

# LOUISIANA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

La. R.S.

## La. R.S. § 14:106. Obscenity

- A. The crime of **obscenity** is the intentional:
  - (1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.
  - (2)
    - (a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.
    - (b) Hard core sexual conduct is the public portrayal, for its own sake, and for ensuing commercial gain of:
      - (i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or
      - (ii) Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or
      - (iii) Sadomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or
      - (iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or
      - (v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.
  - (3)
    - (a) Sale, allocation, consignment, distribution, dissemination, advertisement, exhibition, electronic communication, or display of **obscene** material, or the preparation, manufacture, publication, electronic communication, or printing of **obscene** material for sale, allocation, consignment, distribution, advertisement, exhibition, electronic communication, or display.

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- (b) **Obscene** material is any tangible work or thing which the trier of fact determines that the average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest, and which depicts or describes in a patently offensive way, hard core sexual conduct specifically defined in Paragraph (2) of this Subsection, and the work or thing taken as a whole lacks serious literary, artistic, political, or scientific value.
- (4) Requiring as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication to a purchaser or consignee that such purchaser or consignee also receive or accept any **obscene** material, as defined in Paragraph (3) of this Subsection, for resale, distribution, display, advertisement, electronic communication, or exhibition purposes; or, denying or threatening to deny a franchise to, or imposing a penalty, on or against, a person by reason of his refusal to accept, or his return of, such **obscene** material.
- (5) Solicitation or enticement of an unmarried person under the age of seventeen years to commit any act prohibited by Paragraphs (1), (2), or (3) above.
- (6) Advertisement, exhibition, electronic communication, or display of sexually violent material. "Violent material" is any tangible work or thing which the trier of facts determines depicts actual or simulated patently offensive acts of violence, including but not limited to, acts depicting sadistic conduct, whippings, beatings, torture, and mutilation of the human body, as described in Item (2)(b)(iii) of this Subsection.
- (7)
  - (a) Transmission, or causing the transmission, by a person, knowing the content of an advertisement to be sexually explicit as defined in this Paragraph, of an unsolicited advertisement containing sexually explicit materials in an electronic communication to one or more persons within this state without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement. A "subject line" is the area of an electronic communication that contains a summary description of the content of the message.
  - (b) As used in this Paragraph, "sexually explicit" means the graphic depiction of sex, including but not limited to sexual audio, text, or images; depiction of sexual activity; nudity; or sexually oriented language.
- (8) *(amended & reenacted in 2012)*
  - (A) TRANSMISSION OR CAUSING THE TRANSMISSION BY A PERSON, KNOWING ITS CONTENT TO BE SEXUALLY EXPLICIT AS DEFINED IN THIS PARAGRAPH, OF AN UNSOLICITED TEXT MESSAGE CONTAINING SEXUALLY EXPLICIT MATERIALS TO A WIRELESS TELECOMMUNICATIONS DEVICE OF ONE OR MORE PERSONS WITHIN THIS STATE.
  - (B) AS USED IN THIS PARAGRAPH:
    - (I) "SEXUALLY EXPLICIT" MEANS THE GRAPHIC DEPICTION OF SEX, INCLUDING BUT NOT LIMITED TO SEXUAL AUDIO, TEXT, OR IMAGES, THE DEPICTION OF SEXUAL ACTIVITY, NUDITY,

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OR SEXUALLY ORIENTED LANGUAGE AND IS OBSCENE AS DEFINED IN R.S. 14:106(A)(3)(B).

(II) "WIRELESS TELECOMMUNICATIONS DEVICE" MEANS A CELLULAR TELEPHONE, A TEXT-MESSAGING DEVICE, A PERSONAL DIGITAL ASSISTANT, A TABLET COMPUTER, OR ANY OTHER SUBSTANTIALLY SIMILAR WIRELESS DEVICE.

