.

(9) Sadoomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(11) Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

**OR. REV. STAT. § 167.075 (2010). Exhibiting an obscene performance to a minor**

(1) A person commits the crime of exhibiting an obscene performance to a minor if the minor is unaccompanied by the parent or lawful guardian of the minor, and for a monetary consideration or other valuable commodity or service, the person knowingly or recklessly:

(a) Exhibits an obscene performance to the minor; or

(b) Sells an admission ticket or other means to gain entrance to an obscene performance to the minor; or

(c) Permits the admission of the minor to premises whereon there is exhibited an obscene performance.

(2) No employee is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of regular employment at a showing open to the public.

(3) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no

financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where the person is regularly employed, but does not include a manager of the motion picture theater.

(4) Exhibiting an obscene performance to a minor 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.

**OR. REV. STAT. § 167.080 (2010). 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.

**OR. REV. STAT. § 167.085 (2010). Defenses in prosecutions under ORS 167.075 and 167.080**

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.

**OR. REV. STAT. § 167.090 (2010). Publicly displaying nudity or sex for advertising purposes**

(1) A person commits the crime of publicly displaying nudity or sex for advertising purposes if, for advertising purposes, the person knowingly:

(a) Displays publicly or causes to be displayed publicly a picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities, or any obscenities; or

(b) Permits any display described in this section on premises owned, rented or operated by the person.

(2) Publicly displaying nudity or sex for advertising purposes is a Class A misdemeanor.

**PENNSYLVANIA**

**18 PA. CONS. STAT. ANN. § 5903 (2010). 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 an 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 an 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) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;

(4) 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;

(5) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to it obscenity;

(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 (c)(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 subsections (c)(1) and (c)(2) without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement.

(b) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Community." For the purpose of applying the "contemporary community standards" in this section, community means the State.

"Knowing." As used in subsections (a) and (a.1), knowing 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 material or performance described therein which is reasonably susceptible of examination by the defendant.

"Material." Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.

"Nude." Means showing the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

"Obscene." Any material or performance, if:

(1) the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;

(2) the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and

(3) the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

"Performance." Means any play, dance or other live exhibition performed before an audience.

"Sadomasochistic abuse." Means, in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

"Sexual conduct." Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

"Subject line." The area of an electronic communication that contains a summary description of the content of the message.

"Transportation facility." Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations.

(c) DISSEMINATION TO MINORS.-- No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. "Explicit sexual materials," as used in this subsection, means materials which are obscene or:

(1) any picture, photograph, drawing, sculpture, motion picture film, video tape 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

(2) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (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 minors.

(d) ADMITTING MINOR TO SHOW.-- It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

(e) DEFINITIONS.-- As used in subsections (c) and (d) of this section:

(1) "MINOR" means any person under the age of 18 years.

(2) "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.

(3) "SEXUAL CONDUCT" means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a 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 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 so clothed.

(6) "HARMFUL TO MINORS" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(i) predominantly appeals to the prurient, shameful, or morbid interest of minors; and

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



(iii) taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

(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:

(i) the character and content of any material or performance described herein which is reasonably susceptible of examination by the defendant; and

(ii) the age of the minor: 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 minor.

(f) REQUIRING SALE AS CONDITION OF BUSINESS DEALINGS.-- No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

(g) INJUNCTION.-- The attorney for the Commonwealth may institute proceedings in equity in the court of common pleas of the county in which any person violates or clearly is about to violate this section for the purpose of enjoining such violation. The court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The court shall hold a hearing within three days after demand by the attorney for the Commonwealth, one of which days must be a business day for the court, and a final decree shall be filed in the office of the prothonotary within 24 hours after the close of the hearing. A written memorandum supporting the decree shall be filed within five days of the filing of the decree. The attorney for the Commonwealth shall prove the elements of the violation beyond a reasonable doubt. The defendant shall have the right to trial by jury at the said hearing.

(h) CRIMINAL PROSECUTION.--

(1) Any person who violates subsection (a), (a.1) or (f) is guilty of a misdemeanor of the first degree. Violation of subsection (a) is a felony of the third degree if the offender has previously been convicted of a violation of subsection (a) or if the material was sold, distributed, prepared or published for the purpose of resale.

(2) Any person who violates subsection (c) or (d) is guilty of a felony of the third degree. Violation of subsection (c) or (d) is a felony of the second degree if the offender has previously been convicted of a violation of subsection (c) or (d).

(3) Findings made in an equity action shall not be binding in the criminal proceedings.

(i) **RIGHT TO JURY TRIAL.**-- The right to trial by jury shall be preserved in all proceedings under this section.

(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.

(k) **ORDINANCES OR RESOLUTIONS.**-- Nothing in this chapter shall be construed to invalidate, supersede, repeal or preempt any ordinance or resolution of any political subdivision insofar as it is consistent with this chapter, and political subdivisions further retain the right to regulate any activities, displays, exhibitions or materials not specifically regulated by this chapter.

(l) **PENALTY FOR ATTEMPT TO EVADE PROSECUTION.**-- Any person who violates subsection (a.1) and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than \$ 100 nor more than \$ 500 per message or to imprisonment for not more than 90 days, or both, for a first offense and a fine of not less than \$ 500 nor more than \$ 1,000 or to imprisonment for not more than one year, or both, for a second or subsequent offense.

(m) **CONCURRENT JURISDICTION TO PROSECUTE.**-- The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a.1) and may refer to the district attorney, with the district attorney's consent, any violation or alleged violation of subsection (a.1) which may come to the Attorney General's attention.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-31-1 (2010). Circulation of obscene publications and shows**

(a) Every person who willfully or knowingly promotes for the purpose of commercial gain within the community any show, motion picture, performance, photograph, book, magazine, or other material which is obscene 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) For the purpose of this section:

(1) In determining whether or not a show, motion picture, performance, photograph, book, magazine, or other material is obscene the trier of the fact must find:

(i) That the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;

(ii) That the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by this chapter; and

(iii) That the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(2) "Community standards" means the geographical area of the state of Rhode Island and Providence Plantations.

(3) "Knowingly" means having knowledge of the character and content of the material or failure on notice to exercise reasonable inspection which would disclose the content and character of it.

(4) "Material" means anything tangible which is capable of being used or adapted to arouse prurient interest through the medium of reading, or observation.

(5) "Patently offensive" means so offensive on its face as to affront current standards of decency.

(6) "Performance" means any play, motion picture, dance, or other exhibition performed before an audience.

(7) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do it for resale.

(8) "Sexual conduct" means:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sado-masochistic abuse, meaning flagellation or torture by or upon a person in an act of apparent sexual stimulation or gratification.

(iii) Masturbation, excretory functions, and lewd exhibitions of the genitals.

(9) "Standards of decency" means community standards of decency.

(c) If any of the depictions and descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included because the depictions or descriptions are constitutionally protected or for any other reason, that declaration shall not invalidate this chapter as to other sexual conduct included in this chapter.

### **R.I. GEN. LAWS § 11-31-2 (2010). Forfeiture of obscene publications**

Any obscene book, pamphlet, ballad, printed paper, or other thing mentioned in § 11-31-1 found by any officer in executing a search warrant or which shall be produced and brought into court shall be forfeited to the state. Further proceedings shall be had on them for their forfeiture as is prescribed by law in chapter 21 of title 12, and upon entry of final judgment of forfeiture the item shall be destroyed by order of the court. However, if any book, pamphlet, ballad, printed paper or other thing mentioned in § 11-31-1 is seized by any officer in executing a search warrant, it shall not be forfeited to the state unless the person, firm, corporation, or association claiming a proprietary interest in and to it or in whose possession it is found has been accorded the opportunity for a hearing on the question of whether it is obscene as provided by § 12-5-8.

### **R.I. GEN. LAWS § 11-31-10 (2010). 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

(iii) 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.

