

# GEORGIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

## O.C.G.A.

### **O.C.G.A § 16-12-80. Distributing obscene material; obscene material defined; penalty**

- (a) A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word "knowing," as used in this Code section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if a commercial dissemination of obscene material is involved, the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
- (b) Material is obscene if:
  - (1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;
  - (2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and
  - (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:
    - (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
    - (B) Acts of masturbation;
    - (C) Acts involving excretory functions or lewd exhibition of the genitals;
    - (D) Acts of bestiality or the fondling of sex organs of animals; or
    - (E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.
- (c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.
- (d) Material not otherwise obscene may be obscene under this Code section if the distribution thereof, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.
- (e) It is an affirmative defense under this Code section that dissemination of the material was restricted to:
  - (1) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing a course of study related to such material; or

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- (2) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.
- (f) A person who commits the offense of distributing obscene material shall be guilty of a misdemeanor of a high and aggravated nature.

## § 16-12-81. Distribution of material depicting nudity or sexual conduct; penalty

- (a) A person commits the offense of distributing material depicting nudity or sexual conduct when he sends unsolicited through the mail or otherwise unsolicited causes to be delivered material depicting nudity or sexual conduct to any person or residence or office unless there is imprinted upon the envelope or container of such material in not less than eight-point boldface type the following notice:
  - "Notice -- The material contained herein depicts nudity or sexual conduct. If the viewing of such material could be offensive to the addressee, this container should not be opened but returned to the sender."
- (b) As used within this Code section, the term:
  - (1) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering or the depiction of covered male genitals in a discernibly turgid state.
  - (2) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast.
- (c) A person who commits the offense of distributing material depicting nudity or sexual conduct, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years or by a fine not to exceed \$10,000.00, or both.

## § 16-12-82. Public nuisances

The use of any premises in violation of any of the provisions of this part shall constitute a public nuisance.

## § 16-12-83. Contraband

Any materials declared to be obscene by this part and advertisements for such materials are declared to be contraband.

## § 16-12-85. Display of restricted film previews to general audiences

- (a) It shall be unlawful for any motion picture theater owner, operator, or projectionist to display to the audience within the theater scenes from a film to be shown at the theater at some future time when the viewing of that film from which the scenes are taken is restricted to adults or requires minors to be accompanied by

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a parent or guardian. Scenes of such restricted films may be shown within a theater if the audience has been similarly restricted as to viewing age and conditions.

- (b) This Code section shall not apply to motion pictures which are not rated as to viewing audience nor to the first display of a preview trailer from any motion picture.
- (c) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

## § 16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties

- (a) As used in this Code section, the term:
  - (1) "Minor" means any person under the age of 18 years.
  - (2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.
  - (3) "Producing" means producing, directing, manufacturing, issuing, or publishing.
  - (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) Lewd exhibition of the genitals or pubic area of any person;
    - (E) Flagellation or torture by or upon a person who is nude;
    - (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
    - (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;
    - (H) Defecation or urination for the purpose of sexual stimulation of the viewer; or
    - (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
  - (5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.
- (b)
  - (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.
  - (2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.
  - (3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

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- (4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.
- (5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.
- (6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.
- (7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.
- (8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.
- (c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.
- (d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.
- (e) (1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:
  - (A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and
  - (B) Any property used, or intended to be used, to commit such offense.
    - (2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.
    - (3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.
    - (4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

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- (f) (1) The following property shall be subject to forfeiture to the State of Georgia:
  - (A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;
  - (B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or
  - (C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section;
  - except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.
    - (2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.
- (g)
  - (1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.
  - (2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

## § 16-12-100.1. Electronically furnishing obscene material to minors

- (a) As used in this Code section, the term:
  - (1) "Bulletin board system" means a computer data and file service that is accessed by telephone line to store and transmit information.
  - (2) "CD-ROM" means a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by computers to reveal the above-said material.
  - (3) "Electronically furnishes" means:
    - (A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or
    - (B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board.
  - (4) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
    - (A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