- B. Lack of knowledge of age or marital status shall not constitute a defense.
- C. If any employee of a theatre or bookstore acting in the course or scope of his employment, is arrested for an offense designated in this Section, the employer shall reimburse the employee for all attorney's fees and other costs of defense of such employee. Such fees and expenses may be fixed by the court exercising criminal jurisdiction after contradictory hearing or by ordinary civil process.
- D.
  - (1) The provisions of this Section do not apply to recognized and established schools, churches, museums, medical clinics, hospitals, physicians, public libraries, governmental agencies, quasi-governmental sponsored organizations and persons acting in their capacity as employees or agents of such organizations, or a person solely employed to operate a movie projector in a duly licensed theatre.
  - (2) For the purpose of this Paragraph, the following words and terms shall have the respective meanings defined as follows:
    - (a) "Recognized and established schools" means schools having a full time faculty and pupils, gathered together for instruction in a diversified curriculum.
    - (b) "Churches" means any church, affiliated with a national or regional denomination.
    - (c) "Physicians" means any licensed physician or psychiatrist.
    - (d) "Medical clinics and hospitals" means any clinic or hospital of licensed physicians or psychiatrists used for the reception and care of the sick, wounded or infirm.
- E. This Section does not preempt, nor shall anything in this Section be construed to preempt, the regulation of **obscenity** by municipalities, parishes, and consolidated city-parish governments; however, in order to promote uniform **obscenity** legislation throughout the state, the regulation of **obscenity** by municipalities, parishes, and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this Section.
- F.
  - (1) Except for those motion pictures, printed materials, electronic communication and photographic materials showing actual ultimate sexual acts or simulated or animated ultimate sexual acts when there is an explicit, close-up depiction of human genital organs so as to give the appearance of the consummation of ultimate sexual acts, no person, firm, or corporation shall be arrested, charged, or indicted for any violations of a provision of this Section until such time as the material involved has first been the subject of an adversarial hearing under the provisions of this Section, wherein such person, firm, or corporation is made a defendant and, after such material is declared by the court to be **obscene**, such person, firm, or corporation continues to

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- engage in the conduct prohibited by this Section. The sole issue at the hearing shall be whether the material is **obscene**.
  - (2) The hearing shall be held before the district court having jurisdiction over the proceedings within seventy-two hours after receipt of notice by the person, firm, or corporation. The person, firm, or corporation shall be given notice of the hearing by registered mail or by personal service on the owner, manager, or other person having a financial interest in the material; provided, if there is no such person on the premises, then notice may be given by personal service on any employee of the person, firm, or corporation on such premises. The notice shall state the nature of the violation, the date, place, and time of the hearing, and the right to present and cross-examine witnesses.
  - (3) The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this Section subsequent to notice of the judgment, finding the material to be **obscene**, shall be subject to criminal prosecution notwithstanding the appeal from the judgment.
  - (4) No determination by the district court pursuant to this Section shall be of any force and effect outside the judicial district in which made and no such determination shall be res judicata in any proceeding in any other judicial district. In addition, evidence of any hearing held pursuant to this Section shall not be competent or admissible in any criminal action for the violation of any other Section of this Title; provided, however, that in any criminal action, charging the violation of any other Section of this Title, against any person, firm, or corporation that was a defendant in such hearing, involving the same material declared to be **obscene** under the provisions of this Section, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only.
- G.
  - (1) Except as provided in paragraph (5) of this subsection, on a first conviction, whoever commits the crime of **obscenity** shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned, with or without hard labor, for not less than six months nor more than three years, or both.
  - (2)
    - (a) Except as provided in paragraph (5) of this subsection, on a second conviction, the offender shall be imprisoned, with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.
    - (b) The imprisonment provided for in Subparagraph (a) of this paragraph, may be imposed at court discretion if the court determines that the offender, due to his employment, could not avoid engagement in the offense. This Subparagraph (b) shall not apply to the manager or other person in charge of an establishment selling or exhibiting **obscene** material.
  - (3) Except as provided in paragraph (5) of this subsection, on a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than two years nor more than five years, and in addition may