**R.I. GEN. LAWS § 11-31-12 (2010). Penalty for making receipt of obscene publications a condition to delivery of other publications**

(a) Any person, firm, corporation, or association who shall as a condition to a sale, allocation, consignment, or delivery for resale of any book, periodical, publication, pamphlet, magazine, ballad, printed paper, print, photograph, or any other thing require that the purchaser or consignee receive for resale any other book, periodical, publication, pamphlet, magazine, ballad, printed paper, print, picture, photograph, or other thing which is obscene or shall deny or threaten to deny any franchise or impose or threaten to impose any penalty financial or otherwise, by reason of the failure of any person to accept the book, periodical, publication, pamphlet, magazine, ballad, printed paper, print, picture, photograph, or other thing, or by reason of the return of it, shall be imprisoned for a term not to exceed two (2) years or shall pay a fine of not more than one thousand dollars (\$ 1,000) nor less than one hundred dollars (\$ 100).

(b) For the purpose of this section, "obscene" has the same meaning as defined in § 11-31-1.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 16-15-305 (2009). Disseminating, procuring or promoting obscenity unlawful; definitions; penalties; obscene material designated contraband**

(A) It is unlawful for any person knowingly to disseminate obscenity. A person disseminates obscenity within the meaning of this article if he:

(1) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, digital electronic file, or other representation or description of the obscene;

(2) presents or directs an obscene play, dance, or other performance, or participates directly in that portion thereof which makes it obscene;

(3) publishes, exhibits, or otherwise makes available anything obscene to any group or individual; or

(4) exhibits, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, present, rent, or to provide: any motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, video tapes and recordings, or any matter or material of whatever form which is a representation, description, performance, or publication of the obscene.

(B) For purposes of this article any material is obscene if:

(1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section;

(2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex;

(3) to a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value; and

(4) the material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.

(C) As used in this article:

(1) "sexual conduct" means:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;

(b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;

(c) an act or condition that depicts actual or simulated bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(2) "patently offensive" means obviously and clearly disagreeable, objectionable, repugnant, displeasing, distasteful, or obnoxious to contemporary standards of decency and propriety within the community.

(3) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion and is reflective of an arousal of lewd and lascivious desires and thoughts.

(4) "person" means any individual, corporation, partnership, association, firm, club, or other legal or commercial entity.

(5) "knowingly" means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

(D) Obscenity must be judged with reference to ordinary adults except that it must be judged with reference to children or other especially susceptible audiences or clearly defined deviant sexual groups if it appears from the character of the material or the circumstances of its dissemination to be especially for or directed to children or such audiences or groups.

(E) As used in this article, "community standards" used in determining prurient appeal and patent offensiveness are the standards of the area from which the jury is drawn.

(F) It is unlawful for any person knowingly to create, buy, procure, or process obscene material with the purpose and intent of disseminating it.

(G) It is unlawful for a person to advertise or otherwise promote the sale of material represented or held out by them as obscene.

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

(I) Obscene material disseminated, procured, or promoted in violation of this section is contraband and may be seized by appropriate law enforcement authorities.

**S.C. CODE ANN. § 16-15-315 (2009). Condition on certain sales for resale or on franchising rights that obscene material be received for resale prohibited; penalties**

No person shall, as a condition to any sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, digital electronic file require that the purchaser or consignee receive for resale any other article, book, publication, or digital electronic file which is obscene within the meaning of Section 16-15-305 nor shall any person deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept the articles, books, publications, or digital electronic files, or by reason of the return thereof. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than one thousand dollars, or both.

**S.C. CODE ANN. § 16-15-325 (2009). Participation in preparation of obscene material prohibited; penalties**

Any individual who knowingly:

(a) photographs himself or any other individual or animal for purposes of preparing an obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination; or

(b) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year and fined not more than one thousand dollars.



**S.C. CODE ANN. § 16-15-335 (2009). Permitting minor to engage in any act constituting violation of this article prohibited; penalties**

An individual eighteen years of age or older who, in any manner, knowingly hires, employs, uses, or permits a person under the age of eighteen years to do or assist in doing an act or thing constituting an offense pursuant to this article and involving any material, act, or thing he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

**S.C. CODE ANN. § 16-15-345 (2009). Disseminating obscene material to person under age eighteen prohibited; penalties**

An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

**S.C. CODE ANN. § 16-15-345 (2009). Disseminating obscene material to minor twelve years of age or younger prohibited; penalties**

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

**S.C. CODE ANN. § 16-15-375 (2009). Definitions applicable to §§ 16-15-385 through 16-15-425**

The following definitions apply to Section 16-15-385, disseminating or exhibiting to minors harmful material or performances; Section 16-15-387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16-15-395, first degree sexual exploitation of a minor; Section 16-15-405, second degree sexual exploitation of a minor; Section 16-15-410, third degree sexual exploitation of a minor; Section 16-15-415, promoting prostitution of a minor; and Section 16-15-425, participating in prostitution of a minor.

(1) "Harmful to minors" means that quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

(a) the average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

(b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

(c) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) "Material" means pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations but not material consisting entirely of written words.

(3) "Minor" means an individual who is less than eighteen years old.

(4) "Prostitution" means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) "Sexual activity" includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or an animal;

(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) "Sexually explicit nudity" means the showing of:

(a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

**S.C. CODE ANN. § 16-15-385 (2009). 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.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 22-24-25 (2009). Regulation of obscenity by county or municipality - - Limitations**

Except as provided in § 22-24-37, nothing contained in this chapter limits any county or municipality from regulating obscene material or obscene live conduct within its jurisdiction.

### **S.D. CODIFIED LAWS § 22-24-25.1 (2009). Regulation of obscenity by county or municipality - - Contemporary community standards test - - Approval by voters**

Any county or municipality may provide, by ordinance, for a contemporary community standards test to regulate the sale, distribution, and use of obscene material and to regulate obscene live conduct in any commercial establishment or public place within its jurisdiction.

### **S.D. CODIFIED LAWS § 22-24-27 (2009). Regulation of obscenity by county or municipality - - Dissemination of materials to minors - - Definitions**

Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:

(1) "Contemporary community standard," the contemporary community standard of the state in which the question of obscenity is to be tested, by the average person, of the state;

(2) "Distributed," to transfer possession of, whether with or without consideration;

(3) "Exhibit," to show or display;

(4) "Harmful to minors," includes in its meaning 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, if it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors; and

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

(c) Is without serious literary, artistic, political, or scientific value;

(5) "Magistrate," any circuit court or magistrate judge;

(6) "Material," anything tangible which is harmful to minors, whether derived through the medium of reading, observation, or sound;

(7) "Matter" or "material," any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or recording, transcription or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials;

(8) "Minor," any person less than eighteen years of age;

(9) "Nudity," within the meaning of subdivision (4) of this section, 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 or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(10) "Obscene live conduct," any physical human body activity, whether performed or engaged in alone or with other persons, including singing, speaking, dancing, acting, simulation, or pantomiming, where:

(a) The dominant theme of such conduct, taken as a whole, appeals to a prurient interest;

(b) The conduct is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and

(c) The conduct is without serious literary, artistic, political, or scientific value. In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct;

(11) "Obscene material," material:

(a) The dominant theme of which, taken as a whole, appeals to the prurient interest;

(b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and

(c) Lacks serious literary, artistic, political, or scientific value. In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter;

(12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group;

(13) "Sado-masochistic abuse," 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;

(14) "Sexual conduct," within the meaning of subdivision (4) of this section, 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;

(15) "Sexual excitement," the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**S.D. CODIFIED LAWS § 22-24-28 (2009). Dissemination of material harmful to minors - - Penalty**

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

**S.D. CODIFIED LAWS § 22-24-29 (2009). Dissemination of material harmful to minors - - Giving or selling material**

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).

**S.D. CODIFIED LAWS § 22-24-29.1 (2009). Display or sale of magazines or books with obscene material on cover - - Penalty**

No person may knowingly distribute, display, sell, or exhibit for sale in any public place any magazine, book, or newsprint displaying or containing obscene material on its cover or material unless the magazine, book, or newsprint is wrapped and sealed so that no more than its title, name, price, or date is exposed to the public and the magazine, book, or newsprint cannot be viewed or examined without breaking the seal, wrapping, or covering. Any person who violates this section is guilty of a Class 1 misdemeanor.