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- (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) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.
- (5) "Minor" means an unmarried person younger than 18 years of age.
- (6) "Sodomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- (7) "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
- (8) "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation.
- (b) A person commits the crime of electronically furnishing obscene materials to minors if:
  - (1) Knowing or having good reason to know the character of the material furnished, the person electronically furnishes to an individual whom the person knows or should have known is a minor:
    - (A) Any picture, photograph, drawing, or similar visual representation or image of a person or portion of a human body which depicts sexually explicit nudity, sexual conduct, or sodomasochistic abuse and which is harmful to minors; or
    - (B) Any written or aural matter that contains material of the nature described in subparagraph (A) of this paragraph or contains explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement, or sodomasochistic abuse;
  - (2) The offensive portions of the material electronically furnished to the minor are not merely an incidental part of an otherwise nonoffending whole;
  - (3) The material furnished to the minor, taken as a whole, lacks serious literary, artistic, political, or scientific value; and
  - (4) The material furnished to the minor, taken as a whole, is harmful to minors in that it appeals to and incites prurient interest.
- (c) Any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

## § 16-12-100.2. Computer or electronic pornography and child exploitation prevention

- (a) This Code section shall be known and may be cited as the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007."
- (b) As used in this Code section, the term:
  - (1) "Child" means any person under the age of 16 years.
  - (2) "Electronic device" means any device used for the purpose of communicating with a child for sexual purposes or any device used to visually depict a child engaged in sexually explicit conduct, store any image or audio of

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- a child engaged in sexually explicit conduct, or transmit any audio or visual image of a child for sexual purposes. Such term may include, but shall not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes;
- (3) "Identifiable child" means a person:
    - (A) Who was a child at the time the visual depiction was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual depiction; and
    - (B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.
    - The term shall not be construed to require proof of the actual identity of the child.
  - (4) "Sadomasochistic abuse" has the same meaning as provided in Code Section 16-12-100.1.
  - (5) "Sexual conduct" has the same meaning as provided in Code Section 16-12-100.1.
  - (6) "Sexual excitement" has the same meaning as provided in Code Section 16-12-100.1.
  - (7) "Sexually explicit nudity" has the same meaning as provided in Code Section 16-12-102.
  - (8) "Visual depiction" means any image and includes undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable child engaged in sexually explicit conduct.
  - (c) (1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:
    - (A) Compiles, enters into, or transmits by computer or other electronic device;
    - (B) Makes, prints, publishes, or reproduces by other computer or other electronic device;
    - (C) Causes or allows to be entered into or transmitted by computer or other electronic device; or
    - (D) 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 the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.
      - (2) Any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than \$10,000.00 and by imprisonment for not less than one nor more than 20 years.
  - (d)
    - (1) It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2,



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relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

- (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than \$25,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.
- (e)
  - (1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.
  - (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than \$10,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.
- (f)
  - (1) It shall be unlawful for any owner or operator of a computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child to intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this Code section, knowing that such person intended to utilize such service to violate this Code section. No owner or operator of a public computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child shall be held liable on account of any action taken in good faith in providing the aforementioned services.
  - (2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.
- (g) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.



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- (h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1, relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this Code section which the person engages in while:
  - (1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides in this state or another person believed by such person to be a child residing in this state; or
  - (2) Within this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides within or outside this state or another person believed by such person to be a child residing within or outside this state.
- (i) Any violation of this Code section shall constitute a separate offense.