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- be fined not less than five thousand dollars nor more than ten thousand dollars.
- (4) When a violation of Paragraph (1), (2), or (3) of Subsection A of this Section is with or in the presence of an unmarried person under the age of seventeen years, the offender shall be fined not more than ten thousand dollars and shall be imprisoned, with or without hard labor, for not less than two years nor more than five years, without benefit of parole, probation, or suspension of sentence.
- (5) WHOEVER VIOLATES THE PROVISIONS OF PARAGRAPHS (A)(7) OR (A)(8) OF THIS SECTION MAY BE FINED NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS.
- H.
  - (1) When a corporation is charged with violating this Section, the corporation, the president, the vice president, the secretary, and the treasurer may all be named as defendants. Upon conviction for a violation of this Section, a corporation shall be sentenced in accordance with Subsection G hereof. All corporate officers who are named as defendants shall be subject to the penalty provisions of this Section as set forth in Subsection G.
  - (2) If the corporation is domiciled in this state, upon indictment or information filed against the corporation, a notice of arraignment shall be served upon the corporation, or its designated agent for service of process, which then must appear before the district court in which the prosecution is pending to plead to the charge within fifteen days of service. If no appearance is made within fifteen days, an attorney shall be appointed by the court to represent the defendant corporation with respect to the charge or to show cause why the corporation should not be enjoined from continuing in business during the pendency of the criminal proceedings. Appearance for arraignment may be made through private counsel.
  - (3) If the corporation is domiciled out of state and is registered to do business in Louisiana, notice of arraignment shall be served upon the corporate agent for service of process or the secretary of state, who shall then notify the corporation charged by indictment or information to appear before the district court in which the prosecution is pending for arraignment within sixty days after the notice is mailed by the secretary of state. If no appearance is made within sixty days the court shall appoint an attorney to represent the defendant corporation with respect to the charge or to show cause why the corporation should not be enjoined from continuing in business during the pendency of the criminal proceedings. Appearance for arraignment may be made by private counsel.
  - (4) If the corporation is domiciled out of state and is not registered to do business in Louisiana, notice of arraignment of the corporation shall be served upon the secretary of state and an employee, officer, or agent for service of process of the corporation found within the parish where the violation of this Section has allegedly occurred. Such notice shall act as a bar to that corporation registering to do business in Louisiana until it appears before the district court in which the prosecution is pending to answer the charge.

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## § 14:106.1. Promotion or wholesale promotion of obscene devices

- A. For the purposes of this Section, the following definitions shall apply unless the context clearly requires otherwise:
  - (1) "**Obscene** device" means a device, including an artificial penis or artificial vagina, which is designed or marketed as useful primarily for the stimulation of human genital organs.
  - (2) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, distribute, circulate, disseminate, present, or exhibit, including the offer or agreement to do any of these things, for the purpose of sale or resale.
- B. No person shall knowingly and intentionally promote an **obscene** device.
- C.
  - (1) On a first conviction, whoever commits the crime of promoting an **obscene** device shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned with or without hard labor for not less than six months nor more than three years, or both.
  - (2) On a second conviction, the offender shall be imprisoned with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

## § 14:106.2. Sexual acts prohibited in public; penalties

- A. It shall be unlawful for any person to engage in vaginal, anal, or oral sexual intercourse in any public place or place open to the public view for the purpose of gaining the attention of the public.
- B. Whoever violates a provision of this Section shall be fined not more than one thousand dollars and imprisoned for not less than ten days nor more than one year. At least ten days of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

## § 14:106.3. Unlawful exhibition of sexually explicit material in a motor vehicle; penalties

- A. It shall be unlawful for any person to knowingly exhibit sexually explicit material in a motor vehicle on a public street, highway, public place, or any place open to public view knowing that the material is visible to the public from outside the motor vehicle.
- B. For the purposes of this Section the term "exhibit sexually explicit material" means to present, exhibit, project, or display a motion picture, film, videotape, compact disc, digital versatile disc, digital video disc, or any other form of visual technology of any of the following:
  - (1) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being.
  - (2) The graphic depiction of sex, including but not limited to the visual depiction of sexual activity or nudity.
- C.

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- (1) Whoever violates a provision of this Section upon a first conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.
- (2) Upon a second conviction, the offender shall be fined not more than one thousand dollars and imprisoned for not more than one year, or both.
- (3) Upon a third or subsequent conviction, the offender shall be fined not more than one thousand dollars and shall be imprisoned for not more than one year, or both. At least ten days of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