**S.D. CODIFIED LAWS § 22-24-30 (2009). Dissemination of material harmful to minors - - Exhibiting or admitting to motion picture**

A person is guilty of disseminating material harmful to minors if, with reference to a motion picture, show, or other presentation which depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors, that person knowingly:

- (1) Exhibits such motion picture, show, or other presentation to a minor;
- (2) Sells or gives to a minor an admission ticket or pass to premises whereon there is exhibited such motion picture, show, or other presentation; or
- (3) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show, or other presentation.

**S.D. CODIFIED LAWS § 22-24-31 (2009). Dissemination of material harmful to minors - - Affirmative defense**

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.

**S.D. CODIFIED LAWS § 22-24-34 (2009). Dissemination of material harmful to minors - - Each sale as separate offense**

If more than one article or item of material prohibited under §§ 22-24-27 to 22-24-37, inclusive, is sold, given, advertised for sale, distributed commercially, or promoted, by the same person, after a hearing and determination that probable cause exists to believe

such article or material is harmful to minors, each such sale, gift, advertisement, distribution, or promotion constitutes a separate offense.

**S.D. CODIFIED LAWS § 22-24-37 (2009). Dissemination of material harmful to minors - - Inapplicable to law enforcement activities, educational activities, and activities in the course of employment**

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.

## **TENNESSEE**

**TENN. CODE ANN. § 39-17-901 (2010). Part definitions**

The following definitions apply in this part, unless the context requires otherwise:

- (1) "Actual or constructive knowledge" means that a person is deemed to have constructive knowledge of the contents of material who has knowledge of facts that would put a reasonable and prudent person on notice as to the suspect nature of the material;
- (2) "Community" means the judicial district, as defined in § 16-2-506, in which a violation is alleged to have occurred;
- (3) "Distribute" means to transfer possession of, whether with or without consideration;
- (4) "Excess violence" means the depiction of acts of violence in such a graphic or bloody manner as to exceed common limits of custom and candor, or in such a manner that it is apparent that the predominant appeal of the material is portrayal of violence for violence's sake;



(5) "Final judgment" or "conviction" means all direct appeals have been exhausted including an application for appeal or for certiorari to the Tennessee or United States supreme court;

(6) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse when the matter or performance:

(A) Would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;

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

(C) Taken as whole lacks serious literary, artistic, political or scientific values for minors;

(7) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture film, videocassette or other pictorial representation, or any statue, figure, device, theatrical production or electrical reproduction, or any other article, equipment, machine or material that is obscene as defined by §§ 39-17-901 -- 39-17-917;

(8) "Minor" means any person who has not reached eighteen (18) years of age and is not emancipated;

(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 below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(10) "Obscene" means:

(A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;

(B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and

(C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(11) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(12) "Prurient interest" means a shameful or morbid interest in sex;

(13) "Sadomasochistic abuse" means flagellation or torture or physical restraint by or upon a person for the purpose of sexual gratification of either person;

(14) "Sexual conduct" means:

(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. A sexual act is simulated when it depicts explicit sexual activity that gives the appearance of ultimate sexual acts, anal, oral or genital. "Ultimate sexual acts" means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy; or

(B) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals; and

(15) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**TENN. CODE ANN. § 39-17-902 (2010). Producing, importing, preparing, distributing, processing or appearing in obscene material or exhibition**

(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 the provisions of 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.

### **TENN. CODE ANN. § 39-17-903 (2010). Seizure of obscene materials - - Warrant - - Disposition of seized materials**

(a) Upon a showing of probable cause that the obscenity laws of this state are being violated, any judge or magistrate shall be empowered to issue a search warrant in accordance with the general law pertaining to searches and seizures in this state. The warrant shall authorize or designate a law enforcement officer to enter upon the premises where alleged violations of the obscenity laws are being carried on and take into custody one (1) example of each piece of matter which is obscene. Return on the search shall be in the manner prescribed generally for searches and seizures in the state of Tennessee, except that matter that is seized shall be retained by the district attorney general to be used as evidence in any legal proceeding in which the matter is in issue or involved.

(b) When a search and seizure takes place in accordance with this section, any person aggrieved by the search and seizure, or claiming ownership of the matter seized, may file a motion in writing with the court of record in the jurisdiction in which the search and seizure took place, contesting the legality of the search and seizure or the fact of the obscenity of the matter seized. The court shall set a hearing within one (1) day after the request therefor, or at such time as the requesting party might agree. In the event the court finds that the search and seizure was illegal or if the court or any other court of competent jurisdiction shall determine that the matter is not obscene, the matter shall be forthwith returned to the person and to the place from which it was taken.

### **TENN. CODE ANN. § 39-17-908 (2010). Enforcement - - Initiation of criminal actions - - Civil proceedings**

(a) Criminal action shall commence only on criminal indictment or the issuance of a warrant by a judge of any court of record; provided, that the commencement of any criminal action shall be made only with the prior knowledge and written approval of the district attorney general or any assistant district attorney general.

(b) The provisions of §§ 39-17-901 -- 39-17-908 may be enforced by either criminal

actions or by actions for injunctive relief, or both, and the actions may be commenced simultaneously and proceed independently of each other.

**TENN. CODE ANN. § 39-17-911 (2010). Sale, loan, or exhibition of material to minors**

(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.

**TENN. CODE ANN. § 39-17-914 (2010). Display for sale or rental of material harmful to minors**

(a) It is unlawful for a person to display for sale or rental a visual depiction, including a videocassette tape or film, video game, computer software game, or a written representation, including a book, magazine or pamphlet, that contains material harmful to minors anywhere minors are lawfully admitted.

(b) The state has the burden of proving that the material is displayed. Material is not considered displayed under this section if:

(1) The material is:

(A) Placed in "binder racks" that cover the lower two thirds (2/3) of the material and the viewable one third (1/3) is not harmful to minors;

(B) Located at a height of not less than five and one half feet (51/2') from the floor; and

(C) Reasonable steps are taken to prevent minors from perusing the material;

(2) The material is sealed, and, if it contains material on its cover that is harmful to minors, it must also be opaquely wrapped;

(3) The material is placed out of sight underneath the counter; or

(4) The material is located so that the material is not open to view by minors and is located in an area restricted to adults;

(5) Unless its cover contains material which is harmful to minors, a video cassette tape or film is not considered displayed if it is in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction; or

(6) In a situation if the minor is accompanied by the minor's parent or guardian, unless the area is restricted to adults as provided for in subdivision (b)(4).

(c) A violation of this section is a Class C misdemeanor for each day the person is in violation of this section.

## **TEXAS**

### **TEX. PENAL CODE ANN. § 43.21 (2010). Definitions**

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

### **TEX. PENAL CODE ANN. § 43.22 (2010). Obscene Display or Distribution**

(a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

**TEX. PENAL CODE ANN. § 43.23(2010). Obscenity**

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) Except as provided by Subsection (h), an offense under Subsection (a) is a state jail felony.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) Except as provided by Subsection (h), an offense under Subsection (c) is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) It is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a device proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.

(h) The punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

(i) In this section, "identifiable child" means a person, recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique

birthmark or other recognizable feature:

(1) who was younger than 18 years of age at the time the visual depiction was created, adapted, or modified; or

(2) whose image as a person younger than 18 years of age was used in creating, adapting, or modifying the visual depiction.

(j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

**TEX. PENAL CODE ANN. § 43.24(2010). 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 a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.



(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.

## **UTAH**

### **UTAH CODE ANN. § 10-8-41 (2010). Prostitution, lewd or perverted acts, gambling, and obscene or lewd publications**

(1) Boards of commissioners and city councils of cities may suppress and prohibit the keeping of disorderly houses, houses of ill fame or assignation, or houses kept by, maintained for, or resorted to or used by, one or more persons for acts of perversion, lewdness, or prostitution within the limits of the city and within three miles of the outer boundaries thereof, and may prohibit resorting thereto for any of the purposes aforesaid; they may also make it unlawful for any person to commit or offer or agree to commit an act of sexual intercourse for hire, lewdness, or moral perversion within the city, or for any person to secure, induce, procure, offer, or transport to any place within the city any person for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to receive or direct or offer or agree to receive or direct any person into any place or building within the city for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to aid, abet, or participate in the commission of any of the foregoing; and they may also suppress and prohibit gambling houses and gambling, lotteries and all fraudulent devices and practices, and all kinds of gaming, playing at dice or cards, and other games of chance, and the sale, distribution, or exhibition of obscene or lewd publications, prints, pictures, or illustrations.

