

CHAPTER 134: OFFENSES AGAINST PUBLIC MORALS

Section

- 134.01 Public indecency
- 134.02 Obscenity
- 134.03 Harmful material

§ 134.01 PUBLIC INDECENCY.

(A) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

- (1) An act of sexual penetration or sexual conduct as defined in ILCS Ch. 720, Act 5, § 12-12; or
- (2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person.

(B) **PUBLIC PLACE.** For purposes of this section, any place where the conduct may reasonably be expected to be viewed by others.

(C) Breast-feeding of infants is not an act of public indecency.
(ILCS Ch. 720, Act 5, § 11-9) Penalty, see § 130.99

§ 134.02 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;
- (2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene;

(3) Publishes, exhibits, or otherwise makes available anything obscene;

(4) Performs an obscene act or otherwise presents an obscene exhibition of his/her body for gain;

(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/her 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;

(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.*

(1) 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.

(2) 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.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) The character of the audience for which the material was designed or to which it was directed;

(b) 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;

- (c) The artistic, literary, scientific, educational, or other merits of the material, or absence thereof;
- (d) The degree, if any, of public acceptance of the material in this state;
- (e) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;
- (f) Purpose of the author, creator, publisher, or disseminator.

(D) *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 three copies of obscene material shall be prima facie evidence of an intent to disseminate.

(E) *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.

(ILCS Ch. 720, Act 5, § 11-20) Penalty, see § 130.99

§ 134.03 HARMFUL MATERIAL.

(A) As used in this section:

DISTRIBUTE. Transfer possession of, whether with or without consideration.

HARMFUL TO MINORS. That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when, taken as a whole, it predominately appeals to the prurient interest in sex of minors, is patently offensive to prevailing standards in the adult community in the state as a whole with respect to what is suitable material for minors, and lacks serious literary, artistic, political, or scientific value for minors.

KNOWINGLY. Having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents.

MATERIAL. Any picture, photograph, drawing, sculpture, film, video game, computer game, video or similar visual depiction, including any such representation or image which is stored electronically, or any book, magazine, printed matter however reproduced, or recorded audio of any sort.

MINOR. Any person under the age of 18.

NUDITY. 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 below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

SADO-MASOCHISTIC ABUSE. 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 clothed for sexual gratification or stimulation.

SEXUAL CONDUCT. Acts of masturbation, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

SEXUAL EXCITEMENT. The condition of human male or female genitals when in a state of sexual stimulation or arousal.

(B) A person is guilty of distributing harmful material to a minor when he or she:

(1) Knowingly sells, lends, distributes, exhibits to, depicts to, or gives away to a minor, knowing that the minor is under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age:

(a) Any material which depicts nudity, sexual conduct or sado-masochistic abuse, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which taken as a whole is harmful to minors;

(b) A motion picture, show, or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse and is harmful to minors;

(c) An admission ticket or pass to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation; or

(2) Admits a minor to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation, knowing that the minor is a person under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age.

(C) In any prosecution arising under this section, it is an affirmative defense:

(1) That the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older, which was relied upon by the accused;

(2) That the defendant was in a parental or guardianship relationship with the minor or that the minor was accompanied by a parent or legal guardian;

(3) That the defendant was a *bona fide* school, museum, or public library, or was a person acting in the course of his or her employment as an employee or official of such organization or retail outlet affiliated with and serving the educational purpose of such organization;

(4) That the act charged was committed in aid of legitimate scientific or educational purposes; or

(5) That an advertisement of harmful material as defined in this section culminated in the sale or distribution of such harmful material to a child under circumstances where there was no personal confrontation of the child by the defendant, his employees, or agents, as where the order or request for such harmful material was transmitted by mail, telephone, Internet or similar means of communication, and delivery of such harmful material to the child was by mail, freight, Internet or similar means of transport, which advertisement contained the following statement, or a substantially similar statement, and that the defendant required the purchaser to certify that he or she was not under the age of 18 and that the purchaser falsely stated that he or she was not under the age of 18:

"NOTICE: It is unlawful for any person under the age of 18 to purchase the matter advertised. Any person under the age of 18 that falsely states that he or she is not under the age of 18 for the purpose of obtaining the material advertised is guilty of a Class B misdemeanor under the laws of the State."

(D) The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom such material was sold, lent, distributed or given, unless it appears from the nature of the matter or the circumstances of its dissemination or distribution that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.

(E) Distribution of harmful material in violation of this section is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony to be prosecuted under appropriate state law.

(F) Any person under the age of 18 that falsely states, either orally or in writing, that he or she is not under the age of 18, or that presents or offers to any person any evidence of age and identity that is false or not actually his or her own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material is guilty of a Class B misdemeanor.

(G) A person over the age of 18 who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes to, or sends, or causes to be sent, or exhibits to, or offers to distribute, or exhibits any harmful material to a person that he or she believes is a minor is guilty of a Class A misdemeanor. If that person utilized a computer web camera, cellular telephone, or any other type of device to manufacture the harmful material, then each offense is a Class 4 felony to be prosecuted under appropriate state law.

(H) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this section.

(ILCS Ch. 720, Act 5, § 11-21) Penalty, see § 130.99