

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) *Elements of the offense.* No person, with knowledge that a person is a child (that is, a person under 18 years of age), or who fails to exercise reasonable care in ascertaining the true age of a child, shall knowingly distribute to, send, or cause to be sent to, or exhibit to, or offer to distribute or exhibit any harmful material to a child.

(B) *Definitions.* For purposes of this section:

(1) **HARMFUL.** Material is harmful if, to the average person, applying contemporary standards, its predominant appeal, taken as a whole, is to prurient interest, that is a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters, and is material the redeeming social importance of which is substantially less than its prurient appeal.

(2) **MATERIAL.** Any writing, picture, record, or other representation or embodiment.

(3) ***DISTRIBUTE.*** To transfer possession of, whether with or without consideration.

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

(C) *Interpretation of evidence.*

(1) 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 the material was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition 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.

(2) In prosecutions under this section, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate the material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the material and can justify the conclusion that the redeeming social importance of the material is in fact substantially less than its prurient appeal.

(D) *Affirmative defenses.*

(1) Nothing in this section shall prohibit any public library or any library operated by an accredited institution of higher education from circulating harmful material to any person under 18 years of age, provided such circulation is in aid of a legitimate scientific or educational purpose, and it shall be an affirmative defense in any prosecution for a violation of this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(2) Nothing in this section shall prohibit any parent from distributing to his/her child any harmful material.

(3) Proof that the defendant demanded, was shown, and acted in reliance upon any of the following documents as proof of the age of a child, shall be a defense to any criminal prosecution under this section: a document issued by the federal government or any state, county, or village government or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act or an identification card issued to a member of the armed forces.

(4) In the event an advertisement of harmful material as defined in this section culminates in the sale or distribution of harmful material to a child, under circumstances where there was no personal confrontation of the child by the defendant,

his/her employees, or agents, as where the order or request for harmful material was transmitted by mail, telephone, or similar means of communication, and delivery of the harmful material to the child was by mail, freight, or similar means of transport, it shall be a defense in any prosecution for a violation of this section that the advertisement contained the following statement, or a statement substantially similar thereto, and that the defendant required the purchaser to certify that he/she was not under 18 years of age and that the purchaser falsely stated that he/she was not under 18 years of age:

“NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he/she is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the state of Illinois and a violation of § 134.03 of the Village Code of Ordinances.”

(E) *Child falsifying age.* No person under 18 years of age shall falsely state, either orally or in writing, that he/she is not under the age of 18 years, or present or offer to any person any evidence of age and identity which is false or not actually his/her own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material.

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