(2) (a) A woman's breast feeding, including breast feeding in any place where the woman otherwise may rightfully be, does not under any circumstance constitute an obscene or lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

(b) Boards of commissioners and city councils of cities may not prohibit a woman's breast feeding in any location where she otherwise may rightfully be, irrespective of whether the breast is uncovered during or incidental to the breast feeding.

### **UTAH CODE ANN. § 67-5-18 (2010). Obscenity and Pornography Complaints Ombudsman -- Powers**

(1) As used in this section, "pornography" means material or a performance that meets the requirements of Subsection 76-10-1203(1).

(2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the Office of the Attorney General.

(b) The attorney general shall hire an attorney licensed to practice law in Utah who has knowledge of obscenity and pornography law and, if possible, who has a background or expertise in investigating and prosecuting obscenity and pornography law violations to fill the position.

(c) The person hired to fill the position is an exempt employee.

(d) The attorney general may hire clerks, interns, or other personnel to assist the pornography complaints ombudsman.

(3) The Obscenity and Pornography Complaints Ombudsman shall:

(a) develop and maintain expertise in and understanding of laws designed to control or eliminate obscenity and pornography and the legal standards governing the regulation or elimination of obscenity and pornography;

(b) advise citizens and local governments about remedies to address instances of obscenity and pornography in their communities;

(c) advise local governments about ways to strengthen local laws and ordinances addressing obscenity and pornography;

(d) advise local governments about strategies to restrict, suppress, or eliminate obscenity and pornography in their communities;

(e) at the request of the attorney general or a local government, assist a local government in investigating and prosecuting state and local laws and ordinances addressing obscenity or pornography;

(f) before beginning an investigation:

(i) contact the county, district, or city attorney within whose jurisdiction an investigation by the Obscenity and Pornography Complaints Ombudsman will take place and inform that county, district, or city attorney of the investigation; and

(ii) coordinate efforts and share records, in accordance with Section 63G-2-206, with the county, district, or city's attorney referred to in Subsection (3)(f)(i) throughout the investigation;

(g) advise citizens about their options to address specific complaints about obscenity or pornography in their communities;

(h) when requested by a citizen or local government official, arbitrate between citizens and businesses to resolve complaints about obscenity or pornography;

(i) provide information to private citizens, civic groups, government entities, and other interested parties about the dangers of obscenity and pornography, the current laws to restrict, suppress, or eliminate pornography, and their rights and responsibilities under those laws;

(j) draft model ordinances that contain:

(i) various degrees of regulation of sexually-oriented businesses; and

(ii) options for local communities that can be used to regulate pornography and obscenity;

(k) assist political subdivisions in:

(i) drafting model rules, regulations, and policies; and

(ii) providing recommendations for enforcing those rules, regulations, and policies;

(l) in conjunction with Utah's county and municipal prosecuting attorneys:

(i) review Utah's and Idaho's moral nuisance law;

(ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for municipalities and counties to provide an effective mechanism to abate and discourage obscenity and pornography; and

(iii) present the draft to the Legislature's Judiciary Interim Committee before October 25, 2001; and

(m) establish a program to combat Internet pornography and to assist parents in protecting their children from Internet pornography.

## **UTAH CODE ANN. § 76-10-1201 (2010). Definitions**

For the purpose of this part:

(1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.

(2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.

(3) "Distribute" means to transfer possession of materials whether with or without consideration.

(4) "Exhibit" means to show.

(5) (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

(i) taken as a whole, appeals to the prurient interest in sex of minors;

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

(iii) taken as a whole, does not have serious value for minors.

(b) Serious value includes only serious literary, artistic, political or scientific value for minors.

(6) (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.

(b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.

(7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(8) "Minor" means any person less than 18 years of age.

(9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.

(10) "Nudity" means:

(a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;

(b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(c) the depiction of covered male genitals in a discernibly turgid state.

(11) "Performance" means any physical human bodily activity, whether engaged in

alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.

(12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

(13) "Sado-masochistic abuse" means:

(a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or

(b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

(14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

(15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

### **UTAH CODE ANN. § 76-10-1203 (2010). Pornographic material or performance -- Expert testimony not required**

(1) Any material or performance is pornographic if:

(a) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;

(b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and

(c) Taken as a whole it does not have serious literary, artistic, political or scientific value.

(2) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value.

(3) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

**UTAH CODE ANN. §76-10-1205 (2010). Inducing acceptance of pornographic material -- Exemptions for Internet service providers and hosting companies**

(1) A person is guilty of inducing acceptance of pornographic material when he knowingly:

(a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or

(b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

(2) (a) An offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$ 1,000 plus \$ 10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (2) supersedes Section 77-18-1.

(3) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

**UTAH CODE ANN. § 76-10-1206 (2010). 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.

(2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$ 1,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

(d) Subsection (2)(a) supersedes Section 77-18-1.

(3) (a) If a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$ 5,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

(c) Subsection (3)(a) supersedes Section 77-18-1.

(d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(A) the distribution of pornographic material by the hosting company occurs only



incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

## **VERMONT**

### **VT. STAT. ANN. tit. 13, § 2801 (2010). Definitions**

As used in this act:

(1) "Minor" means any person less than 18 years old.

(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 fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

(3) "Sexual conduct" means acts 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, 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 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 minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse,

when it:

(A) Predominantly appeals to the prurient, shameful or morbid interest of minors; and

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

(C) Is taken as a whole, lacks serious literary, artistic, political, or scientific value, for minors.

(7) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(8) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, sidewalk, or lobby of a building which has unrestricted access by the public.

**VT. STAT. ANN. tit. 13, § 2802 (2010). Disseminating indecent material to a minor in the presence of a 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.

**VT. STAT. ANN. tit. 13, § 2802a (2010). Disseminating indecent material to a minor outside the presence of the minor**

(a) No person may, with knowledge of its character and content, and with actual knowledge that the recipient is a minor, sell, lend, distribute or give away:

(1) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image, including any such representation or image which is communicated, transmitted, or 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 actual knowledge that the recipient or viewer is a minor, and with knowledge of the character and content of a motion picture, show or other presentation, including any such motion picture, show or presentation which is communicated, transmitted, or stored electronically, 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.

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

**VT. STAT. ANN. TIT. 13, § 2802b (2010). Minor electronically disseminating indecent material to another person**

(a) (1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of

subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. -- A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than \$ 300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.

**VT. STAT. ANN. TIT. 13, § 2803 (2010). Distribution of indecent material**

No person may hire, employ or permit a minor to sell, lend, distribute or give away material, the sale, lending, distribution or giving away of which to minors is prohibited by section 2802.

**VT. STAT. ANN. TIT. 13, § 2804 (2010). Exhibition of motion pictures**

No person may, with knowledge of the character and content, exhibit a motion picture, show or other presentation, harmful to minors as defined in subdivision 2801(6) of this title, which in whole or part depicts nudity and sexual conduct, as defined in section 2801, such that it may be viewed by minors from public property or private property not under the control of the person exhibiting the motion picture, show or other presentation.

**VT. STAT. ANN. TIT. 13, § 2804a (2010). Publicly displaying sex or nudity for advertising purposes**

No person may knowingly, publicly display nudity or sex for advertising purposes. A violation of this section occurs if a person:

(1) Displays publicly or causes to be displayed publicly for advertising purposes a picture, photograph, drawing, sculpture or other visual representation or image, including any such representation or image which is communicated, transmitted, or stored electronically, of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement, which is harmful to minors, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities; or

(2) Permits any public display described in this section on premises owned, rented or operated by him or her; or

(3) For advertising purposes, purchases space in any newspaper, magazine or other circular, printed in this state, in order to insert any article or advertisement which contains material harmful to minors.

**VT. STAT. ANN. TIT. 13, § 2804b (2010). 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.

**VT. STAT. ANN. TIT. 13, § 2805 (2010). 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.

**VT. STAT. ANN. TIT. 13, § 2809 (2010). Civil action prerequisite for criminal prosecution**

Where evidence of conduct prohibited under subdivision 2802(a)(2) of this title consists entirely of written matter in a book or other publication however reproduced, a criminal prosecution may be commenced only after violation of a final injunction prohibiting such conduct.

