

# COLORADO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

## C.R.S.

### C.R.S. 18-7-101. Definitions

- As used in this part 1, unless the context otherwise requires:
  - (1) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.
  - (1.5) "Minor" means a person under eighteen years of age.
  - (2) "Obscene" means material or a performance that:
    - (a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
    - (b) Depicts or describes:
      - (I) Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
      - (II) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and
    - (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.
  - (3) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.
  - (4) "Patently offensive" means so offensive on its face as to affront current community standards of tolerance.
  - (5) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.
  - (6) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.
  - (6.5) "Prurient interest" means a shameful or morbid interest.
  - (7) "Simulated" means the explicit depiction or description of any of the types of conduct set forth in paragraph (b) of subsection (2) of this section, which creates the appearance of such conduct.
  - (8) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.
  - (9) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

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## 18-7-102. Obscenity

- (1)
  - (a) Except as otherwise provided in subsection (1.5) of this section, a person commits wholesale promotion of obscenity if, knowing its content and character, such person wholesale promotes or possesses with intent to wholesale promote any obscene material.
  - (b) Wholesale promotion of obscenity is a class 1 misdemeanor.
- (1.5)
  - (a) A person commits wholesale promotion of obscenity to a minor if, knowing its content and character, such person wholesale promotes to a minor or possesses with intent to wholesale promote to a minor any obscene material.
  - (b) Wholesale promotion of obscenity to a minor is a class 6 felony.
- (2) (a) Except as otherwise provided in subsection (2.5) of this section, a person commits promotion of obscenity if, knowing its content and character, such person:
  - (I) Promotes or possesses with intent to promote any obscene material; or
  - (II) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
    - (b) Promotion of obscenity is a class 2 misdemeanor.
- (2.5) (a) A person commits promotion of obscenity to a minor if, knowing its content and character, such person:
  - (I) Promotes to a minor or possesses with intent to promote to a minor any obscene material; or
  - (II) Produces, presents, or directs an obscene performance involving a minor or participates in a portion thereof that is obscene or that contributes to its obscenity.
    - (b) Promotion of obscenity to a minor is a class 6 felony.
- (3) Repealed.
- (4) A person who possesses six or more identical obscene materials is presumed to possess them with intent to promote the same.
- (5) This section does not apply to a person who possesses or distributes obscene material or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.
- (6) This section does not apply to a person's conduct otherwise proscribed by this section which occurs in that person's residence as long as that person does not engage in the wholesale promotion or promotion of obscene material in his residence.

## 18-7-103. Injunctions to restrain the promotion of obscene materials

- (1) The district courts of this state and the judges thereof shall have full power, authority, and jurisdiction to enjoin the wholesale promotion, promotion, or display of obscene materials as specified in this section and to issue all necessary and proper restraining orders, injunctions, and writs and processes in connection therewith not inconsistent with this article.
- (2) The district attorney of the county in which a person, firm, or corporation wholesale promotes, promotes, or displays, or is about to wholesale promote, promote, or display, or has in his, her, or its possession with intent to wholesale promote, promote, or display, or is about to acquire possession with intent to

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wholesale promote, promote, or display any obscene material may maintain an action for injunction against such person, firm, or corporation to prevent the wholesale promotion, promotion, or display or further wholesale promotion, promotion, or display of said material described or identified in said suit for injunction.