## § 16-12-100.3. Obscene telephone contact; conviction; penalties

- (a) As used in this Code section, the terms "sexual conduct," "sexual excitement," and "sodomasochistic abuse" have the same meanings as provided for those terms in Code Section 16-12-100.1, relating to electronically furnishing obscene materials to minors; the term "sexually explicit nudity" has the same meaning as provided for that term in Code Section 16-12-102, relating to distributing harmful materials to minors; and the term "child" means a person under 14 years of age.
- (b) A person 17 years of age or over commits the offense of obscene telephone contact with a child if that person has telephone contact with an individual whom that person knows or should have known is a child, and that contact involves any aural matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sodomasochistic abuse which is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.
- (c)
  - (1) Except as otherwise provided in other paragraphs of this subsection, a person convicted of the offense of obscene telephone contact with a child shall be guilty of a misdemeanor of a high and aggravated nature.
  - (2) Upon the first conviction of the offense of obscene telephone contact with a child:
    - (A) If the person convicted is less than 21 years of age, such person shall be guilty of a misdemeanor; or
    - (B) The judge may probate the sentence without regard to the age of the convicted person, and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, the judge shall sentence the defendant to imprisonment; provided, further, that upon a defendant's being incarcerated on a conviction for such first offense, the place of incarceration shall provide counseling to such defendant.

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- (3) Upon a second or subsequent conviction of such offense, the defendant shall be guilty of a felony and punished by imprisonment for not less than one nor more than five years.

## § 16-12-101. Legislative purpose

The General Assembly finds that the sale, loan, and exhibition of harmful materials to minors has become a matter of increasingly grave concern to the people of this state. The elimination of such sales, loans, and exhibition and the consequent protection of minors from harmful materials are in the best interest of the morals and general welfare of the citizens of this state in general and of minors in this state in particular. The accomplishment of these ends can best be achieved by providing public prosecutors with an effective power to commence criminal proceedings against persons who engage in the sale, loan, or exhibition of harmful materials to minors.

## § 16-12-102. Definitions

- As used in this part, the term:
  - (1) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
    - (A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest 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) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.
  - (2) "Knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
    - (A) The character and content of any material described in this part which is reasonably susceptible to examination by the defendant; and
    - (B) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability in this part if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minor.
  - (3) "Minor" means a person less than 18 years of age.
  - (4) "Sadomasochistic abuse" means actual or simulated flagellation or torture by or upon a person who is nude, clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained by one so clothed or nude.
  - (5) "Sexual conduct" means actual or simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breasts.

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- (6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (7) "Sexually explicit nudity" means a state of undress so as to expose 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 thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

## § 16-12-103. Selling, loaning, distributing, or exhibiting; duties of video game retailers

- (a) It shall be unlawful for any person knowingly to sell or loan for monetary consideration or otherwise furnish or disseminate to a minor:
  - (1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or
  - (2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- (b)
  - (1) It shall be unlawful for any person knowingly to sell or furnish to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors or exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by minors not admitted to any such premises.
  - (2) It shall be unlawful for any person knowingly to sell or to furnish to a person under the age of 21 an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is harmful to minors and which, in whole or in part, consists of sexually explicit nudity on the part of one or more live performers; sexual conduct on the part of one or more live performers; or sadomasochistic abuse on the part of one or more live performers.
- (c) It shall be unlawful for any person to falsely represent his or her age to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent with the intent to unlawfully procure any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.
- (d) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent that he or she is the parent or guardian of any minor or knowingly to make a false representation with respect to the age of another person with the intent

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to unlawfully procure for such other person any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such other person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

- (e) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment or at any other public place frequented by minors or where minors are or may be invited as part of the general public:
  - (1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or
  - (2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- (f) (1) As used in this subsection, the term:
  - (A) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.
  - (B) "Video game retailer" means a person who sells or rents video games to the public.
    - (2) Every video game retailer shall post a sign providing information to consumers about any video game rating system which appears on a video game offered by such retailer. The sign shall be posted in a conspicuous place within the portion of the establishment dedicated to the display or advertisement of video games. Each video game retailer shall make available to consumers, upon request, written information explaining each such rating system.
    - (3) A person violating the provisions of this subsection shall be punished with a civil fine in an amount not less than \$250.00 and not more than \$500.00 for each violation. Each day in violation of this subsection shall constitute a separate offense.

## § 16-12-104. Library exception

The provisions of Code Section 16-12-103 shall not apply to any public library operated by the state or any of its political subdivisions nor to any library operated as a part of any school, college, or university.

## § 16-12-105. Penalty

Any person who violates any provision of Code Section 16-12-103 or 16-12-104 shall be guilty of a misdemeanor of a high and aggravated nature.