## **VIRGINIA**

### **VA. CODE ANN. § 18.2-372 (2010). “Obscene” defined**

The word "*obscene*" where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

### **VA. CODE ANN. § 18.2-373 (2010). Obscene items enumerated**

Obscene items shall include:

- (1) Any obscene book;
- (2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, bumper sticker, drawing, photograph, film, negative, slide, motion picture, videotape recording;
- (3) Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds; or
- (4) Any obscene writing, picture or similar visual representation, or sound recording, stored in an electronic or other medium retrievable in a perceivable form.

### **VA. CODE ANN. § 18.2-374 (2010). Obscene items enumerated**

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.

**VA. CODE ANN. § 18.2-374.3 (2010). Use of communications systems to facilitate certain offenses involving children**

A. As used in subsections C, D, and E "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It shall be unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child less than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.

Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this subsection when the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of which shall be a mandatory minimum term of imprisonment.

D. Any person who uses a communications system, including but not limited to



computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any child he knows or has reason to believe is at least 15 years of age but less than 18 years of age to knowingly and intentionally commit any of the activities listed in subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any person who commits a second or subsequent violation of this subsection shall be punished by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

E. Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

#### **VA. CODE ANN. § 18.2-375 (2010). Obscene exhibitions and performances**

It shall be unlawful for any person knowingly to:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in, any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theatre, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section if the employee is not the manager of the theatre or an officer of such entity, and has no financial interest in such theatre other than receiving salary and wages; or

(2) Own, lease or manage any theatre, garden, building, structure, room or place and lease, let, lend or permit such theatre, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the locality who is the manager of such theatre, garden, building, structure, room or place.

#### **VA. CODE ANN. § 18.2-376 (2010). Advertising, etc., obscene items, exhibitions or performances**

It shall be unlawful for any person knowingly to prepare, print, publish, or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item proscribed in § 18.2-373, or of any obscene performance or exhibition proscribed in § 18.2-375, stating or indicating where such obscene item, exhibition, or performance may be purchased, obtained, seen or heard.

**VA. CODE ANN. § 18.2-376.1 (2010). Enhanced penalties for using a computer in certain violations**

Any person who uses a computer in connection with a violation of §§ 18.2-374, 18.2-375, or § 18.2-376 is guilty of a separate and distinct Class 1 misdemeanor, and for a second or subsequent such offense within 10 years of a prior such offense is guilty of a Class 6 felony, the penalties to be imposed in addition to any other punishment otherwise prescribed for a violation of any of those sections.

**VA. CODE ANN. § 18.2-377 (2010). Placards, posters, bills, etc.**

It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print, or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing, or picture which is obscene, or which advertises or promotes any obscene item proscribed in § 18.2-373 or any obscene exhibition or performance proscribed in § 18.2-375, or knowingly to permit the same to be displayed on property belonging to or controlled by him.

**VA. CODE ANN. § 18.2-378 (2010). Coercing acceptance of obscene articles or publications**

It shall be unlawful for any person, firm, association or corporation, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication to require that the purchaser or consignee receive for resale any other article, book, or other publication which is obscene; nor shall any person, firm, association or corporation deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof.

**VA. CODE ANN. § 18.2-379 (2010). Employing or permitting minor to assist in offense under article**

It shall be unlawful for any person knowingly to hire, employ, use or permit any minor to do or assist in doing any act or thing constituting an offense under this article.

**VA. CODE ANN. § 18.2-380 (2010). Punishment for first offense**

Any person, firm, association or corporation convicted for the first time of an offense under §§ 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378 or § 18.2-379, shall be guilty of a Class 1 misdemeanor.

**VA. CODE ANN. § 18.2-381 (2010). Punishment for subsequent offenses; additionally penalty for owner**

Any person, firm, association or corporation convicted of a second or other subsequent offense under §§ 18.2-374 through 18.2-379 shall be guilty of a Class 6 felony. However, if the person, firm, association or corporation convicted of such subsequent offense is the owner of the business establishment where each of the offenses occurred, a fine of not more than \$ 10,000 shall be imposed in addition to the penalties otherwise prescribed by this section.

**VA. CODE ANN. § 18.2-382 (2010). Photographs, slides and motion pictures**

Every person who knowingly:

(1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or

(2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution;

shall be guilty of a Class 3 misdemeanor.

**VA. CODE ANN. § 18.2-383 (2010). 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.

**VA. CODE ANN. § 18.2-384 (2010). Proceedings against book alleged to be obscene**

(1) Whenever he has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book, any citizen or the attorney for the Commonwealth of any county or city, or city attorney, in which the sale or commercial distribution of such book occurs may institute a proceeding in the circuit court in said city

or county for adjudication of the obscenity of the book.

(2) The proceeding shall be instituted by filing with the court a petition:

(a) Directed against the book by name or description;

(b) Alleging the obscene nature of the book; and

(c) Listing the names and addresses, if known, of the author, publisher, and all other persons interested in its sale or commercial distribution.

(3) Upon the filing of a petition pursuant to this article, the court in term or in vacation shall forthwith examine the book alleged to be obscene. If the court find no probable cause to believe the book obscene, the judge thereof shall dismiss the petition; but if the court find probable cause to believe the book obscene, the judge thereof shall issue an order to show cause why the book should not be adjudicated obscene.

(4) The order to show cause shall be:

(a) Directed against the book by name or description;

(b) Published once a week for two successive weeks in a newspaper of general circulation within the county or city in which the proceeding is filed;

(c) If their names and addresses are known, served by registered mail upon the author, publisher, and all other persons interested in the sale or commercial distribution of the book; and

(d) Returnable twenty-one days after its service by registered mail or the commencement of its publication, whichever is later.

(5) When an order to show cause is issued pursuant to this article, and upon four days' notice to be given to the persons and in the manner prescribed by the court, the court may issue a temporary restraining order against the sale or distribution of the book alleged to be obscene.

(6) On or before the return date specified in the order to show cause, the author, publisher, and any person interested in the sale or commercial distribution of the book may appear and file an answer. The court may by order permit any other person to appear and file an answer *amicus curiae*.

(7) If no one appears and files an answer on or before the return date specified in the order to show cause, the court, upon being satisfied that the book is obscene, shall order the clerk of court to enter judgment that the book is obscene, but the court in its discretion may except from its judgment a restricted category of persons to whom the book is not obscene.

(8) If an appearance is entered and an answer filed, the court shall order the proceeding set on the calendar for a prompt hearing. The court shall conduct the hearing in accordance with the rules of civil procedure applicable to the trial of cases by the court without a jury. At the hearing, the court shall receive evidence, including the testimony of experts, if such evidence be offered, pertaining to:

(a) The artistic, literary, medical, scientific, cultural and educational values, if any, of the book considered as a whole;

(b) The degree of public acceptance of the book, or books of similar character, within the county or city in which the proceeding is brought;

(c) The intent of the author and publisher of the book;

(d) The reputation of the author and publisher;

(e) The advertising, promotion, and other circumstances relating to the sale of the book;

(f) The nature of classes of persons, including scholars, scientists, and physicians, for whom the book may not have prurient appeal, and who may be subject to exception pursuant to subsection (7).

(9) In making a decision on the obscenity of the book, the court shall consider, among other things, the evidence offered pursuant to subsection (8), if any, and shall make a written determination upon every such consideration relied upon in the proceeding in his findings of fact and conclusions of law or in a memorandum accompanying them.

(10) If he finds the book not obscene, the court shall order the clerk of court to enter judgment accordingly. If he finds the book obscene, the court shall order the clerk of court to enter judgment that the book is obscene, but the court, in its discretion, may except from its judgment a restricted category of persons to whom the book is not obscene.

(11) While a temporary restraining order made pursuant to subsection (5) is in effect, or after the entry of a judgment pursuant to subsection (7), or after the entry of judgment pursuant to subsection (10), any person who publishes, sells, rents, lends, transports in intrastate commerce, or commercially distributes or exhibits the book, or has the book in his possession with intent to publish, sell, rent, lend, transport in intrastate commerce, or commercially distribute or exhibit the book, is presumed to have knowledge that the book is obscene under §§ 18.2-372 through 18.2-378 of this article.