## § 14:91.11. Sale, exhibition, or distribution of material harmful to minors

- A.
  - (1) The unlawful sale, exhibition, rental, leasing, or distribution of material harmful to minors is the intentional sale, allocation, distribution, advertisement, dissemination, exhibition, or display of material harmful to minors, by a person who is not the spouse, parent, or legal guardian of the minor to any unmarried person under the age of eighteen years, or the possession of material harmful to minors with the intent to sell, allocate, advertise, disseminate, exhibit, or display such material to any unmarried person under the age of eighteen years, by a person who is not the spouse, parent, or legal guardian of the minor at a newsstand or any other commercial establishment which is open to persons under the age of eighteen years.
  - (2) "Material harmful to minors" is defined as any paper, magazine, book, newspaper, periodical, pamphlet, composition, publication, photograph, drawing, picture, poster, motion picture film, video tape, video game, figure, phonograph record, album, cassette, compact disc, wire or tape recording, or other similar tangible work or thing which exploits, is devoted to or principally consists of, descriptions or depictions of illicit sex or sexual immorality for commercial gain, and when the trier of fact determines that each of the following applies:
    - (a) The material incites or appeals to or is designed to incite or appeal to the prurient, shameful, or morbid interest of minors.
    - (b) The material is offensive to the average adult applying contemporary community standards with respect to what is suitable for minors.
    - (c) The material taken as a whole lacks serious literary, artistic, political, or scientific value for minors.
  - (3) For the purpose of this section "descriptions or depictions of illicit sex or sexual immorality" includes the depiction, display, description, exhibition or representation of:
    - (a) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being;
    - (b) Masturbation, excretory functions, or exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples;
    - (c) Sadoomasochistic abuse, meaning actual, simulated, or animated, flagellation or torture by or upon a person who is nude or clad in



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undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed;

- (d) Actual, simulated, or animated, touching, caressing, or fondling of, or other similar physical contact with, a pubic area, anus, female breast nipple, covered or exposed, whether alone or between human,<sup>1</sup> animals or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or
- 1As appears in enrolled bill.
- (e) Actual, simulated, or animated, stimulation of the human genital organs by any device whether or not the device is designed, manufactured, and marketed for such purpose.
- (4) "Minor" means any person under the age of eighteen years.
- (5) "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 or viewed on or through a computer, gaming system, console, or other technology.
- B.
  - (1) It shall be unlawful for a person who is not the spouse, parent, or legal guardian of the minor to invite or permit any unmarried person under the age of eighteen years of age to be in any commercial establishment that exhibits or displays any item, material, work or thing of any kind that is described in Subsection A of this Section.
  - (2) Lack of knowledge of age shall not constitute a defense, unless the defendant shows that he had reasonable cause to believe that the minor involved was eighteen years of age or more and that the minor exhibited to the defendant a selective service card, driver's license, military identification card, birth certificate or other official or apparently official document purporting to establish that such a minor was eighteen years of age or more.
  - (3) For the purpose of Subsections A and B of this Section, "exhibition or display" means the exhibition or display of material harmful to minors as defined in Subsection A of this Section so that, as displayed, depictions and representations of illicit sex or sexual immorality are visible to minors.
  - (4) A commercial establishment shall not be in violation of this Section if the commercial establishment provides for a separate area for the exhibition or display of material harmful to minors and designates said area "NOT FOR MINORS" or similar words and the commercial establishment prohibits persons under the age of eighteen years from seeing or examining the contents of material harmful to minors.
- C. This section does not preempt, nor shall anything in this section be construed to preempt, the regulation of **obscenity** by municipalities, parishes and consolidated city-parish governments; however, in order to promote uniform **obscenity** legislation throughout the state, the regulation of **obscenity** by municipalities, parishes and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this section.
- D. Prior to selling material harmful to minors as provided for by this Section, a commercial establishment shall require the individual purchasing the material harmful



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to minors to provide a driver's license, selective service card, military identification card, birth certificate, or other official form of identification which on its face establishes the age of the person as eighteen years or older.

- E. Whoever is found guilty of violating the provisions of this section shall be fined not less than one hundred dollars nor more than two thousand dollars or imprisoned for not more than one year, or both.

## § 32:378.1. Display of patently obscene words, photographs, and depictions

- A. No person owning or operating a Louisiana registered motor vehicle on any of the public streets in this state shall affix to any part of such motor vehicle any sticker, decal, emblem, or other device containing patently **obscene** words, photographs, or depictions that are displayed to members of the public not occupying such vehicle. For the purposes of this Section, "**obscene**" shall have the meaning of "**obscenity**" as contained in R.S. 14:106.
- B. Any person who violates the provisions of R.S. 32:378.1, upon conviction, may be penalized by a fine not to exceed one hundred dollars.