- (3) This article shall not authorize the issuance of temporary restraining orders except where exigent circumstances require the same. In matters of exigent circumstances, the restraining order shall provide that the action must be commenced on the earliest possible date. No temporary restraining order may be issued to restrain the continued exhibitions of a motion picture being shown commercially before the public, notwithstanding the existence of exigent circumstances.
- (4) No temporary restraining order or temporary injunction may be issued except after notice to the person, firm, or corporation sought to be enjoined and only after all parties have been offered or afforded an opportunity to be heard. A person, firm, or corporation shall be deemed to have been offered or afforded an opportunity to be heard if notice has been given and he, she, or it fails to appear. At such hearing, evidence shall be presented and witnesses examined.
- (5) Before or after the commencement of the hearing on an application for a temporary injunction, the court may, and on motion of the party sought to be restrained shall, order the trial on the action on the merits to be advanced and consolidated with the hearing on the application. Where such hearings are not so consolidated, and a temporary injunction or restraining order is issued, the court shall hold a final hearing and a trial of the issues within one day after joinder of issue, and a decision shall be rendered within two days of the conclusion of the trial. If a final hearing is not held within one day after joinder of issue or a decision not rendered within two days of the conclusion of the trial, the injunction shall be dissolved. No temporary injunction or restraining order shall issue until after a showing of probable cause to believe that the material or display is obscene and a showing of probable success on the merits. Any such temporary injunction or restraining order shall provide that the defendant may not be punished for contempt if the material is found not to be obscene after joinder of issue, final hearing, and trial.
- (6) Nothing contained in this article shall prevent the court from issuing a temporary restraining order forbidding the removing, destroying, deleting, splicing, or otherwise altering of any motion picture alleged to be obscene.
- (7) Any person, firm, or corporation sought to be permanently enjoined shall be entitled to a full adversary trial of the issues within one day after the joinder of issue, and a decision shall be rendered by the court within two days of the conclusion of the trial. If the defendant in any suit for a permanent injunction filed under the terms of this article shall fail to answer or otherwise join issue within the time required to file his, her, or its answer, the court, on motion of the party applying for the injunction, shall enter a general denial for the defendant and set a date for hearing on the question raised in the suit for injunction within ten days following the entry of the general denial entered by the court. The court shall render its decision within two days after the conclusion of the hearing.
- (8) In the event that a final order or judgment of injunction is entered against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the material described in subsection (2) of this section, and such sheriff shall be directed to seize and destroy

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the same six months after the entry of the said final order unless criminal proceedings or an indictment is brought before that time, in which event, said material may be used as evidence in such criminal proceeding.

- (9) In any action brought as herein provided, the district attorney shall not be required to file any undertaking, bond, or security before the issuance of any injunction order provided for above, shall not be liable for costs, and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.
- (10) Every person, firm, or corporation who wholesale promotes, promotes, displays, or acquires possession with intent to wholesale promote, promote, or display any of the material described in subsection (2) of this section, after the service upon him of a summons and complaint in an action brought pursuant to this article, is chargeable with knowledge of the contents.

## **18-7-104.5. Remedies under the "Colorado Organized Crime Control Act"**

When a person or persons, through an enterprise, engage in a pattern of racketeering activity for which the predicate offenses are the promotion or wholesale promotion of obscenity, pursuant to article 17 of this title, the difference in the fair market value of real property in the vicinity of the location of such enterprise from what the value would be if such enterprise or any part thereof were not located in the vicinity, as established by the opinion testimony of experts or otherwise, shall be deemed a compensable injury for which the owners of victimized real property can exercise all civil remedies set forth in article 17 of this title, in addition to any other measure of damages provable pursuant to article 17 of this title.

## **18-7-208. Promoting sexual immorality**

- (1) Any person who, for pecuniary gain, furnishes or makes available to another person any facility, knowing that the same is to be used for or in aid of sexual intercourse between persons who are not husband and wife, or for or in aid of deviate sexual intercourse, or who advertises in any manner that he furnishes or is willing to furnish or make available any such facility for such purposes, commits promoting sexual immorality.
- (2) "Facility", as used in this section, means any place or thing which provides seclusion, privacy, opportunity, protection, comfort, or assistance to or for a person or persons engaging or intending to engage in sexual intercourse or deviate sexual intercourse.
- (3) Promoting sexual immorality is a class 2 misdemeanor.