(12) Any party to the proceeding, including the petitioner, may appeal from the judgment of the court to the Supreme Court of Virginia, as otherwise provided by law.

(13) It is expressly provided that the petition and proceeding authorized under this article,

relating to books alleged to be obscene, shall be intended only to establish scienter in cases where the establishment of such scienter is thought to be useful or desirable by the petitioner; and the provisions of § 18.2-384 shall in no wise be construed to be a necessary prerequisite to the filing of criminal charges under this article.

**VA. CODE ANN. § 18.2-385 (2010). Section 18.2-384 applicable to motion picture films**

The provisions of § 18.2-384 shall apply mutatis mutandis in the case of motion picture film.

**VA. CODE ANN. § 18.2-386 (2010). Showing previews of certain motion pictures**

It shall be unlawful for any person to exhibit any trailer or preview of any motion picture which has a motion picture industry rating which would not permit persons in the audience viewing the feature motion picture to see the complete motion picture from which the trailer or preview is taken. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

**VA. CODE ANN. § 18.2-387.1 (2010). Obscene sexual display; penalty**

Any person who, while in any public place where others are present, intending that he be seen by others, intentionally and obscenely as defined in § 18.2-372, engages in actual or explicitly simulated acts of masturbation, is guilty of a Class 1 misdemeanor.

## **WASHINGTON**

**WASH. REV. CODE ANN. § 9.68.015 (2010). 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.

**WASH. REV. CODE ANN. § 9.68.030 (2010). Indecent articles, etc.**

Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or

exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor.

**WASH. REV. CODE ANN. § 9.68.050 (2010). “Erotic material” - -  
Definitions**

For the purposes of RCW 9.68.050 through 9.68.120:

- (1) "Minor" means any person under the age of eighteen years;
- (2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;
- (3) "Person" means any individual, corporation, or other organization;
- (4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings.

**WASH. REV. CODE ANN. § 9.68.050 (2010). “Erotic material” - -  
Determination by court - - Labeling - - Penalties**

(1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies

of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned not more than one year;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year.

### **WASH. REV. CODE ANN. § 9.68.070 (2010). Prosecution for violation of RCW 9.68.060 - - Defense\**

In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself to be a parent,



or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation.

### **WASH. REV. CODE ANN. § 9.68.080 (2010). Unlawful acts**

(1) It shall be unlawful for any minor to misrepresent his true age or his true status as the child, stepchild or ward of a person accompanying him, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his true status as parent, spouse of a parent or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050.

## **WEST VIRGINIA**

### **W. VA. CODE ANN. § 61-8A-1 (2010). Definitions**

When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(a) "Adult" means a person eighteen years of age or older.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(c) "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(d) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(e) "Employee" means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(f) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(g) "Knowledge of the character of the matter" means having awareness of or notice of the overall sexual content and character of matter as depicting, representing, or describing obscene matter.

(h) "Matter" means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two or three dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

(i) "Minor" means an unemancipated person under eighteen years of age.

(j) "Obscene matter" means matter that:

(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

(k) "Parent" includes a biological or adoptive parent, legal guardian or legal custodian.

(l) "Person" means any adult, partnership, firm, association, corporation or other legal entity.

(m) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

### **W. VA. CODE ANN. § 61-8A-2 (2010). 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.

### **W. VA. CODE ANN. § 61-8A-3 (2010). Exemptions from criminal liability**

The criminal provisions of section two [§ 61-8A-2] 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.

### **W. VA. CODE ANN. § 61-8A-4 (2010). Use of obscene matter with intent to seduce minor**

Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, 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. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

**W. VA. CODE ANN. § 61-8A-5 (2010). Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties**

Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

**WISCONSIN**

**WIS. STAT. ANN. § 944.21 (2010). Obscene material or performance**

(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 printers 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)
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)

### **WIS. STAT. ANN. § 944.23 (2010). Making lewd, obscene or indecent drawings**

Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

### **WIS. STAT. ANN. § 944.23 (2010). Sending obscene or sexually explicit electronic messages**

(1) In this section:

(a) "Electronic mail solicitation" means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.

(b) "Obscene material" has the meaning given in s. 944.21 (2) (c) (c) "Sexually explicit conduct" has the meaning given in s. 948.01 (7)

(2) Whoever sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words "ADULT ADVERTISEMENT" in the subject line of the electronic mail solicitation is guilty of a Class A misdemeanor.

# WYOMING

## WYO. STAT. ANN. § 6-4-301 (2010). Definitions

(a) As used in this article:

(i) "Disseminate" means to sell, distribute, deliver, provide, exhibit or otherwise make available to another;

(ii) "Material" includes any form of human expression or communication intended for, or capable of, visual, auditory or sensory perception;

(iii) "Obscene" is material which the average person would find:

(A) Applying contemporary community standards, taken as a whole, appeals to the prurient interest;

(B) Applying contemporary community standards, depicts or describes sexual conduct in a patently offensive way; and

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

(iv) "Produce or reproduce" means to bring into being regardless of the process or means employed. Undeveloped photographs, films, molds, casts, printing plates and like articles may be obscene notwithstanding that further processing or other acts are necessary to make the obscenity patent or to disseminate or exhibit the obscene material;

(v) "Sexual conduct" means:

(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated;

(B) Sado-masochistic abuse; or

(C) Patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibitions of the genitals.

## WYO. STAT. ANN. § 6-4-302 (2010). 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.

## **FEDERAL LEGISLATION**

### **18 U.S.C. § 1460 (2010). Possession with intent to sell, and sale, of obscene matter on Federal property**

(a) Whoever, either--

(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

(2) in the Indian country as defined in section 1151 of this title [18 USCS § 1151],

knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term "visual depiction" includes undeveloped film and videotape but does not include mere words.

### **18 U.S.C. § 1461 (2010). Mailing obscene or crime-inciting matter**

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and--

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing--

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined under this title or imprisoned not more than five years, or both, for the first such offense, and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

### **18 U.S.C. § 1462 (2010). Importation or transportation of obscene matters**

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934 [47 USCS § 230(e)(2)]), for carriage in interstate or foreign commerce--

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing

abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes or receives, from such express company or other common carrier or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) any matter or thing the carriage or importation of which is herein made unlawful--

Shall be fined under this title or imprisoned not more than five years, or both, for the first such offense and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

### **18 U.S.C. § 1463 (2010). Mailing indecent matter on wrappers or envelopes**

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined under this title or imprisoned not more than five years, or both.

### **18 U.S.C. § 1464 (2010). Broadcasting obscene language**

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.

### **18 U.S.C. § 1465 (2010). Production and transportation of obscene matters for sale or distribution**

Whoever knowingly produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly transports or travels in, or uses a facility or means of, interstate or foreign commerce or an interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) in or affecting such commerce, for the purpose of sale or distribution of any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing,

figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined under this title or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

### **18 U.S.C. § 1466 (2010). Engaging in the business of selling or transferring obscene matter**

(a) Whoever is engaged in the business of producing with intent to distribute or sell, or selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who produces[,] sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the production, selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

### **18 U.S.C. § 1466A (2010). Obscene visual representation of the sexual abuse of children**

(a) In general. Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and  
(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1) [18 USCS § 2252A(b)(1)], including the penalties provided for cases involving a prior conviction.

(b) Additional offenses. Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2) [18 USCS § 2252A(b)(2)], including the penalties provided for cases involving a prior conviction.

(c) Nonrequired element of offense. It is not a required element of any offense under this section that the minor depicted actually exist.

(d) Circumstances. The circumstance referred to in subsections (a) and (b) is that--

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) Affirmative defense. It shall be an affirmative defense to a charge of violating subsection (b) that the defendant--

(1) possessed less than 3 such visual depictions; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction--

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(f) Definitions. For purposes of this section--

(1) the term "visual depiction" includes undeveloped film and videotape, and data

stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term "sexually explicit conduct" has the meaning given the term in section 2256(2)(A) or 2256(2)(B) [18 USCS § 2256(2)(A) or 2256(2)(B)]; and

(3) the term "graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

### **18 U.S.C. § 1468 (2010). Distributing obscene material by cable or subscription television**

(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

(b) As used in this section, the term "distribute" means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

(c) Nothing in this chapter [18 USCS §§ 1460 et seq.], or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.

