

ARKANSAS STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

A.C.A.

A.C.A. 5-68-502. Unlawful acts.

It is unlawful for any person, including, but not limited to, any person having custody, control, or supervision of any commercial establishment, to knowingly:

(1)

(A) Display material that is harmful to minors in such a way that the material is exposed to the view of a minor as part of the invited general public.

(B) However, a person is deemed not to have displayed material harmful to minors if:

(i) The material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view; or

(ii) Material harmful to minors is not contained on the front cover, back cover, or binding of the displayed material;

(2)

(A) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor with or without consideration any material that is harmful to minors.

(B) However, the prohibition under subdivision (2)(A) of this section does not apply to any dissemination:

(i) By a parent, guardian, or relative within the third degree or consanguinity of the minor; or

(ii) With the consent of a parent or guardian of the minor; or

(3)

(A) Present to a minor or participate in presenting to a minor with or without consideration any performance that is harmful to minors.

(B) However, the prohibition under subdivision (3)(A) of this section does not apply to any dissemination:

(i) By a parent, guardian, or relative within the third degree of consanguinity to the minor; or

(ii) With the consent of a parent or guardian of the minor.

5-68-201. Exhibition of obscene figures.

(a) Any person publicly exhibiting any obscene figure is guilty of a violation.

(b) Any person convicted under a provision of this section shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

5-68-202. Sale or possession of literature rejected by U.S. mail.

(a) It is unlawful for any person, firm, or corporation to sell or to offer for sale or to have in possession any magazine, paper, or other literature or printed book, picture, or matter the shipment or transportation of which has been refused and rejected from the United States mail or which literature or literature of like character the United States Government does not permit to be sold, shipped, or handled.

(b)

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(1) Any violation of a provision of this section constitutes a violation and upon conviction the offender is subject to a fine of any sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

(2) Each day that this section is violated constitutes a separate offense.

5-68-203. Obscene films.

(a) It is unlawful for any person to knowingly exhibit, sell, offer to sell, give away, circulate, produce, distribute, attempt to distribute, or have in his or her possession any obscene film.

(b) As used in this section:

(1) "Film" means motion picture film, still picture film, slides, and movie film of any type;

(2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest; and

(3) "Person" means any individual, partnership, firm, association, club, corporation, or other legal entity.

(c)

(1) Any person that knowingly exhibits, sells, offers to sell, gives away, circulates, produces, distributes, or attempts to distribute any obscene film is guilty of a Class D felony.

(2) Any person that has in his or her possession an obscene film is guilty of a Class A misdemeanor.

5-68-204. Nudism.

(a) As used in this section, "nudism" means the act or acts of a person or persons congregating or gathering with his, her, or their private parts exposed in the presence of one (1) or more persons of the opposite sex as a form of social practice.

(b) The provisions of this section do not apply to the enumerated acts if:

(1) The purpose of the person committing the act or acts is to render medical or surgical treatment or to determine the need for medical or surgical treatment or to cleanse such sexual part, and the person committing the act:

(A) Is a licensed physician, as defined by § 17-80-101, or any such physician of a sister state making a professional call into Arkansas;

(B) Committed the act under the professional direction of any physician described in subdivision (b)(1)(A) of this section; or

(C) Is a nurse duly registered or licensed by the Arkansas State Board of Nursing; or

(2) The persons are married legally one to another.

(c) It is unlawful for any:

(1) Person, club, camp, corporation, partnership, association, or organization to advocate, demonstrate, or promote nudism; or

(2) Person to rent, lease, or otherwise permit his or her land, premises, or buildings to be used for the purpose of advocating, demonstrating, or promoting nudism.

(d) Any person, club, camp, corporation, partnership, association, or organization violating any provision of this section is guilty of a Class A misdemeanor for each offense.

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(e) This section does not repeal any existing laws of the State of Arkansas except those in direct conflict with this section but this section is cumulative to the existing laws of the State of Arkansas.

5-68-205. Public display of obscenity.

