CHAPTER 728

OBSCENITY

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Complaint alleging a child in need of assistance; see §709.13

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728.1 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.

[C75, 77, §725.1; C79, 81, §728.1]

83 Acts, ch 167, §1; 89 Acts, ch 263, §1; 97 Acts, ch 125, §2; 2005 Acts, ch 3, §111

Referred to in §15.393

728.2 Dissemination and exhibition of obscene material to minors.

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

[C51, §2717; R60, §4359; C73, §4022; C97, §4951, 4955; C24, 27, 31, 35, 39, §**13189, 13193;** C46, 50, 54, 58, 62, 66, 71, 73, §725.4, 725.8; C75, 77, §725.2; C79, 81, §728.2]

Referred to in §272.2, 692A.102, 728.8, 728.9

728.3 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.

[C51, §2717; R60, §4359; C73, §4022; C97, §4951; S13, §4944-k; C24, 27, 31, 35, 39, §**13185, 13189;** C46, 50, 54, 58, 62, 66, 71, 73, §725.3, 725.4; C75, 77, §725.3; C79, 81, §728.3]

83 Acts, ch 167, §2

Referred to in §692A.102, 728.8, 728.9

728.4 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.

[C79, 81, §728.4; 82 Acts, ch 1115, §1]

83 Acts, ch 167, §3; 89 Acts, ch 263, §2

Referred to in §692A.102

728.5 Public indecent exposure in certain establishments.

An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person allows or permits the actual or simulated public performance of any sex act upon or in such place of business.

2. If such person allows or permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.

3. If such person allows or permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.

4. If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.

5. If such person advertises that any activity prohibited by this section is allowed or permitted in such place of business.

6. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. However, if such person allows or permits a minor to participate in any act included in subsections 1 through 4, the person shall be guilty of an aggravated misdemeanor.

The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

[C79, 81, §728.5]

92 Acts, ch 1029, §1; 97 Acts, ch 125, §3

Referred to in §728.8

728.6 Civil suit to determine obscenity.

Whenever the county attorney of any county has reasonable cause to believe that any person is engaged or plans to engage in the dissemination or exhibition of obscene material within the county attorney's county to minors the county attorney may institute a civil proceeding in the district court of the county to enjoin the dissemination or exhibition of obscene material to minors. Such application for injunction is optional and not mandatory and shall not be construed as a prerequisite to criminal prosecution for a violation of this chapter.

[C75, 77, §725.4; C79, 81, §728.6]

728.7 Exemptions for public libraries and educational institutions.

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

[C75, 77, §725.5; C79, 81, §728.7]

728.8 Suspension of licenses or permits.

Any person who knowingly permits a violation of section 728.2, 728.3, or 728.5, subsection 6, to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2, 728.3, or 728.5, subsection 6.

[C75, 77, §725.6; C79, 81, §728.8]

92 Acts, ch 1029, §2; 97 Acts, ch 125, §4

Referred to in **§331.756(79)**

728.9 Evidence considered.

At a trial for violation of section 728.2 or 728.3 the court may consider the material, and receive into evidence in addition to other competent evidence, the offered testimony of experts pertaining to:

1. The artistic, literary, political or scientific value, if any, of the challenged material.
2. The degree of public acceptance within the community of the material or material of similar character.
3. The intent of the author, artist, producer, publisher or manufacturer in creating the material.
4. The advertising promotion and other circumstances relating to the sale of the material.

[C75, 77, §725.7; C79, 81, §728.9]

728.10 Affirmative defense.

In any prosecution for disseminating or exhibiting obscene material to minors, it is an affirmative defense that the defendant had reasonable cause to believe that the minor

involved was eighteen years old or more and the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more or was accompanied by a parent or spouse eighteen years of age or more.

[C75, 77, §725.8; C79, 81, §728.10]

728.11 Uniform application.

In order to provide for the uniform application of the provisions of this chapter relating to obscene material applicable to minors within this state, it is intended that the sole and only regulation of obscene material shall be under the provisions of this chapter, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the availability of obscene materials. All such laws, ordinances or regulations shall be or become void, unenforceable and of no effect on January 1, 1978. Nothing in this section shall restrict the zoning authority of cities and counties.

[C75, 77, §725.9; C79, 81, §728.11]

728.12 Sexual exploitation of a minor.

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class "D" felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

[C79, 81, §728.12]

83 Acts, ch 167, §4; 86 Acts, ch 1176, §1 – 3; 89 Acts, ch 263, §3; 2001 Acts, ch 17, §4; 2003 Acts, ch 65, §1, 2

Referred to in §229A.2, 232.68, 692A.102, 901A.1, 903B.1, 903B.2, 903B.10, 915.36, 915.37

728.13 Repealed by 85 Acts, ch 201, § 21.

728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.

1. A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, or slide which depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney immediately or as soon as possible as required in this section. The processor shall not report to the county attorney depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all films, photographs, video tapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

For purposes of this section, "*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 for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.

d. Fondling or touching the pubes or genitals 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 act.

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.

2. A person who violates this section is guilty of a simple misdemeanor.

89 Acts, ch 263, §4; 94 Acts, ch 1128, §2

728.15 Telephone dissemination of obscene material to minors.

1. *a.* As used in this section, "*person*" excludes any information-access service provider that merely provides transmission capacity without control over the content of the transmission.

b. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor.

2. It shall be a defense in any prosecution for a violation of subsection 1 by a person accused of knowingly disseminating obscene material by the use of telephones or telephone facilities to a minor that the person accused has taken either of the following measures to restrict access to the obscene material:

a. The person accused has done all of the following:

(1) Required the person receiving the obscene material to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins.

(2) Previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older.

(3) 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 eighteen years or that the code is no longer desired.

b. The person accused has required payment by credit card before transmission of the obscene material.

3. Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subsection 2 is confidential and shall not be sold or otherwise disseminated except upon order of the court.

4. *a.* A violation of subsection 1 is an aggravated misdemeanor.

b. A violation of subsection 1 by a person who has been previously convicted of a violation of subsection 1 is a class "D" felony.

89 Acts, ch 263, §5; 2009 Acts, ch 133, §184

Referred to in §272.2, 692A.102