

## Illinois

- [Sex offenses](#) (720 ILCS 5/11-20, Obscenity statute found halfway down the page)

(720 ILCS 5/11-20) (from Ch. 38, par. 11-20)

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:

(1) Legislative Declaration. Obscenity is a far-reaching and extremely profitable crime. This crime persists despite the threat of prosecution and successful prosecution because existing sanctions do not effectively reach the money and other assets generated by it. It is therefore necessary to supplement existing sanctions by mandating forfeiture of money and other assets generated by this crime. Forfeiture diminishes the financial incentives which encourage and sustain obscenity and secures for the State, local government and prosecutors a resource for prosecuting these crimes.

(2) Definitions.

(i) "Person" means an individual, partnership, private corporation, public, municipal, governmental or quasi-municipal corporation, unincorporated association, trustee or receiver.

(ii) "Property" means:

(a) real estate, including things growing on, affixed to and found in land, and any kind of interest therein; and

(b) tangible and intangible personal property, including rights, privileges, interests, claims and securities.

(3) Forfeiture of Property. Any person who has been convicted previously of the offense of obscenity and who shall be convicted of a second or subsequent offense of obscenity shall forfeit to the State of Illinois:

(i) Any property constituting or derived from any proceeds such person obtained, directly or indirectly, as a result of such offense; and

(ii) Any of the person's property used in any manner, wholly or in part, to commit such offense.

(4) Forfeiture Hearing. At any time following a second or subsequent conviction for obscenity, the court shall, upon petition by the Attorney General or the State's Attorney, conduct a hearing to determine whether there is any property that is subject to forfeiture as provided hereunder. At the forfeiture hearing the People shall have the burden of establishing by preponderance of the evidence that such property is subject to forfeiture.

(5) Prior Restraint.

Nothing in this subsection shall be construed as authorizing the prior restraint of any showing, performance or exhibition of allegedly obscene films, plays or other presentations or of any sale or distribution of allegedly obscene materials.

(6) Seizure, Sale and Distribution of the Property.

(i) Upon a determination under subparagraph (4) that there is property subject to forfeiture, the court shall authorize the Attorney General or the State's Attorney, except as provided in this Section, to seize all property declared forfeited upon terms and conditions as the court shall deem proper.

(ii) The Attorney General or State's Attorney is authorized to sell all property forfeited and seized pursuant to this Article, and, after the deduction of all requisite expenses of administration and sale, shall distribute the proceeds of such sale, along with any moneys forfeited or seized, in accordance with subparagraph (iii) hereof. If the Attorney General or State's Attorney believes any such property describes, depicts or portrays any of the acts or activities described in subsection (b) of this Section, he shall apply to the court for an order to destroy such property, and if the court determines the property describes, depicts or portrays such acts it shall order the Attorney General or State's Attorney to destroy such property.

(iii) All monies and the sale proceeds of all other property forfeited and seized pursuant hereto shall be distributed as follows:

(a) Fifty percent shall be distributed to the unit of local government whose officers or employees conducted the investigation into and caused the arrest or arrests and prosecution leading to the forfeiture, or, if the investigations, arrest or arrests and prosecution leading to the forfeiture were undertaken by the sheriff, this portion shall be distributed to the county for deposit in a special fund in the county treasury appropriated to the sheriff. Amounts distributed to the county for the sheriff or to the units of local government hereunder shall be used for enforcement of laws or ordinances governing obscenity and child pornography. In the event, however, that the investigation, arrest or arrests and prosecution leading to the forfeiture were undertaken solely by a State agency, the portion provided hereunder shall be paid into the State treasury to be used for enforcement of laws governing obscenity and child pornography.

(b) Twenty-five percent shall be distributed to the county in which the prosecution resulting in the forfeiture was instituted, deposited in a special fund in the county treasury and appropriated to the State's Attorney for use in the enforcement of laws governing obscenity and child pornography.

(c) Twenty-five percent shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Obscenity Profits Forfeiture Fund, which is hereby created in the State Treasury, to be used by the Office of the State's Attorneys Appellate Prosecutor for additional expenses incurred in prosecuting appeals arising under Sections 11-20 and 11-20.1 of the Criminal Code of 1961. Any amounts remaining in the Fund after all additional expenses have been paid shall be used by the Office to reduce the participating county contributions to the Office on a pro-rated basis as determined by the board of governors of the Office of the State's Attorneys Appellate Prosecutor based on the populations of the participating counties.

(7) Construction of subsection (g).

It shall be the intent of the General Assembly that this subsection be liberally construed so as to effect its purposes. The forfeiture of

property and other remedies hereunder shall be considered to be in addition, and not exclusive of any sentence or other remedy provided by law. Subsection (g) of this Section shall not apply to any property of a public library or any property of a library operated by an institution accredited by a generally recognized accrediting agency. (Source: P.A. 85-1014.)