(a)

(1) As used in this subsection:

(A) "Obscene" means the same as "obscene material" defined by § 5-68-302; and

(B) "Obscenity" means an obscene sticker, painting, decal, emblem, or other device that is or contains an obscene writing, description, photograph, or depiction.

(2) A person commits the offense of publicly displaying an obscenity if the person knowingly causes an obscenity to be displayed in a manner that is readily visible to the public and the obscenity's content or character is distinguishable by normal vision.

(3) Publicly displaying an obscenity is a Class B misdemeanor.

(b)

(1) It is unlawful to publicly display obscene material as defined by § 5-68-302 on any motor vehicle or wearing apparel.

(2) A violation of this subsection is a Class C misdemeanor.

5-68-301. Legislative declaration.

(a) The General Assembly finds and declares that:

(1) The definition and regulation of obscenity are matters of statewide concern;

(2) In defining and regulating obscenity, a statewide standard is workable; and

(3) There is a need for clarification of the applicable law relating to the definition and regulation of obscenity.

(b)

(1) To this end, it is the intent of this subchapter to impose a statewide standard for the definition and regulation of obscenity that is applicable throughout the state and all political subdivisions.

(2) No political subdivision shall enact any ordinance, rule, or regulation in conflict with a provision of this subchapter.

5-68-302. Definitions.

As used in this subchapter:

(1) "Advertising purposes" means a purpose of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment;

(2) "Hard-core sexual conduct" means a patently offensive act, exhibition, representation, depiction, or description of:

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- (A) An intrusion, however slight, actual or simulated, by any object, any part of an animal's body, or any part of a person's body into the genital or anal opening of any person's body; or
- (B) Cunnilingus, fellatio, anilingus, bestiality, a lewd exhibition of genitals, or an excretory function, actual or simulated;
- (3) "Live public show" means a public show in which a human being, an animal, or both appear bodily before a spectator or customer;
- (4) "Obscene material" means a material that:
 - (A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;
 - (B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and
 - (C) Taken as a whole, lacks serious literary, artistic, political, or scientific value;
- (5) "Obscene performance" means a play, motion picture, dance, show, or other presentation, whether pictured, animated, or live, performed before an audience and that in whole or in part depicts, or reveals, sexual conduct, hard-core sexual conduct, or sadomasochistic abuse, or that includes an explicit verbal description or a narrative account of sexual conduct or hard-core sexual conduct, and that:
 - (A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;
 - (B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and
 - (C) Taken as a whole, lacks serious literary, artistic, political, or scientific value;
- (6) "Promote" means to produce, direct, perform in, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, or advertise, for consideration, or to offer or agree to do any of these things for consideration;
- (7) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, regardless of whether an admission or other charge is levied or collected and regardless of whether a minor is admitted or excluded;
- (8) "Sadomasochistic abuse" means flagellation, mutilation, or torture by or upon a person who is nude or clad in an undergarment or in revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of a person so clothed, in a sexual context; and
- (9) "Sexual conduct" means human masturbation or sexual intercourse.

5-68-303. Promoting obscene materials.

- (a) Except as otherwise provided in § 5-68-308, a person commits promoting obscene materials if he or she knowingly promotes, or has in his or her possession with intent to promote, any obscene material.
- (b) As used in this section, "material" means any writing, picture, motion picture, film, slide, drawing, or other visual reproduction.
- (c) Promoting obscene materials is a Class D felony.

5-68-304. Promoting obscene performance.

- (a) A person commits promoting an obscene performance if he or she knowingly:

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- (1) Directs, manages, finances, or presents an obscene performance; or
 - (2) Promotes any obscene performance, as owner, producer, director, manager, or performer.
- (b) Promoting an obscene performance is a Class D felony.

5-68-305. Obscene performance at a live public show.

- (a) A person commits an obscene performance at a live public show if he or she knowingly:
- (1) Engages in an obscene performance of sadomasochistic abuse, hard-core sexual conduct, or sexual conduct in a live public show; or
 - (2) Directs, manages, finances, or presents an obscene performance at a live public show in which a participant engages in sadomasochistic abuse, hard-core sexual conduct, or sexual conduct.
- (b) Committing an obscene performance at a live public show is a Class C felony.