## **18-7-302. Indecent exposure**

- (1) A person commits indecent exposure:
  - (a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or

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- alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;
  - (b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.
  - (2)
    - (a) (Deleted by amendment, L. 2003, p. 1435, § 31, effective July 1, 2003.)
    - (b) Indecent exposure is a class 1 misdemeanor.
  - (3) (Deleted by amendment, L. 2002, p. 1587, § 21, effective July 1, 2002.)
  - (4) Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.
  - (5) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.
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## FILTERING LAWS:

### C.R.S. 24-90-404. Qualifications

- (1) Subject to the requirements of this section, the governing body of any eligible participant may submit an application to the state librarian requesting a grant pursuant to this part 4. Any grant approved by the state librarian pursuant to the requirements of this part 4 shall be awarded to the governing body that submitted said application.
- (2) In order to obtain grant moneys under this part 4, and as a condition of the receipt of moneys under said part, each eligible participant shall agree to:
  - (a) Use any grant moneys only for the purchase or use of educational resources to support the educational and informational needs and activities of its residents, students, or faculty, as the case may be;
  - (b) Participate as the state librarian deems appropriate in various programs established to promote and enhance interlibrary sharing of resources and information including, without limitation, the Colorado **library** card reciprocal program and the Colorado **library** computer network;
  - (c) In the case of a school **library** that provides one or more public access computers:
    - (I) Equip each such computer with software that will limit the ability of minors to gain computer access to material that is obscene or illegal;
    - (II) Purchase internet connectivity from an internet service provider that provides **filter** services to limit the computer access of minors to material that is obscene or illegal; or
    - (III) Develop and implement a policy, publicly adopted by the board of education of the school district that maintains such **library**, that establishes and enforces measures to restrict minors from obtaining computer information that is obscene or illegal.

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- (d) In the case of any publicly-supported **library** other than a school or academic **library** that provides one or more public access computers:
  - (I) Equip each such computer with software that will limit the ability of minors to gain computer access to material that is obscene or illegal;
  - (II) Purchase internet connectivity from an internet service provider that provides **filter** services to limit the computer access of minors to material that is obscene or illegal; or
  - (III) Develop and implement a policy, publicly adopted by the governing body of such **library**, that establishes and enforces measures to restrict minors from obtaining computer information that is obscene or illegal.
- (e) In the case of any eligible participant other than an academic **library**, maintain its current efforts to obtain funding from existing local revenue sources to the end that moneys received under this part 4 do not replace or displace existing local revenue sources;
- (f) In the case of an eligible participant that is an academic **library**, maintain its current efforts to obtain funding from other federal or state revenue sources to the end that moneys received under this part 4 do not replace or displace existing federal or state revenue sources;
- (g) Perform other such requirements as the state librarian deems appropriate in the exercise of his or her discretion to further the purposes of this part 4.
- (3) Eligible participants shall apply for grants made available pursuant to this part 4 on official application forms provided by the state librarian. Eligible participants shall provide such information on said forms as the state librarian may require in furtherance of the purposes of this part 4.
- (4) A school **library** or public **library** that complies with paragraph (c) or (d) of subsection (2) of this section, as the case may be, shall be immune from any criminal or civil liability resulting from access by a minor to obscene or illegal material through the use of a public access computer owned or controlled by such school or public **library**.

## **24-90-603. Adoption and enforcement of policy of internet safety for minors including technology protection measures - public libraries**

- (1) No later than December 31, 2004, the governing body of each public library shall adopt and implement a policy of internet safety for minors that includes the operation of a technology protection measure for each computer operated by the public library that allows for access to the internet by a minor.
- (2) After the adoption and implementation of the policy of internet safety required by subsection (1) of this section, the governing body of each public library shall continue to enforce the policy and the operation of the technology protection measure for each computer operated by the public library that allows for access to the internet by a minor.

## **C.R.S. 22-87-101. Short title**

This article shall be known and may be cited as the "Children's Internet Protection Act".

