

KENTUCKY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

KRS

KRS 531.010. Definitions.

- As used in this chapter:
 - **(1)** "Distribute" means to transfer possession of, whether with or without consideration.
 - **(2)** "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials.
 - **(3)** "Obscene" means:
 - **(a)** To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and
 - **(b)** The matter depicts or describes the sexual conduct in a patently offensive way; and
 - **(c)** The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - **(4)** "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

531.020. Distribution of obscene matter.

- **(1)** A person is guilty of distribution of obscene matter when, having knowledge of its content and character, he:
 - **(a)** Sends or causes to be sent into this state for sale or distribution; or
 - **(b)** Brings or causes to be brought into this state for sale or distribution; or
 - **(c)** In this state, he:
 - **1.** Prepares, or
 - **2.** Publishes, or
 - **3.** Prints, or
 - **4.** Exhibits, or
 - **5.** Distributes, or
 - **6.** Offers to distribute, or
 - **7.** Has in his possession with intent to distribute, exhibit or offer to distribute,
 - any obscene matter.
- **(2)** Distribution of obscene matter is a Class B misdemeanor unless the defendant has in his possession more than one unit of material coming within the provisions of this chapter, in which case it shall be a Class A misdemeanor.

531.030. Distribution of obscene matter to minors.

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- **(1)** A person is guilty of distribution of obscene material to minors when, knowing a person to be a minor, or having possession of such facts that he should reasonably know that such person is a minor, and with knowledge of the content and character of the material, he knowingly:
 - **(a)** Sends or causes to be sent; or
 - **(b)** Exhibits; or
 - **(c)** Distributes, or offers to distribute, obscene material to a minor.
- **(2)** Distribution of obscene materials to minors is a Class A misdemeanor unless the defendant has previously been convicted of violation of this section or of KRS 531.020, in which case it shall be a Class D felony.

531.040. Using minors to distribute obscene material.

- **(1)** A person is guilty of using minors to distribute obscene material when knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and knowing of the content and character of the material, he knowingly:
 - **(a)** Hires; or
 - **(b)** Employs; or
 - **(c)** Uses, a minor to do or assist in doing any of the acts prohibited by KRS 531.020.
- **(2)** Using minors to distribute obscene material is a Class A misdemeanor unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class D felony.

531.050. Advertising obscene material.

- **(1)** A person is guilty of advertising obscene material when, having knowledge of its content and character thereof, he writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of obscene matter.
- **(2)** Advertising obscene material is a Class B misdemeanor.

531.060. Promoting sale of obscenity.

- **(1)** A person is guilty of promoting sale of obscenity when he knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or he denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.
- **(2)** Promoting sale of obscenity is a Class B misdemeanor for the first offense, a Class A misdemeanor for the second offense, and a Class D felony for each subsequent offense.

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531.070. Exemptions.

The prohibitions and penalties imposed in this chapter shall not extend to persons having a bona fide scientific, educational, governmental, or other similar justification for conduct which would, except for such justification, be criminal under this chapter.

531.090. Voyeurism.

- **(1)** A person is guilty of voyeurism when:
 - **(a)** He or she intentionally:
 - **1.** Uses or causes the use of any camera, videotape, photooptical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; or
 - **2.** Uses the unaided eye or any device designed to improve visual acuity for the purpose of observing or viewing the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; or
 - **3.** Enters or remains unlawfully in or upon the premises of another for the purpose of observing or viewing the sexual conduct, genitals, or nipple of the female breast of another person without the person's consent; and
 - **(b)** The other person is in a place where a reasonable person would believe that his or her sexual conduct, genitals, or nipple of the female breast will not be observed, viewed, photographed, filmed, or videotaped without his or her knowledge.
- **(2)** The provisions of subsection (1) of this section shall not apply to:
 - **(a)** A law enforcement officer during a lawful criminal investigation; or
 - **(b)** An employee of the Department of Corrections, the Department of Juvenile Justice, a private prison, a local jail, or a local correctional facility whose actions have been authorized for security or investigative purposes.
- **(3)** Unless objected to by the victim or victims of voyeurism, the court on its own motion or on motion of the Commonwealth's attorney shall:
 - **(a)** Order the sealing of all photographs, film, videotapes, or other images that are introduced into evidence during a prosecution under this section or are in the possession of law enforcement, the prosecution, or the court as the result of a prosecution under this section; and
 - **(b)** At the conclusion of a prosecution under this section, unless required for additional prosecutions, order the destruction of all of the photographs, film, videotapes, or other images that are in possession of law enforcement, the prosecution, or the court.
- **(4)** Voyeurism is a Class A misdemeanor.

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531.100. Video voyeurism.

- **(1)** A person is guilty of video voyeurism when he or she intentionally:
 - **(a)** Uses or causes the use of any camera, videotape, photooptical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; and
 - **(b)** Uses or divulges any image so obtained for consideration; or
 - **(c)** Distributes any image so obtained by live or recorded visual medium, electronic mail, the Internet, or a commercial on-line service.
- **(2)** Video voyeurism is a Class D felony.

531.105. Application of KRS 531.100.

The provisions of KRS 531.100 shall not apply to the transference of prohibited images by a telephone company, a cable television company or any of its affiliates, an Internet provider, or a commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.