5-68-306. Publicly displaying obscene material for advertising purposes.

- (a) Except as otherwise provided in § 5-68-308, a person commits publicly displaying obscene material for advertising purposes if, for advertising purposes, he or she knowingly:
- (1) Displays publicly or causes to be displayed publicly obscene material; or
 - (2) Permits any display of obscene material on premises owned, rented, or operated by him or her.
- (b) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare or a vehicle on a public thoroughfare.
- (c) Publicly displaying obscene material for advertising purposes is a Class B misdemeanor.
- (d) In any prosecution for violation of this section, it is an affirmative defense for the defendant to prove that the public display was:
- (1) Primarily for artistic purposes or as a public service even though in connection with a commercial venture; or
 - (2) Of nudity, exhibited by a bona fide art, antique, or similar gallery or exhibition and visible in a normal display setting.

5-68-307. Public display of hard-core sexual conduct.

- (a) A person commits a public display of hard-core sexual conduct if he or she knowingly engages in hard-core sexual conduct in an open public place.
- (b) Engaging in hard-core sexual conduct in an open public place is a Class D felony.

5-68-308. Defenses.

- (a) No employee is liable to prosecution under this subchapter for promoting or possessing with intent to promote any obscene motion picture if the employee is acting within the scope of his or her regular employment.
- (b) (1) As used in subsection (a) of this section, "employee" means any person regularly employed by an owner or operator of a motion picture theater if the person:

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(A) Has no financial interest other than salary or wages in the ownership or operation of the motion picture theater;

(B) Has no financial interest in or control over the selection of a motion picture shown in the theater; and

(C) Is working within the motion picture theater where he or she is regularly employed.

(2) However, "employee" does not include a manager of a motion picture theater.

(c) No employee, director, or trustee of a bona fide school, museum, or public library, acting within the scope of his or her regular employment, is liable to prosecution for a violation of this subchapter for disseminating a writing, film, slide, drawing, or other visual reproduction that is claimed to be obscene.

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5-68-402. Purpose and intent.

(a) The General Assembly determines that during the past several years, the spread of obscene publications has become a matter of increasingly grave concern to the people of this state.

(b) The elimination of this evil and the consequent protection of the citizens and residents of this state against those publications are in the best interests of the morals and general welfare of the people.

(c) The accomplishment of these ends can best be achieved by providing prosecuting attorneys both with a speedy civil remedy for obtaining a judicial determination of the character and contents of publications and with an effective power to reach nonresidents responsible for the composition, publication, and distribution of obscene publications within the state.

5-68-403. Definitions.

As used in this subchapter:

(1) "Mailable matter" means:

(A) Printed or written matter or material having second-class mailing privileges under the laws of the United States; or

(B) Any other printed or written matter or material that has not been determined to be nonmailable under the laws of the United States;

(2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest;

(3) "Person" means any individual, partnership, firm, association, corporation, or other legal entity; and

(4)

(A) "Printed or written matter or material" means any book, pamphlet, magazine, periodical, newspaper, picture magazine, comic book, story paper, or other printed or written matter.

(B) "Printed or written matter or material" does not include written or printed matter or material used by or in any recognized religious, scientific, or educational institution.

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5-68-404. Mailable matter subject to provisions of subchapter.

Any mailable matter that is sent or caused to be sent, brought, or caused to be brought into this state for sale or commercial distribution or that in this state is sold, exhibited or commercially distributed, given away, or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any person with knowledge of the judgment with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of § 5-68-405.

5-68-405. Possession, sale, or distribution.

(a) Any person that, with knowledge of its contents, sends or causes to be sent or brings or causes to be brought into this state for sale or commercial distribution, or in this state prepares, publishes, sells, exhibits, or commercially distributes, or gives away or offers to give away or has in the person's possession with intent to sell or commercially distribute or to exhibit or to give away, any obscene printed or written matter or material other than mailable matter, or any mailable matter known by the person to have been judicially found to be obscene under this subchapter, or that knowingly informs another of when, where, how, or from whom or by what means any of these things can be purchased or obtained, is guilty of a Class D felony.