## § 14:89. Crime against nature

- A. Crime against nature is the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal, except that anal sexual intercourse between two human beings shall not be deemed as a crime against nature when done under any of the circumstances described in R.S. 14:41, 14:42, 14:42.1 or 14:43. Emission is not necessary; and, when committed by a human being with another, the use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime.
- B. Whoever violates the provisions of this Section shall be fined not more than two thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.

## § 14:283. Video voyeurism; penalties

- A. Video voyeurism is:
  - (1) The use of any camera, videotape, photo-optical, photo-electric, or any other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping a person where that person has not consented to the observing, viewing, photographing, filming, or videotaping and it is for a lewd or lascivious purpose; or
  - (2) The transfer of an image obtained by activity described in Paragraph (1) of this Subsection by live or recorded telephone message, electronic mail, the Internet, or a commercial online service.
- B.
  - (1) Except as provided in Paragraphs (3) and (4) of this Subsection, whoever commits the crime of video voyeurism shall, upon a first conviction thereof, be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than two years, or both.

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- (2) On a second or subsequent conviction, the offender shall be fined not more than two thousand dollars and imprisoned at hard labor for not less than six months nor more than three years without benefit of parole, probation, or suspension of sentence.
- (3) Whoever commits the crime of video voyeurism when the observing, viewing, photographing, filming, or videotaping is of any vaginal or anal sexual intercourse, actual or simulated sexual intercourse, masturbation, any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than one year or more than five years, without benefit of parole, probation, or suspension of sentence.
- (4) Whoever commits the crime of video voyeurism when the observing, viewing, photographing, filming, or videotaping is of any child under the age of seventeen with the intention of arousing or gratifying the sexual desires of the offender shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than two years or more than ten years without benefit of parole, probation, or suspension of sentence.
- C. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, an Internet provider, or commercial online service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial online services.
- D. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.
- E. Any evidence resulting from the commission of video voyeurism shall be contraband.
- F. A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541(14.1). Whoever commits the crime of video voyeurism shall be required to register as a sex offender as provided for in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

## § 14:81.1.1. "Sexting"; prohibited acts; penalties

- A.
  - (1) No person under the age of seventeen years shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person.
  - (2) No person under the age of seventeen years shall knowingly possess or transmit an indecent visual depiction that was transmitted by another under the age of seventeen years in violation of the provisions of Paragraph (1) of this Subsection.
- B. For purposes of this Section:
  - (1) "Indecent visual depiction" means any photograph, videotape, film, or other reproduction of a person under the age of seventeen years engaging in sexually explicit conduct, and includes data stored on any computer, telecommunication device, or other electronic storage media which is capable of conversion into a visual image.

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- (2) "Sexually explicit conduct" means masturbation or lewd exhibition of the genitals, pubic hair, anus, vulva, or female breast nipples of a person under the age of seventeen years.
- (3) "Telecommunication device" means an analog or digital electronic device which processes data, telephonic, video, or sound transmission as part of any system involved in the sending or receiving of voice, sound, data, or video transmissions.
- (4) "Transmit" means to give, distribute, transfer, transmute, circulate, or disseminate by use of a computer or telecommunication device.
- C.
  - (1) For a violation of the provisions of Paragraph (A)(1) of this Section, the offender's disposition shall be governed exclusively by the provisions of Title VII of the Louisiana Children's Code.
  - (2)
    - (a) For a first offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, imprisoned for not more than ten days, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform two eight-hour days of court-approved community service.
    - (b) For a second offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, imprisoned for not less than ten days nor more than thirty days, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform five eight-hour days of court-approved community service.
    - (c) For a third or any subsequent offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than five hundred dollars nor more than seven hundred fifty dollars, imprisoned for not less than thirty days nor more than six months, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform ten eight-hour days of court-approved community service.

## § 14:81.1. Pornography involving juveniles

- A.
  - (1) It shall be unlawful for a person to produce, distribute, possess, or possess with the intent to distribute pornography involving juveniles.
  - (2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.
- B. For purposes of this Section, the following definitions shall apply:
  - (1) "Access software provider" means a provider of software, including client or server software, or enabling tools that do any one or more of the following:
    - (a) Filter, screen, allow, or disallow content.
    - (b) Select, choose, analyze, or digest content.