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## § 36-60-3. Restriction of adult bookstores and movie houses to certain areas

- (a) As used in this Code section, the term:
  - (1) "Adult bookstore" means any commercial establishment in which is offered for sale any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct.
  - (2) "Adult movie house" means any movie theater which on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct.
  - (3) "Explicit media outlet" means any commercial establishment which has an inventory of goods that is composed of at least 50 percent of books, pamphlets, magazines, or other printed publications, films, or other media which depict sexually explicit nudity or sexual conduct.
  - (4) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.
  - (5) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals or pubic area with less than a full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.
- (b) The governing authority of each county and municipal corporation is authorized to enact, for their respective jurisdictions, ordinances which shall have the effect of restricting the operation of adult bookstores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes; provided, however, that no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes. As used in this subsection, the term "school building" shall apply only to public or private school buildings. The distance requirement provided in this subsection for explicit media outlets and adult movie houses shall not apply to said locations which hold lawful permits or business licenses on July 1, 1997. In determining the distance requirements provided for in this Code section, the measurement shall be from the closest property line on which the adult bookstore, explicit media outlet, or adult movie house is located to the closest property line on which the school, college, religious institution, public place of worship, or area zoned primarily for residential purposes is located. Nothing in this Code section shall be construed so as to prohibit the adoption by the governing authority of any county or municipality of restrictions relating to the location of adult bookstores, explicit media outlets, and adult movie houses which are more stringent than the requirements of this Code section.

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- (c) Any person, firm, or corporation violating any ordinance enacted pursuant to subsection (b) of this Code section shall be guilty of a misdemeanor. Each day of operation in violation shall be deemed a separate offense.

## § 46-5-22. Using telephone communications for obscene comments, requests, or suggestions; injunction; recorded commercial message

- (a) It shall be unlawful for any person, by means of a telephone communication for commercial purposes, to make directly or by means of an electronic recording device, any comment, request, suggestion, or proposal which is **obscene**, lewd, lascivious, filthy, or indecent. Any person who makes any such comment, request, suggestion, or proposal may be subject to prosecution under this Code section regardless of whether such person placed or initiated the telephone call.
- (b) It shall be unlawful for any person to permit knowingly any telephone or telephone facility connected to a local exchange telephone under such person's control to be used for any purpose prohibited by this Code section.
- (c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor. For purposes of this subsection, each day of a violation shall constitute a separate offense.
- (d) A court may grant a preliminary injunction under this Code section after due notice to the party to be enjoined and upon a sufficient showing of the likelihood of ultimate success in a prosecution under this Code section and showing that such injunction would be in the public interest. Such injunction shall be dissolved by the court if a full trial on the merits is not scheduled within such period as may be specified by the court not to exceed 30 days.
- (e) In the event that a person applies to a local exchange telephone company for use of the local exchange telephone company's facilities for the purpose of transmitting a recorded commercial message, the local exchange telephone company shall have the authority to review the message and deny the applicant's request for facilities if the message appears to violate the provisions of this Code section.

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## FILTERING LAWS:

### § 20-5-5. Internet safety policies in public libraries

- (a) As used in this Code section, the term:
  - (1) "Acceptable-use policy" means a policy for Internet usage adopted by the governing board of a public library that meets the requirements of this Code section.
  - (2) "Child pornography" means any computer depiction or other material depicting a child under the age of 18 years engaging in sexually explicit conduct or in the simulation of such conduct.
  - (3) "Harmful to minors" has the meaning given to such term in Code Section 16-12-100.1.