(b) Any person that, with knowledge of its contents, has in the person's possession any obscene printed or written matter or material other than mailable matter, or any mailable matter known by that person to have been judicially found to be obscene under this subchapter, is guilty of a Class A misdemeanor.

5-68-406. Action to determine obscenity.

The prosecuting attorney for the county where obscene mailable matter is sent or caused to be sent, brought, or caused to be brought or where it is prepared, sold, exhibited or commercially distributed, or given away or offered to be given away or possessed shall institute an action in the circuit court for that county for an adjudication of the obscenity of the mailable matter if the prosecuting attorney has reasonable cause to believe that any person with knowledge of its contents is:

(1) Engaged in sending obscene mailable matter, causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution; or

(2) In this state preparing, selling, exhibiting or commercially distributing obscene mailable matter, giving it away, offering to give it away, or has it in the person's possession with intent to sell, commercially distribute, exhibit, give it away, or offer to give it away.

5-68-415. Possession of things enumerated in § 5-68-405 creates a presumption.

(a)

(1) The possession of any three (3) of the things enumerated in § 5-68-405, except the possession of them for the purpose of return to the person from whom received,

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creates a presumption that the things are intended for sale or commercial distribution, exhibition, or gift.

(2) However, the presumption under subdivision (a)(1) of this section is rebuttable.

(b) The burden of proof that the possession of the things is for the purpose of return to the person from whom received is on the possessor.

The "Arkansas Protection of Children Against Exploitation Act of 1979"

5-27-302. Definitions.

As used in this subchapter:

(1) "Child" means any person under eighteen (18) years of age;

(2) "Commercial exploitation" means having monetary or other material gain as a direct or indirect goal;

(3) "Producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Sadomasochistic abuse for the purpose of sexual stimulation; or

(E) Lewd exhibition of:

(i) The genitals or pubic area of any person; or

(ii) The breast of a female; and

(5) "Visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium other than material specifically used by a licensed medical professional or mental health professional, or both, for the purpose of assessment, evaluation, and treatment of a sex offender.

5-27-303. Engaging children in sexually explicit conduct for use in visual or print medium.

(a) Any person who employs, uses, persuades, induces, entices, or coerces any child to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

(b) Any parent, legal guardian, or person having custody or control of a child who knowingly permits the child to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

5-27-304. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child.

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(a) With knowledge of the character of the visual or print medium involved, no person shall do any of the following:

- (1)** Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or
- (2)** Knowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.

(b) Any person who violates subdivisions (a)(1) or (2) of this section is guilty of a:

- (1)** Class C felony for the first offense; and
- (2)** Class B felony for a subsequent offense.

5-27-304. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child.

(a) With knowledge of the character of the visual or print medium involved, no person shall do any of the following:

- (1)** Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or
- (2)** Knowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.

(b) Any person who violates subdivisions (a)(1) or (2) of this section is guilty of a:

- (1)** Class C felony for the first offense; and
- (2)** Class B felony for a subsequent offense.

5-27-305. Transportation of minors for prohibited sexual conduct.

(a) A person commits the offense of transportation of a minor for prohibited sexual conduct if the person transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and the actor:

- (1)** Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and
- (2)** Acts with the purpose that the minor will engage in:
 - (A)** Prostitution; or
 - (B)** Sexually explicit conduct.

(b) Transportation of a minor for prohibited sexual conduct is a Class A felony.

5-27-306. Internet stalking of a child.