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- (c) Transmit, receive, display, forward, cache, search, organize, reorganize, or translate content.
- (2) "Cable operator" means any person or group of persons who provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- (3) "Distribute" means to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.
- (4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.
- (5) "Pornography involving juveniles" is any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen.
- (6) "Produce" means to photograph, videotape, film, or otherwise reproduce pornography involving juveniles, or to solicit, promote, or coerce any child for the purpose of pornography involving juveniles.
- (7) "Sexual performance" means any performance or part thereof that includes actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals or anus.
- (8) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, regardless of the facilities used.
- C.
  - (1) Possession of three or more of the same photographs, images, films, videotapes, or other visual reproductions shall be prima facie evidence of intent to sell or distribute.
  - (2) Possession of three or more photographs, images, films, videotapes, or other visual reproductions and possession of any type of file sharing technology or software shall be prima facie evidence of intent to sell or distribute.
- D. Lack of knowledge of the juvenile's age shall not be a defense.
- E.
  - (1) Whoever intentionally possesses pornography involving juveniles shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years or more than ten years, without benefit of parole, probation, or suspension of sentence.
  - (2) Whoever distributes or possesses with the intent to distribute pornography involving juveniles shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years or more than ten years, without benefit of parole, probation, or suspension of sentence.
  - (3) Any parent, legal guardian, or custodian of a child who consents to the participation of the child in pornography involving juveniles shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than five years or more than twenty years, without benefit of probation, parole, or suspension of sentence.

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- (4) Whoever engages in the production of pornography involving juveniles shall be fined not more than fifteen thousand dollars and be imprisoned at hard labor for not less than ten years or more than twenty years, without benefit of probation, parole, or suspension of sentence.
- (5)
  - (a) Whoever commits the crime of pornography involving juveniles punishable by the provisions of Paragraphs (1), (2), or (3) of this Subsection when the victim is under the age of thirteen years and the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided in Paragraphs (1), (2), and (3) of this Subsection. The sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
  - (b) Whoever commits the crime of pornography involving juveniles punishable by the provisions of Paragraph (4) of this Subsection when the victim is under the age of thirteen years, and the offender is seventeen years of age or older, shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
  - (c) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.
  - (d) The personal property made subject to seizure and sale pursuant to Subparagraph (c) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.
  - (e) Upon completion of the term of imprisonment imposed in accordance with Subparagraphs (5)(a) and (5)(b) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.
  - (f) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.
  - (g) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.
  - (h) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative

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Procedure Act, that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

- F.
  - (1) Any evidence of pornography involving a child under the age of seventeen shall be contraband. Such contraband shall be seized in accordance with law and shall be disposed of in accordance with R.S. 46:1845.
  - (2) Upon the filing of any information or indictment by the prosecuting authority for a violation of this Section, the investigating law enforcement agency which seized the photographs, films, videotapes, or other visual reproductions of pornography involving juveniles shall provide copies of those reproductions to the Internet crimes against children division within the attorney general's office.
  - (3) Upon receipt of the reproductions as provided in Paragraph (2) of this Subsection, the Internet crimes against children division shall:
    - (a) Provide those visual reproductions to the law enforcement agency representative assigned to the Child Victim Identification Program at the National Center for Missing and Exploited Children.
    - (b) Request the Child Victim Identification Program provide the law enforcement agency contact information for any visual reproductions recovered which contain an identified victim of pornography involving juveniles as defined in this Section.
    - (c) Provide case information to the Child Victim Identification Program, as requested by the National Center for Missing and Exploited Children guidelines, in any case where the Internet crimes against children division within the attorney general's office identifies a previously unidentified victim of pornography involving juveniles.
  - (4) The Internet crimes against children division shall submit to the designated prosecutor the law enforcement agency contact information provided by the Child Victim Identification Program at the National Center for Missing and Exploited Children, for any visual reproductions involved in the case which contain the depiction of an identified victim of pornography involving juveniles as defined in this Section.
  - (5) In all cases in which the prosecuting authority has filed an indictment or information for a violation of this Section and the victim of pornography involving juveniles has been identified and is a resident of this state, the prosecuting agency shall submit all of the following information to the attorney general for entry into the Louisiana Attorney General's Exploited Children's Identification database maintained by that office:
    - (a) The parish, district, and docket number of the case.
    - (b) The name, race, sex, and date of birth of the defendant.
    - (c) The identity of the victim.
    - (d) The contact information for the law enforcement agency which identified a victim of pornography involving juveniles, including contact information maintained by the Child Victim Identification Program and



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provided to the Internet crimes against children division in accordance with this Section.