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- (4) "Internet" means a global network that connects computers via telephone lines, fiber networks, or both to electronic information.
- (5) "**Obscene**" has the meaning given to such term in Code Section 16-12-80.
- (6) "Sexually explicit conduct" has the meaning given to such term in Code Section 16-12-100.
- (b) No later than January 1, 2007, the governing body of each public library shall adopt an acceptable-use policy for its public library system. At a minimum, an acceptable-use policy shall contain provisions which are reasonably designed to:
  - (1) Prevent library patrons, including those patrons under 18 years of age, and library employees from using any computer equipment and communication services owned or leased by the public library for sending, receiving, viewing, or downloading visual depictions of **obscenity**, child pornography, or material that is harmful to minors; and
  - (2) Establish appropriate measures to be taken against library patrons and employees who willfully violate the acceptable-use policy.
- (c) A public library shall take such steps as it deems appropriate to implement and enforce the acceptable-use policy, which shall include, but not be limited to:
  - (1) Use of software programs reasonably designed to block access to visual depictions of **obscenity**, child pornography, and material that is harmful to minors; or
  - (2) Selection of online servers that block access to visual depictions of **obscenity**, child pornography, and material that is harmful to minors.
- (d) A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of **obscenity**, child pornography, and material that is harmful to minors. Nothing in this Code section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under an existing law or court decision.
- (e) The Attorney General and the board of regents shall consult with and assist any public library in the development and implementation of an acceptable-use policy pursuant to this Code section.
- (f)
  - (1) No later than January 31, 2007, each public library shall submit a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section to the board of regents. Such submission shall also include the identification of any software program or online server that is being utilized to block access to material in accordance with subsection (c) of this Code section.
  - (2) The board of regents shall review each acceptable-use policy and any subsequent revisions submitted pursuant to paragraph (3) of this subsection. If the board of regents determines after review that a policy or revision is not reasonably designed to achieve the requirements of this Code section, the board of regents shall provide written notice to the public library explaining the nature of such noncompliance and the public library shall have 30 days from the receipt of written notice to correct such noncompliance. The board of regents may provide an extension to the 30 day period on a showing of good cause.
  - (3) No revision of an acceptable-use policy which has been approved by the board of regents pursuant to paragraph (2) of this subsection shall be implemented until such revision is approved by the board of regents. If the



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- board of regents fails to disapprove the revision within 60 days after the submission is received, the public library may proceed with the implementation of the revision.
  - (4) The board of regents shall be authorized to withhold a portion of state funding to a public library if the public library:
    - (A) Fails to timely submit an acceptable-use policy in accordance with paragraph (1) of this subsection;
    - (B) Submits an acceptable-use policy that is not reasonably designed to achieve the requirements of this Code section; or
    - (C) Is not enforcing or is substantially disregarding its acceptable-use policy.
  - (5) If the board of regents disapproves an acceptable-use policy of a public library or any revision thereof or notifies the public library that it is subject to the withholding of funding pursuant to paragraph (4) of this subsection, the public library may appeal the decision to the superior court of the county where the public library is situated.
- (g)
  - (1) The board of regents shall be responsible for conducting investigations and making written determinations as to whether a public library has violated the requirements of this Code section.
  - (2) If the board of regents determines that a public library is in violation of the requirements of this Code section, it shall direct the public library to acknowledge and correct the violation within 30 days and to develop a corrective plan for preventing future recurrences.
- (h)
  - (1) Notwithstanding any other provision of this Code section to the contrary, an administrator or supervisor of a public library, or designee thereof, may disable the software program or online server that is being utilized to block access to material for an adult or for a minor who provides written consent from his or her parent or guardian to enable access to the Internet for bona fide research or other lawful purpose.
  - (2) Nothing in paragraph (1) of this subsection shall be construed to permit any person to have access to material the character of which is illegal under federal or state law.
- (i) A public library which is fulfilling the requirements of the federal Children's Internet Protection Act, P.L. 106-554, is not required to comply with this Code section.

## § 20-2-324. Internet safety policies in public schools

- (a) As used in this Code section, the term:
  - (1) "Acceptable-use policy" means a policy for Internet usage adopted by a local board of education that meets the requirements of this Code section.
  - (2) "Child pornography" means any computer depiction or other material depicting a child under the age of 18 years engaging in sexually explicit conduct or in the simulation of such conduct.
  - (3) "Harmful to minors" has the meaning given to such term in Code Section 16-12-100.1.