(a) A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:

- (1)** Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:
 - (A)** Sexual intercourse;
 - (B)** Sexually explicit conduct; or

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- (1) "Performance" means any play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation or a part of a play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation, whether:
- (A) Performed live or photographed;
 - (B) Filmed;
 - (C) Videotaped; or
 - (D) Visually depicted by any other photographic, cinematic, magnetic, or electronic means;
- (2) "Promote" means to:
- (A) Sell, give, provide, distribute, circulate, disseminate, present, exhibit, or advertise; or
 - (B) Offer or agree to sell, give, provide, distribute, circulate, disseminate, present, exhibit, or advertise;
- (3) "Sadomasochistic abuse" means flagellation, mutilation, or torture by or upon a person who is nude or clad in an undergarment or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed, in a sexual context;
- (4) "Sexual conduct" means:
- (A) Actual or simulated sexual intercourse;
 - (B) Deviate sexual activity;
 - (C) Sexual bestiality;
 - (D) Masturbation;
 - (E) Sadomasochistic abuse; or
 - (F) Lewd exhibition of the genitals or pubic area of any person or a breast of a female; and
- (5) "Sexual performance" means any performance or part of a performance that includes sexual conduct by a child under eighteen (18) years of age.

5-27-402. Employing or consenting to the use of a child in a sexual performance.

- (a) It is unlawful for a person, knowing the character and content of the performance, to employ, authorize, or induce a child under eighteen (18) years of age to engage in a sexual performance.
- (b) It is also unlawful for a parent or legal guardian or custodian of a child under eighteen (18) years of age to consent to the participation by the child in a sexual performance.
- (c) A person who violates this section upon conviction is guilty of a:
- (1) Class C felony for the first offense; and
 - (2) Class B felony for a subsequent offense.

5-27-403. Producing, directing, or promoting a sexual performance by a child.

- (a) It is unlawful for a person, knowing the character and content of the material, to produce, direct, or promote a performance that includes sexual conduct by a child under eighteen (18) years of age.
- (b) A person who violates this section upon conviction is guilty of a Class B felony.

5-27-404. Good faith defense.

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It is an affirmative defense to a prosecution under this subchapter that the defendant in good faith reasonably believed that the person who engaged in the sexual conduct was eighteen (18) years of age or older.

5-27-405. Determination of age of person.

When it becomes necessary for purposes of this subchapter to determine whether a person who participated in sexual conduct was a child under eighteen (18) years of age, the court or jury may make this determination by any of the following methods:

- (1) Personal inspection of the person;
 - (2) Inspection of the photograph, motion picture, or other material that shows the person engaging in the sexual performance;
 - (3) Oral testimony by a witness to the sexual performance as to the age of the person based on the person's appearance at the time;
 - (4) Expert medical testimony based on the appearance of the person engaged in the sexual performance; or
 - (5) Any other method authorized by law.
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5-27-601. Definitions.

As used in this subchapter:

- (1) "Child" means any person under seventeen (17) years of age;
- (2)
 - (A) "Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function and includes any data storage facility or communications facility directly related to or operating in conjunction with the device.
 - (B) "Computer" also includes any online service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has read-only memory and the capacity to store audio, video, or written material;
- (3) "Computer network" means an interconnection of a communications line with a computer through a remote terminal or a complex consisting of two (2) or more interconnected computers;
- (4) "Computer program" means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or a computer system to perform a specified function;
- (5) "Computer software" means one (1) or more computer programs, existing in any form, or any associated operational procedure, manual, or other documentation;
- (6) "Computer system" means a set of related, connected, or unconnected computers, other devices, and software;
- (7) "Deviate sexual activity" means any act involving the penetration, however slight, of the:
 - (A) Anus or mouth of a person by the penis of another person; or
 - (B) Labia majora or anus of a person by any body member or foreign instrument manipulated by another person;

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- (8) "Electronic mail" means an electronic message, file, data, or other information that is transmitted:
- (A) Between two (2) or more computers, computer networks, or electronic terminals; or
 - (B) Within or between computer networks;
- (9) "Electronic mail service provider" means a person that:
- (A) Is an intermediary in the transmission of electronic mail from the sender to the recipient; or
 - (B) Provides to an end user of electronic mail service the ability to send and receive electronic mail;
- (10) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and also a system operated or service offered by a library or educational institution;
- (11) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks;
- (12) "Performance" means any play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation or a part, whether:
- (A) Performed live or photographed;
 - (B) Filmed;
 - (C) Videotaped; or
 - (D) Visually depicted by any other photographic, cinematic, magnetic, or electronic means;
- (13) "Reproduction" includes, but is not limited to, a computer-generated image;
- (14) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis; and
- (15) "Sexually explicit conduct" means actual or simulated:
- (A) Sexual intercourse;
 - (B) Deviate sexual activity;
 - (C) Bestiality;
 - (D) Masturbation;
 - (E) Sadomasochistic abuse for the purpose of sexual stimulation; or
 - (F) Lewd exhibition of the:
 - (i) Genitals or pubic area of any person; or
 - (ii) Breast of a female.