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## 22-87-102. Legislative declaration

- (1) The general assembly hereby finds and declares that:
  - (a) Use of the internet in the public schools of the state provides an extraordinary, unique, and unparalleled educational resource;
  - (b) Reasonable measures must be adopted and implemented to protect the children who use internet services in public schools from access to material that is harmful to their beneficial development as responsible adults and citizens.
- (2) It is the intent of the general assembly by enacting this article that public schools be required to adopt and enforce reasonable policies of internet safety that will protect children from access to harmful material without compromising either the use of the internet as an educational resource or responsible adult use of internet services in such schools.
- (3) The general assembly favors the adoption by public libraries across the state of policies for children's internet protection that mirror the policies for public schools required to be adopted pursuant to the provisions of this article. Recognizing that limited state resources as of August 15, 2003, preclude an appropriation to expand the requirements of this article to include public libraries, the general assembly urges public libraries to, and hopes such libraries will, adopt the policies specified in this article on their own initiative.

## 22-87-103. Definitions

- As used in this article, unless the context otherwise requires:
  - (1) "Access to the internet" means, with reference to a particular computer, that the computer is equipped with a modem or is connected to a computer network that provides access to the internet.
  - (2) "Computer" includes any hardware, software, or other technology attached or connected to, installed in, or otherwise used in connection with a computer.
  - (3) "District" means any public school district organized under the laws of Colorado, except a junior college district.
  - (4) "Harmful to minors" means any picture, image, graphic image file, or other visual depiction that:
    - (a) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
    - (b) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
    - (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.
  - (5) "Minor" means an individual who has not attained the age of seventeen.
  - (6) "Sexual act" or "sexual contact" shall have the same meanings as set forth in 18 U.S.C. sec. 2246 (2) and (3).
  - (7) "Technology protection measure" means a specific technology, including without limitation, computer software that blocks or filters access to the internet to visual depictions that are:
    - (a) Obscene, as defined in section 18-7-101, C.R.S.;

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- (b) Child pornography, as defined in 18 U.S.C. sec. 2256 (8); or
- (c) Harmful to minors.

## **22-87-104. Adoption and enforcement of policy of internet safety for minors including technology protection measures - public schools**

- (1) No later than December 31, 2003, the governing body of each district shall adopt and implement a policy of internet safety for minors that includes the operation of a technology protection measure for each computer operated by the district that allows for access to the internet by a minor.
- (2) After the adoption and implementation of the policy of internet safety required by subsection (1) of this section, the governing body of each district shall continue to enforce the policy and the operation of the technology protection measure for each computer operated by the district that allows for access to the internet by a minor.

## **22-87-105. Temporary disabling of technology protection measure**

- (1) An administrator, supervisor, or any other person authorized by the district to enforce the operation of the technology protection measure adopted and implemented in accordance with the requirements of section 22-87-104 may temporarily disable the technology protection measure to enable access to the internet on a particular computer by:
  - (a) An adult for bona fide research or other lawful purposes; or
  - (b) A minor for bona fide research or other lawful purposes where the internet use in connection with the research or other lawful purpose is supervised by an administrator, supervisor, or other person authorized by the district to perform such function.

## **22-87-106. No restrictions on blocking access to the internet of other material**

Nothing in this article shall be construed as prohibiting a local board of education, or an elementary or secondary school, from blocking access to the internet on computers owned or operated by that board or school to material other than the material for which a technology protection measure is explicitly required in accordance with the requirements of this article.

## **22-87-107. No effect on library maintained by postsecondary educational institution - no requirement of additional action for public schools already in compliance**

- (1) Nothing in this article shall be construed to apply to any library facility maintained by any postsecondary educational institution. For purposes of this



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subsection (1), "postsecondary" shall have the same meaning as is provided in section 23-1-119 (4), C.R.S.

- (2) Nothing in this article shall be construed to require any additional action on the part of any school district that is already in compliance with the requirements of this article as of July 1, 2003.