

New Hampshire
Title LXII, Chapter 650, Sections 1 to 6

- [Definitions](#)
- [Offenses](#)
- [Exemption](#)
- [Justifiable and non-commercial private dissemination](#)
- [Evidence; adjudication of obscenity](#)
- [Preliminary hearing](#)

TITLE LXII

CRIMINAL CODE

CHAPTER 650

OBSCENE MATTER

General Provisions

650:1 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.

Source. 1971, 518:1. 1976, 46:3. 1977, 199:3. 1994, 60:1, eff. Jan. 1, 1995.

650:2 Offenses. –

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

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene material; or

(b) Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

(c) Publishes, exhibits or otherwise makes available any obscene material; or

(d) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) Sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

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

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

(b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

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

Source. 1971, 518:1. 1976, 46:4. 1977, 199:2. 1983, 448:3. 1994, 60:2, eff. Jan. 1, 1995.

650:3 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.

Source. 1971, 518:1, eff. Nov. 1, 1973.

650:4 Justifiable and Non-Commercial Private Dissemination. – It is an affirmative defense to prosecution under this chapter that dissemination was restricted to:

I. Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

II. Non-commercial dissemination to personal associates of the accused who are not under 18 years of age.

Source. 1971, 518:1, eff. Nov. 1, 1973.

650:5 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.

Source. 1971, 518:1. 1976, 46:5, eff. June 1, 1976.

650:6 Preliminary Hearing. –

I. No recognized or established school, museum, public library or governmental agency, nor any person acting as an employee or agent of such institution, shall be arrested, charged or indicted for any violation of a provision of this chapter until such time as the material involved has first been the subject of an adversary hearing wherein such institution or person is made a defendant, and, after such material is declared by the court to be obscene matter, such institution or person continues to engage in the conduct prohibited by this chapter. The sole issue at the hearing shall be whether the material is obscene matter.

II. The adversary hearing prescribed in paragraph I of this section may be initiated only by complaint of the county attorney or the attorney general. Hearing on the complaint shall be held in the superior court of the county in which the alleged violation occurs. Notice of the complaint and of the hearing shall be given by registered mail or personal service. 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. In addition to the defendant, any other interested party may appear at the hearing in opposition to the complaint and may present and cross-examine witnesses. For the purposes of this paragraph, the term "interested party" includes, but is not limited to the manufacturer of the material alleged to be harmful to minors.

III. 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 chapter subsequent to notice of the judgment finding the material to be obscene matter shall be subject to criminal prosecution notwithstanding the appeal from the judgment.

Source. 1979, 397:2, eff. Aug. 22, 1979.