5-27-602. Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child.

- (a) A person commits distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child if the person knowingly:
- (1) Receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer through any means, including the internet, any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct; or
 - (2) Possesses or views through any means, including on the internet, any photograph, film, videotape, computer program or file, computer-generated image,

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video game, or any other reproduction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.

(b) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child is a:

(1) Class C felony for the first offense; and

(2) Class B felony for any subsequent offense.

(c) It is an affirmative defense to a prosecution under this section that the defendant in good faith reasonably believed that the person depicted in the matter was seventeen (17) years of age or older.

5-27-603. Computer child pornography.

(a) A person commits computer child pornography if the person knowingly:

(1) Compiles, enters into, or transmits by means of computer, makes, prints, publishes, or reproduces by other computerized means, knowingly causes or allows to be entered into or transmitted by means of computer or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexually explicit conduct of or with any child or another individual believed by the person to be a child, or the visual depiction of the conduct; or

(2) Utilizes a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.

(b) Computer child pornography is a Class B felony.

5-27-604. Failure to report computer child pornography.

(a) A person commits failure to report computer child **pornography** if the person:

(1) Is the owner, operator, or employee of a computer online service, internet service, or bulletin board service; and

(2) Knowingly fails to notify a law enforcement official that a subscriber is using the computer online service, internet service, or bulletin board service to commit a violation of § 5-27-603.

(b) Failure to report computer child **pornography** is a Class A misdemeanor.

5-27-605. Computer exploitation of a child.

(a) (1) A person commits computer exploitation of a child in the first degree if the person:

(A) Causes or permits a child to engage in sexually explicit conduct; and

(B) Knows, has reason to know, or intends that the prohibited conduct may be:

(i) Photographed;

(ii) Filmed;

(iii) Reproduced;

(iv) Reconstructed in any manner, including on the internet; or

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- (v) Part of an exhibition or performance.
- (2) Computer exploitation of a child in the first degree is a:
 - (A) Class B felony for the first offense; and
 - (B) Class A felony for a subsequent offense.
- (b) (1) A person commits computer exploitation of a child in the second degree if the person:
 - (A) Photographs or films a child engaged in sexually explicit conduct; or
 - (B) Uses any device, including a computer, to reproduce or reconstruct the image of a child engaged in sexually explicit conduct.
- (2) Computer exploitation of a child in the second degree is a Class C felony.

5-27-608. Applicability of this subchapter to interactive computer service and electronic mail service providers.

An interactive computer service or electronic mail service provider does not violate this subchapter when the interactive computer service or electronic mail service provider is an intermediary between the sender and the recipient in the transmission of an electronic mail that violates this subchapter.

FILTERING LAWS:

6-21-107. Official computer use policy.

- (a) The board of directors of each school district in this state shall develop and adopt a written policy concerning student and staff use of computers owned by the school district. The written policy shall state that a system to prevent computer users from accessing material harmful to minors shall be established and maintained for all public access computers in the school district. The policy shall be implemented by August 1, 2001.
- (b) The written policy shall include provisions for administration of punishment of students for violations of the policy with stiffer penalties for repeat offenders, and the same shall be incorporated into the school district's written student discipline policy.
- (c) Students shall sign a computer-use agreement form outlining proper and improper use of public access computers prior to being allowed to access the computer equipment.
- (d) For purposes of this section:
 - (1) "Harmful to minors" has the same meaning as prescribed in § 5-68-501; and
 - (2) "Public access computer" means a computer that:
 - (A) Is located in a public school or public library;
 - (B) Is accessible by a minor; and
 - (C) Is connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

6-21-111. Definitions.