### **18 U.S.C. § 1469 (2010). Presumptions**

(a) In any prosecution under this chapter [18 USCS §§ 1460 et seq.] in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

(b) In any prosecution under this chapter [18 USCS §§ 1460 et seq.] in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.

## **18 U.S.C. § 1470 (2010). Transfer of obscene material to minors**

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

## **AMERICAN SAMOA**

## **GUAM**

### **GUAM CODE ANN. tit. 9, § 28.40 (2009). Definitions**

As used in this Article:

(a) *Material* means any picture, drawing, photograph, motion picture or pictorial representation, or any statue or other figure, or any mechanical, chemical or electrical reproduction, or anything which is or may be used as a means of communication (other than the written or spoken word). Material includes molds, printing plates and other latent representational objects.

(b) *Prurient interest* means a shameful or morbid interest in nudity, sex or excretion.

(c) *Performance* means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to dancing, acting, simulating or pantomiming which is either public or for commercial gain.

(d) *Distribute* means to transfer possession of material.

(e) Any material or performance is *obscene* if:

(1) The average person, applying contemporary community standards, finds that the material or performance, taken as a whole, appeals to the prurient interest; and

(2) The material or performance depicts or describes in a patently offensive way, sexual conduct, normal or perverted, actual or simulated; and

(3) The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.

(f) *Sadomasochistic abuse* means flagellation or torture by or upon a person as an act of

sexual stimulation or gratification.

(g) *Sexual conduct* means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(h) *Owner* means any person who owns or has legal right to possession of any material.

### **Guam Code Ann. tit. 9, § 28.49 (2009). Obscenity: Distribution**

Every person who knowingly sends or causes to be sent, or who in Guam possesses, prepares, publishes, shows, prints or who offers to distribute, distributes or exhibits to another any obscene material, when such act or acts are public or for commercial gain, is guilty of a misdemeanor.

### **Guam Code Ann. tit. 9, § 28.50 (2009). Same: Participation In**

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance which is public or for commercial gain is guilty of a misdemeanor.

### **Guam Code Ann. tit. 9, § 28.51 (2009). Same: Employment of Minor**

A person is guilty of a felony of the third degree if he knowingly or recklessly employs or uses a minor under the age of sixteen (16) years to do or assist in doing any of the acts described in §§ 28.49 or 28.50 of this Chapter.

### **Guam Code Ann. tit. 9, § 28.52 (2009). Use of One's Child in Obscene Acts**

A person is guilty of a felony of the first degree if while having custody or control of any child under the age of sixteen (16) years, he shall knowingly permit that child to be used in or be a party to any material or performance that is obscene.

### **Guam Code Ann. tit. 9, § 28.55 (2009). Defenses**

It shall be an affirmative defense in a prosecution under this Article for the defendant to show:

(1) That the distribution was made to the recipient by a bona fide school, museum or public library or by an employee of such organization acting in the course of his employment or of a retail outlet affiliated with and serving the educational purposes of such organization; or



(2) That the act was done for legitimate scientific or education purposes.

### **Guam Code Ann. tit. 9, § 28.60 (2009). Disposition of Obscene Material**

When the conviction of any person for the commission of any offense defined in § 28.50 becomes final, copies of any obscene material described in the indictment, information or complaint or admitted in evidence which were taken from the possession of the defendant and which are in the possession or under the control of the Attorney General or any law enforcement officer or the clerk of the court may be destroyed upon order of the court. A copy of the order shall be mailed to the defendant and his counsel by the clerk of the court. The date fixed for the destruction of the obscene material must be at least thirty (30) days after the mailing of the order.

## **PUERTO RICO**

### **P.R. LAWS ANN. tit. 33, §4074(2009). Obscene material, obscene acts, sexual behavior and related terms defined**

For the effects of §§ 4074-4081 of this title, the following terms or phrases shall have the meaning set forth below:

(a) *Obscene material.* Means material which, considered as a whole by an average person and by applying contemporary community patterns, attracts lascivious interest, in other words, a morbid interest in nudity, sexuality or biological functions; and is material that depicts or describes sexual behavior in a patently offensive manner and, considered as a whole, fails to have any serious literary, artistic, political, religious, scientific or educational merit.

The material's attraction to lascivious interest in sex is judged with reference to the average adult unless the nature of the material or the manner in which it is marketed, distributed or exhibited demonstrates that it is designed for groups of sexual deviates, in which case, said attraction shall be judged with reference to the group for whom it is intended.

In proceedings for violations of the provisions of this subtitle where the way it is produced, presented, sold, marketed, distributed or publicized indicates that the accused is promoting the material commercially because of its lascivious attraction, the proof of this action shall constitute prima facie evidence that the same fails to have any serious literary, artistic, political, religious, scientific or educational merit.

The fact that the defendant knew that the material showed persons under sixteen (16) years of age engaging in sexual behavior, as defined in subsection (f) of this section, is a factor that must be considered when determining that the material is obscene.

When the forbidden act is carried out for, with or in the presence of children less than sixteen (16) years old, it shall suffice that the material is intended to awaken a lascivious interest in sex.

(b) *Material*. Means any book, magazine, newspaper or other printed or written material, or any portrait, photograph, moving picture, cinematographic film or other graphic representation or oral or visual representation transmitted or retransmitted through cable, electromagnetic waves, computers, digital technology or any other electronic medium or any other communications means [media] or any statue, carving or figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other article, equipment or machine.

(c) *Distribute*. Means to transfer possession, either with or without remuneration, or to send a signal, transmit, retransmit or broadcast by cable, electromagnetic impulses or any electronic means or other communications media.

(d) *Subsequent violation*. Means any infraction or infractions of the same nature, using the same communications media that the first infraction was committed with, brought before any court of justice after thirty (30) or more days have elapsed from the first infraction.

(e) *Obscene act*. Means any physical activity of the human body, whether it is carried out alone or with other persons, including, but not limited to, singing, talking, dancing, acting, pretending, or by pantomime which, considered as a whole by the average person, according to contemporary community patterns, appeals to a lascivious interest, in other words, a morbid interest in nudity, sexuality or biological functions and represents or describes sexual behavior in a manifestly offensive manner and fails to have a serious literary, artistic, political, religious, scientific or educational value.

Incitement by actions leading to a lascivious interest shall be judged in relation to the average adult, unless the nature of said conduct or the manner in which it is produced, presented or displayed, demonstrates that it is designed for groups of sexual deviates, in which case the predominant attraction of the acts shall be judged with reference to the group for whom it is intended.

In proceedings for violations of the provisions of this subtitle where the manner of production, presentation or exhibition indicates that the accused is commercially exploiting obscene acts for their lascivious attraction, said circumstances shall constitute prima facie evidence that same lacks serious literary, artistic, political, religious, scientific or educational merit.

When determining whether the act, considered as a whole, appeals to a lascivious interest in sex, the fact that the defendant knew that the conduct showed persons under sixteen (16) years of age engaged in sexual behavior, as defined in subsection (f) of this section, is a factor that may be taken into consideration.

When the prohibited act is carried out for, with or in the presence of children under sixteen (16) years of age, it shall be sufficient that the material is intended to awaken a lascivious interest in sex.

(f) *Sexual behavior*. Means:

(1) Patently offensive representations or descriptions of consummated, normal or perverted sexual acts, whether they be real or simulated, including sexual relations, sodomy, unnatural acts and bestiality.

(2) Patently offensive representations or descriptions of masturbation, oral copulation, sexual sadism, sexual masochism, lascivious display of genital organs, stimulation of human genitalia with objects designed for such purposes, or scatological functions, whether such acts are carried out individually or between members of the same sex or the

opposite sex, or between humans and animals. An act is simulated when it gives the impression of being sexual behavior.