531.110. Sealing and destruction of images in cases of video voyeurism.

- Unless objected to by the victim or victims of the video voyeurism, the court, on its own motion, or on motion of the attorney for the Commonwealth shall:
 - **(1)** Order all photographs, film, videotapes, or other images that are introduced into evidence or are in the possession of law enforcement, the prosecution, or the court to be sealed; and
 - **(2)** At the conclusion of the case, unless required for additional prosecutions, order all of the photographs, film, videotapes, or other images that are in the possession of law enforcement, the prosecution, or the court to be destroyed.

531.300. Definitions for KRS 531.080 and 531.310 to 531.370.

- As used in KRS 531.080 and 531.310 to 531.370:
 - **(1)** "Distribute" means to transfer possession of, whether with or without consideration;
 - **(2)** "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials;
 - **(3)** "Obscene" means the predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors;
 - **(4)** "Sexual conduct by a minor" means:

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- **(a)** Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
- **(b)** Physical contact with, or willful or intentional exhibition of the genitals;
- **(c)** Flagellation or excretion for the purpose of sexual stimulation or gratification; or
- **(d)** The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family;
- **(5)** "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience;
- **(6)** "Sexual performance" means any performance or part thereof which includes sexual conduct by a minor; and
- **(7)** "Promote" means to prepare, publish, print, procure or manufacture, or to offer or agree to do the same.

531.310. Use of a minor in a sexual performance.

- **(1)** A person is guilty of the use of a minor in a sexual performance if he employs, consents to, authorizes or induces a minor to engage in a sexual performance.
- **(2)** Use of a minor in a sexual performance is:
 - **(a)** A Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - **(b)** A Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - **(c)** A Class A felony if the minor so used incurs physical injury thereby.

531.320. Promoting a sexual performance by a minor.

- **(1)** A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a minor.
- **(2)** Promoting a sexual performance by a minor is:
 - **(a)** A Class C felony if the minor involved in the sexual performance is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - **(b)** A Class B felony if the minor involved in the sexual performance is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - **(c)** A Class A felony if the minor involved in the sexual performance incurs physical injury thereby.

531.330. Presumption as to minority.

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- **(1)** For purposes of KRS 529.040 or 529.100 where the offense involves commercial sexual activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370, any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.
- **(2)** In any prosecution under KRS 529.040 or 529.100 where the offense involves commercial sexual activity by a minor and in any prosecution under KRS 530.070, 531.080, and 531.300 to 531.370, the defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.
- **(3)** The presumption raised in subsection (1) of this section may be rebutted by any competent evidence.

531.335. Possession of matter portraying a sexual performance by a minor.

- **(1)** A person is guilty of possession of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he or she knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person.
- **(2)** Possession of matter portraying a sexual performance by a minor is a Class D felony.

531.340. Distribution of matter portraying a sexual performance by a minor.

- **(1)** A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:
 - **(a)** Sends or causes to be sent into this state for sale or distribution; or
 - **(b)** Brings or causes to be brought into this state for sale or distribution; or
 - **(c)** In this state, he or she:
 - **1.** Exhibits for profit or gain; or
 - **2.** Distributes; or
 - **3.** Offers to distribute; or
 - **4.** Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.
- **(2)** Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his or her possession with the intent to distribute it.
- **(3)** Distribution of matter portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

531.350. Promoting sale of material portraying a sexual performance by a minor.

- **(1)** A person is guilty of promoting sale of material portraying a sexual performance by a minor when he knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter portraying a sexual performance by a minor, or he denies or threatens to deny a franchise,

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revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.

- **(2)** Promoting sale of matter portraying a sexual performance by a minor is a Class A misdemeanor for the first offense, a Class D felony for the second offense, and a Class C felony for each subsequent offense.

531.360. Advertising material portraying a sexual performance by a minor.

- **(1)** A person is guilty of advertising material portraying a sexual performance by a minor when, having knowledge of its content and character thereof, he or she writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of matter portraying a sexual performance by a minor.
- **(2)** Advertising material portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

531.370. Using minors to distribute material portraying a sexual performance by a minor.

- **(1)** A person is guilty of using minors to distribute material portraying a sexual performance by a minor when knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and knowing of the content and character of the material, he knowingly:
 - **(a)** Hires; or
 - **(b)** Employs; or
 - **(c)** Uses,
 - a minor to do or assist in doing any of the acts prohibited by KRS 531.340.
 - **(2)** Using minors to distribute material portraying a sexual performance by a minor is a Class D felony unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class C felony.
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FILTERING LAWS:

156.675. Prevention of transmission of sexually explicit materials to schools -- Administrative regulations -- Local school district policy on student Internet access.

- **(1)** The Kentucky Board of Education shall promulgate administrative regulations to prevent sexually explicit material from being transmitted via any video or computer system, software or hardware product, or **Internet** service managed or provided to local **schools** or **school**districts.
- **(2)** Each local **school** district and **school** shall utilize the latest available **filtering** technology to ensure that sexually explicit material is not made available to students.
- **(3)** The Kentucky Department of Education shall make available to **school** districts and **schools** upon request and without cost, state-of-the-art software products that enable local districts and **schools** to prevent access to sexually explicit material. The

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department shall also notify all **school** districts and **schools** of the availability of the software. Any product provided or obtained by a district or **school** shall meet the requirements of subsection (2) of this section.

- **(4)** Each local **school** district shall establish a policy regarding student **Internet** access that shall include, but not be limited to, parental consent for student **Internet** use, teacher supervision of student computer use, and auditing procedures to determine whether education technology is being used for the purpose of accessing sexually explicit or other objectionable material.