

Utah

Title 76, Chapter 10

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76-10-1201. Definitions.

For the purpose of this part:

(1) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

(2) "Distribute" means to transfer possession of materials whether with or without consideration.

(3) "Exhibit" means to show.

(4) "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:

(a) taken as a whole, appeals to the prurient interest in sex 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) taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors.

(5) "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. 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.

(6) "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.

(7) "Minor" means any person less than eighteen years of age.

(8) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering, or the showing of a female breast with less than an opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(9) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.

(10) "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.

(11) "Sado-masochistic abuse" means 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 the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(12) "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.

(13) "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.

76-10-1203. 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, sadomasochistic 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.

76-10-1204. Distributing pornographic material.

(1) A person is guilty of distributing pornographic material when he knowingly:

(a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;

(b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;

(c) distributes or offers to distribute, exhibits or offers to exhibit any pornographic material to others;

(d) writes, creates, or solicits the publication or advertising of pornographic material;

(e) promotes the distribution or exhibition of material he represents to be pornographic; or

(f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.

(2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.

(3) It is a separate offense under this section for:

(a) each day's exhibition of any pornographic motion picture film; and

(b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.

(4) Each separate offense under this section is a class A misdemeanor punishable by:

(a) a minimum mandatory fine of not less than \$100 plus \$10 for each article exhibited up to the maximum allowed by law; and

(b) incarceration, without suspension of sentence in any way, for a term of not less than seven days, notwithstanding any provisions of Section 77-18-1.

(5) If a defendant has already been convicted once under this section, each separate further offense is a third degree felony punishable by a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than 30 days. This subsection supersedes Section 77-18-1.

76-10-1205. Inducing acceptance of pornographic material.

(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 violation of this section is a class A misdemeanor punishable by a fine of not less than \$500 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days. This subsection supersedes Section 77-18-1.

76-10-1206. Dealing in material harmful to a minor.

(1) A person is guilty of dealing in material harmful to minors when, knowing that a person is a minor, or having failed to exercise reasonable care in ascertaining the proper age of a minor, he:

(a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a minor any material harmful to minors;

(b) intentionally produces, presents, or directs any performance before a minor, that is harmful to minors; or

(c) intentionally participates in any performance before a minor, that is harmful to minors.

(2) Each separate offense under this section is a third degree felony punishable by a minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days. This section supersedes Section **77-18-1**.

(3) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than \$5,000 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than one year. This section supersedes Section **77-18-1**.

76-10-1210. Local regulation of pornographic materials or materials harmful to minors.

(1) It is not the intent of this part to prescribe or limit the regulation of pornographic materials or materials harmful to minors, and counties, cities, and other political subdivisions of the State of Utah are specifically given the right hereby to further regulate the materials. Specifically, without limitation, these political subdivisions may further regulate materials by ordinances relating to zoning, licensing, public nuisances, or relating to a specific type of business such as adult bookstores or drive-in movies.

(2) It is not the intent of this part to preclude the application of other laws of the State of Utah to pornographic materials or materials harmful to minors. Specifically, without limitation, this part is not in derogation of sections **76-10-803** and **76-10-806**.

(3) The commission of a crime under this part shall be deemed to offend public decency under section **76-10-803**. It is the intent of this part to give the broadest meaning permissible under the federal and state constitutions to the words "offends public decency" in section **76-10-803**.

76-10-1212. Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.

(1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant to afford the magistrate the opportunity to examine this material.

(2) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by other manner or means that he finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.

(3) (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within ten days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.

(b) The magistrate shall set a hearing within seven days after the filing of this notice, or at another time to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.

(c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.

(d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.

(e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.

(4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it may not be returned.

(5) (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.

(b) This section does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state.

76-10-1213. Corporate defendants -- Summons -- Subpoena duces tecum.

(1) (a) The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic or harmful to minors, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or harmful to minors or by another manner or means the magistrate finds necessary.

(b) Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit so as to afford the magistrate the opportunity to examine this material.

(c) The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier, or assistant cashier of the corporation.

(2) The production of material alleged to be pornographic or harmful to minors in any proceedings under this part against a corporation may be compelled by the issuance and service of a subpoena duces tecum. This section does not prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.

76-10-1214. Conspiracy an offense -- Punishment.

(1) A conspiracy of two or more persons to commit any offense proscribed by this part is a third degree felony punishable for each separate offense by a minimum mandatory fine of not less than \$1,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than 60 days. This subsection supersedes Section 77-18-1.

(2) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than \$5,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than one year. This subsection supersedes Section 77-18-1.

76-10-1222. Distribution of pornographic film -- Penalties for violations.

(1) Any person who knowingly or by criminal negligence distributes for exhibition within this state a film which is pornographic as that term is defined in the Utah criminal code shall be guilty of a class A misdemeanor and shall, for each separate offense, be fined not less than \$1,000 and imprisoned, without suspension of sentence in any way, for a term of not less than 60 days.

(2) Any person convicted of a violation of this section who has been convicted before of a violation of this section, shall be guilty of a felony of the third degree and shall, for each separate offense, be fined not less than \$5,000 and imprisoned, without suspension of sentence in any way, for a term of not less than six months.

(3) Each copy of a pornographic film distributed for exhibition within this state in violation of this section shall constitute a separate offense.

76-10-1225. Prosecution of pornographic film violations by county attorney, district attorney, or city attorney.

The county attorney of the county where the violation occurred or within a prosecution district where the violation occurred, the district attorney shall file and prosecute any action for violations of this act unless the violation occurs in a city of the first or second class. If the violation occurs in such a city, the action may be commenced and prosecuted by either the city attorney or the county attorney. All fines imposed for any violation of this act shall be paid to the political subdivision employing the prosecuting attorney.

76-10-1229. Distribution of pornographic material through cable television prohibited -- Definitions -- Prosecution of violation.

(1) No person, including a franchisee, shall knowingly distribute by wire or cable any pornographic or indecent material to its subscribers.

(2) For purposes of this section "material" means any visual display shown on a cable television system, whether or not accompanied by sound, or any sound recording played on a cable television system.

(3) For purposes of this section "pornographic material" is any material defined as pornographic in sections 76-10-1201 and 76-10-1203.

(4) For purposes of this section "indecent material" means any material described in section 76-10-1227.

(5) For purposes of this section "distribute" means to send, transmit, retransmit, or otherwise pass through a cable television system.

(6) Prosecution for violation of this section may be initiated at the instance of the attorney general or any county or city attorney of an interested political subdivision or at the instance of the governing body of any such political subdivision.

(7) Any person who violates this section is guilty of a class A misdemeanor.