- (a) As used in this section:

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(1) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; and

(2) "Public access computer" means a computer that:

(A) Is located in a public school;

(B) Is frequently or regularly used directly by a minor; and

(C) Is connected to any computer communication system.

(b) A public school that provides a public access computer shall equip the computer with technology that seeks to prevent minors from gaining access to material that is harmful to minors or obtain Internet connectivity from an Internet service provider that provides filter services to limit access to material that is harmful to minors. Standards and rules for the enforcement of this subsection shall be prescribed by the State Board of Education.

(c) A school board of directors by a majority vote and after an opportunity for a notice and comment period of at least thirty (30) calendar days may vote to exclude the public schools under its authority from the provisions of subsection (b) of this section.

13-2-103. Library computer use -- Policy -- Signed agreement form required.

(a) The board of directors of each library operated as an entity of the state or any city, county, or other political subdivision of the state with one (1) or more public access computers shall develop, adopt, and implement a written policy that:

(1) Establishes and maintains a system to prevent a minor from gaining computer access to materials harmful to minors as defined in § 5-68-501;

(2) Provides for:

(A) Suspending the privilege of a minor to use the public access computers if the minor violates the policy; and

(B) Revoking such a privilege for a repeat offender; and

(3) Requires each user to sign a computer-use agreement form outlining proper and improper use of public access computers prior to the user being allowed to access the computer equipment.

(b) For purposes of this section, "public access computer" means a computer that is:

(1) Located in a public school or public library;

(2) Accessible by a minor; and

(3) Connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

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(c) Copies of the standards and rules for the enforcement of this section shall be submitted to the Arkansas State Library.

5-68-501. Definitions.

As used in this subchapter:

- (1) "CD-ROM" means a compact disk that:
 - (A) Has the capacity to store graphic, audio, video, and written material; and
 - (B) May be used by a computer or other device to play or display material harmful to minors;
- (2) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when the material or performance, taken as a whole, has the following characteristics:
 - (A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
 - (B) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
 - (C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;
- (3) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry of both:
 - (A) The character and content of any material described in this section that is reasonably susceptible to examination by the defendant; and
 - (B)
 - (i) The age of the minor.
 - (ii) However, an honest mistake constitutes an excuse from liability under this section if the defendant made a reasonable bona fide attempt to ascertain the age of the minor;
- (4) "Magnetic disk memory" means a memory system that stores and retrieves binary data on a record-like metal or plastic disk coated with a magnetic material, including, but not limited to, a hard disk drive and a floppy diskette;
- (5) "Magnetic tape memory" means a memory system that stores and retrieves binary data on magnetic recording tape;
- (6)
 - (A) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture, film, record, recording tape, CD-ROM disk, magnetic disk memory, magnetic tape memory, video tape, or other media.
 - (B) However, "material" does not include a matter displayed, transmitted, retrieved, or stored on the Internet or other network for the electronic dissemination of information;
- (7) "Minor" means any person under eighteen (18) years of age;
- (8) "Nudity" means a:
 - (A) Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;

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- (B)** Showing of the female breast with less than a fully opaque covering of any portion of the female breast below the top of the nipple; or
 - (C)** Depiction of covered male genitals in a discernibly turgid state;
- (9)**
 - (A)** "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one (1) or more, with or without consideration.
 - (B)** However, "performance" does not include a matter displayed, transmitted, retrieved, or stored on the Internet or other network for electronic dissemination of information;
- (10)** "Person" means any individual, partnership, association, corporation, or other legal entity of any kind;
- (11)** "Reasonable bona fide attempt" means an attempt to ascertain the true age of a minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and not relying solely on an oral allegation or apparent age of the minor;
- (12)** "Sadomasochistic abuse" means 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 a person so clothed;
- (13)** "Sexual conduct" means an act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or female breast; and
- (14)** "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.