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- (4) "Internet" means a global network that connects computers via telephone lines, fiber networks, or both to electronic information.
  - (5) "**Obscene**" has the meaning given to such term in Code Section 16-12-80.
  - (6) "Sexually explicit conduct" has the meaning given to such term in Code Section 16-12-100.
- (b) No later than January 1, 2007, each local board of education shall adopt an acceptable-use policy for its school system. At a minimum, an acceptable-use policy shall contain provisions which are reasonably designed to:
  - (1) Prevent students and employees of the school system from using any computer equipment and communication services owned or leased by the school system for sending, receiving, viewing, or downloading visual depictions of **obscenity**, child pornography, or material that is harmful to minors;
  - (2) Establish appropriate measures to be taken against students and school employees who willfully violate the acceptable-use policy; and
  - (3) Provide for expedited review and resolution of a claim that the policy is denying a student or school employee access to material that is not within the prohibition of the acceptable-use policy.
- (c) A local board of education shall take such steps as it deems appropriate to implement and enforce the acceptable-use policy, which shall include, but not be limited to:
  - (1) Use of software programs reasonably designed to block access to visual depictions of **obscenity**, child pornography, and material that is harmful to minors; or
  - (2) Selection of online servers that block access to visual depictions of **obscenity**, child pornography, and material that is harmful to minors.
- (d) Each local school system shall provide, upon written request of a parent or guardian, a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section.
- (e) The Attorney General and the department shall consult with and assist any local board of education in the development and implementation of an acceptable-use policy pursuant to this Code section.
- (f)
  - (1) No later than January 31, 2007, each local board of education shall submit a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section to the State Board of Education. Such submission shall also include the identification of any software program or online server that is being utilized to block access to material in accordance with subsection (c) of this Code section.
  - (2) The State Board of Education shall review each acceptable-use policy and any subsequent revisions submitted pursuant to paragraph (3) of this subsection. If the state board determines after review that a policy or revision is not reasonably designed to achieve the requirements of this Code section, the state board shall provide written notice to the local board of education explaining the nature of such noncompliance and the local board of education shall have 30 days from the receipt of written notice to correct such noncompliance. The state board may provide an extension to the 30 day period on a showing of good cause.
  - (3) No revision of an acceptable-use policy which has been approved by the state board pursuant to paragraph (2) of this subsection shall be implemented

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- until such revision is approved by the state board. If the state board fails to disapprove the revision within 60 days after the submission is received, the local board of education may proceed with the implementation of the revision.
- (4) The state board shall be authorized to withhold a portion of state funding to a local school system if the local board of education:
    - (A) Fails to timely submit an acceptable-use policy in accordance with paragraph (1) of this subsection;
    - (B) Submits an acceptable-use policy that is not reasonably designed to achieve the requirements of this Code section; or
    - (C) Is not enforcing or is substantially disregarding its acceptable-use policy.
  - (5) If the state board disapproves an acceptable-use policy of a local board of education or any revision thereof or notifies the local board of education that it is subject to the withholding of funding pursuant to paragraph (4) of this subsection, the local board of education may appeal the decision to the superior court of the county where the local board of education is situated.
  - (g)
    - (1) The state board shall be responsible for conducting investigations and making written determinations as to whether a local board of education has violated the requirements of this Code section.
    - (2) If the state board determines that a local board of education is in violation of the requirements of this Code section, it shall direct the local board of education to acknowledge and correct the violation within 30 days and to develop a corrective plan for preventing future recurrences.
  - (h)
    - (1) Notwithstanding any other provision of this Code section to the contrary, an administrator or supervisor of a local school system, or designee thereof, may disable the software program or online server that is being utilized to block access to material for an adult or for a minor who provides written consent from his or her parent or guardian to enable access to the Internet for bona fide research or other lawful purpose.
    - (2) Nothing in paragraph (1) of this subsection shall be construed to permit any person to have access to material the character of which is illegal under federal or state law.
  - (i) A local board of education which is fulfilling the requirements of the federal Children's Internet Protection Act, P.L. 106-554, is not required to comply with this Code section.