

## Arizona

### Title 13, Chapter 35, Sections 3501 to 3507

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#### 13-3501. 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.

13-3502. 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.

13-3503. 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.

13-3504. 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.

**13-3505. 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.

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

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

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

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

**13-3507. 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.