**P.R. LAWS ANN. tit. 33, §4075(2009). Delivery, transportation, sale, distribution, exhibition or possession of obscene material**

(a) Any person who knowingly sends, or has delivered, or transports or has transported, or brings or has someone bring obscene material to Puerto Rico for sale, exhibition, publication or distribution, or who possesses, prepares, publishes or prints any obscene material in Puerto Rico, with the intention of distributing, selling, exhibiting it to others, or offering it for distribution or sale, shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion.

(b) Any person who commits the acts forbidden in subsection (a) of this section, knowing that in such obscene material a child under sixteen (16) years of age is presented while carrying out or simulating a sexual act, shall be punished upon conviction, by imprisonment for a term of two (2) years to a maximum of four (4) years, or a fine not to exceed fifty thousand dollars (\$50,000), or both penalties at the court's discretion.

(c) The provisions of this section, with regard to the exhibition, or possession with intent to exhibit, of any obscene material shall not apply to any employee, projector operator or movie cameraman who has been employed and who is working at his job, as long as said employee, projector operator or cameraman does not have a financial interest of any kind in the place where he is employed.

**P.R. LAWS ANN. tit. 33, §4076(2009). Obscene exhibitions**

Any person who knowingly engages in or participates in administrating, producing, patronizing, presenting or exhibiting a spectacle with obscene acts or has a part in said show or contributes to its obscenity shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion. A spectacle shall be understood to mean any theatrical performance, cinema film, dance or any other exhibition intended for an audience.

**P.R. LAWS ANN. tit. 33, §4077(2009). Protection of minors**

(a) Any person engaging in acts prohibited in §§ 4075 and 4076 of this title for or in the presence of children under sixteen (16) years of age shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a maximum fine of five thousand dollars (\$5,000), or both penalties at the court's discretion.

(b) The penalty of imprisonment for a minimum term of three (3) years and a maximum of five (5) years shall be imposed on any person who employs, uses, persuades or induces a child under sixteen (16) years of age to engage in, or to induce another child to pose, model or perform sexual acts for the purpose of preparing, printing or exhibiting obscene material, or presenting an obscene spectacle.

(c) Any person who employs, hires or uses a child under sixteen (16) years of age to engage in or help him to engage in any of the forbidden acts in § 4075 of this title shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a fine not to exceed five thousand dollars (\$5,000), or both penalties at the court's discretion.

**P.R. LAWS ANN. tit. 33, §4077a(2009). Protection of Minors - - Display and sale of material injurious to minors**

Except as it may otherwise be construed from the context, the following definitions contained in this section shall have the following meaning. The concept of sexual conduct used in this definition shall have the meaning provided in § 4074 of this title.

(1) *Material injurious to minors.* Means all material, including photographs, books, magazines, newspapers, drawings, cartoons, figures, sculptures, recordings, films, cinematographic film[s], or any similar medium that portrays explicitly the nudity of the human body, expressions of sexual conduct, or in such a way that when its context is taken as a whole:

- (a) Appeals predominantly to the prurient interest of the minors.
- (b) Is patently offensive in accordance with the contemporary adult community criteria with regard to the best interests of the minor.
- (c) Lacks true social value for the minors.

(2) *Knowingly.* Means having knowledge of the injurious nature of the material or conduct for minors.

**P.R. LAWS ANN. tit. 33, §4077b(2009). Protection of Minors - - Penalties**

Any person charged with the supervision, control or custody of a commercial or business establishment that knowingly exhibits, displays or exposes to view any material injurious to minors in those areas of the establishment or surrounding areas to which a minor could have access as part of the general public, or who sells, rents or loans said material to a minor, shall be sanctioned by imprisonment for a term that shall not exceed six (6) months and a fine that shall not exceed five thousand dollars (\$5,000).

Any person in charge of the supervision, custody or control of a moving picture theatre where cinematographic films, that contain material that is injurious to minors, are projected, and knowingly sells or otherwise allows minors to enter said establishment, shall be sanctioned with a term of imprisonment that shall not exceed six (6) months, and a fine that shall not exceed five thousand dollars (\$5,000).

**P.R. LAWS ANN. tit. 33, §4078(2009). Obscene advertisements, sales propaganda or promotion, and distribution; soliciting**

Any person who writes, prepares, exhibits, publishes, announces or solicits any person to publish or exhibit an obscene announcement or that in any other way promotes the sale or distribution of obscene material, shall be punished with the penalty of imprisonment for a term not to exceed six (6) months, a fine not to exceed five hundred dollars (\$500),

or both penalties at the discretion of the court. However, the court may impose the penalty of rendering community service in lieu of the penalty of imprisonment.

**P.R. LAWS ANN. tit. 33, §4079(2009). Conditional sales or distribution**

Any person who, knowingly, as a condition of the sale, distribution, consignment or delivery for resale of any newspaper, magazine, book, publication or other merchandise, requires as a condition that the buyer or consignee accept any obscene material, or who refuses, revokes or threatens to refuse or revoke a franchise, or imposes a monetary or any other kind of penalty because the person refused to accept obscene material or such obscene material is returned, shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion.

**P.R. LAWS ANN. tit. 33, §4079a(2009). Transmission or retransmission of obscene material**

Any person who knowingly distributes any obscene material through television, radio or any electronic media or other communications media shall be punished by imprisonment which shall not exceed six (6) months or a fine which shall not exceed five hundred dollars (\$500) or both penalties at the court's discretion. In case of subsequent violations to this section, upon conviction said person shall be punished by imprisonment for a fixed term of two (2) years and five (5) months. If there were aggravating circumstances the fixed penalty established herein may be increased to a maximum of four (4) years or a fixed fine of fifty thousand dollars (\$50,000) or both penalties at the discretion of the court. If there were extenuating circumstances, the fixed penalty established herein may be reduced to a minimum of one year and eight (8) months or a fixed fine of twenty thousand dollars (\$20,000) or both penalties at the discretion of the court. Provided, That in case of subsequent violations to the provisions of this section by a juridical person, the court may impose a penalty of suspension or cancellation as provided in §§ 3243 and 3244 of this title.

**P.R. LAWS ANN. tit. 33, §4080(2009). Confiscation**

The Secretary of Justice, the Superintendent of Police, or the Secretary of the Treasury, through their delegates or peace officers, may seize any property or interest that any person has acquired in violation of the provisions in §§ 4075-4079 of this title, following the procedure established by §§ 1 and 2 of Act June 4, 1960, No. 39.

## **U.S. VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 14, § 488 (2010). Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor or assist any other person to employ, use, persuade, induce, entice, or coerce any minor to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any another person to engage in sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any material or information whether it be printed, verbal, audio or digital which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into the Virgin Islands any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material that

depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(b) Any person who violates the provision of this section is guilty of a felony punishable upon conviction by imprisonment for not less than five years or more than 20 years and by a fine of not more than \$100,000.

**V.I. CODE ANN. tit. 14, § 490 (2010). Obscene Internet contact with a minor**

(a) It is unlawful for any person intentionally or willfully to use a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a minor or another person believed by such person to be a minor, to commit any illegal act described in sections 488, 489 and 490 of this chapter or to engage in any conduct that by its nature is an unlawful sexual offense against a minor.

(b) A person commits the offense of obscene Internet contact with a minor if the person has contact with someone the person knows to be a minor or with someone the person believes to be a minor via a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the minor or the person, except that no conviction may be had for a violation of this subsection on the unsupported testimony of a minor.

(c) (1) It is unlawful for any owner or operator of a computer on-line service, Internet service, or local bulletin board service intentionally or willfully to permit a subscriber to use the service to commit a violation of this section, knowing that the person intended to use the service to violate this section. No owner or operator of a public computer on-line service, internet service, or local bulletin board service may be held liable on account of any action taken in good faith in providing the aforementioned services.

(2) Any person who violates paragraph (1) of this subsection is guilty of a misdemeanor.

(3) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this chapter does not constitute a defense to prosecution under this section.

(4) A person is subject to prosecution in the Virgin Islands pursuant to the Revised Organic Act of the Virgin Islands, section 21(b) relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this section which the person engages in while either within or outside of the Virgin Islands if, by such conduct, the person commits a violation of this section which involves

a minor who resides in the Virgin Islands or another person believed by such person to be a minor residing in the Virgin Islands.