- (6) No sentence, plea, conviction, or other final disposition shall be invalidated due to failure to comply with the provisions of this Subsection, and no person shall have a cause of action against the investigating law enforcement agency or any prosecuting authority, or officer or agent thereof for failure to comply with the provisions of this Subsection.
- G. In prosecutions for violations of this Section, the trier of fact may determine, utilizing the following factors, whether or not the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of seventeen years at the time of filming or recording:
  - (1) The general body growth, bone structure, and bone development of the person.
  - (2) The development of pubic or body hair on the person.
  - (3) The development of the person's sexual organs.
  - (4) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material.
  - (5) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person.
  - (6) Such other information, factors, and evidence available to the trier of fact which the court determines is probative and reasonably reliable.
- H. The provisions of this Section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this Section.

## § 46:1845. Protection of privacy of a victim when evidence pertains to child pornography, video voyeurism, or obscenity

- A. Notwithstanding any other law to the contrary, after the institution of prosecution under any statute listed in R.S. 46:1844(W)(2), or any other criminal law, the district attorney may file a motion for a contradictory hearing, with the defendant, to determine whether the court should issue an order to protect the privacy of the victim by limiting access to child pornography evidence, video voyeurism evidence, or involuntary **obscenity** evidence obtained in the investigation of the offense. The victim may request the district attorney to file the motion. The court may order the hearing on its own motion.
- B. For purposes of this Section:
  - (1) "Child pornography evidence" means evidence tending to prove pornography involving a juvenile as defined in R.S. 14:81.1.
  - (2) "Involuntary **obscenity** evidence" means any evidence tending to prove the conduct proscribed in R.S. 14:106(A)(2)(b) that is unlawfully possessed.
  - (3) "Stored data" means data, which although not a tangible visual depiction, may be used to render a tangible visual depiction through the use of an appropriate device or process. Stored data shall include but is not limited to digital or analog data stored on any of the following mediums: film, videotape, tape, hard disk, floppy disk, magnetic tape, electro-optical disk, CD, DVD, semi-conductor memory, memory stick, Read-Only Memory, flash memory and

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- any other form of physical, electric, magnetic, electromagnetic, optical or electro-optical media.
- (4) "Video voyeurism evidence" means any evidence tending to prove video voyeurism as defined in R.S. 14:283.
- (5) A "victim" is any person who appears in any evidence defined in Paragraph (1), (2), (3), or (4) of this Subsection.
- C. At the hearing, the court shall inspect only tangible visual depictions, and any stored data which may be used to create a tangible visual depiction obtained during the investigation of the offense. The court may view the evidence in camera.
- D. If the court finds probable cause that the evidence tends to prove child pornography, video voyeurism, or involuntary **obscenity** and that it is in the interest of justice to take action to protect the privacy of a victim, it shall issue an order to limit access to the evidence and copies thereof. The order shall remain in effect until modified or rescinded by a court of competent jurisdiction.
- E. The court, upon motion of the district attorney, after a contradictory hearing with the defendant, may order the destruction of the evidence tending to prove child pornography, video voyeurism, or involuntary **obscenity**.
- F. When making a ruling pursuant to the provisions of this Chapter, the court shall:
  - (1) Consider the legislative intent expressed in R.S. 46:1841.
  - (2) Balance the following interests:
    - (a) The right of government to exercise the police power to promote, protect, and preserve the general welfare, safety, health, peace, and good order of the public by proscribing criminal behavior and providing punishment therefor.
    - (b) The right of a person charged with a crime to have a fair, impartial, and public trial.
    - (c) The right of the public to know.
    - (d) The right of an individual to own private property and not be deprived thereof without due process.
    - (e) The right of a person to privacy.
    - (f) The freedom of speech rights of the media and the public.

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## FILTERING LAWS:

### **§ 17:100.7. Policies; governing authorities of public elementary and secondary schools; Internet and online sites; access by students and employees; exceptions**

- A. Each governing authority of a public elementary or secondary school shall adopt policies, in accordance with all applicable state and federal laws, regarding access by students and employees to Internet and online sites that contain or make reference to harmful material the character of which is such that it is reasonably believed to be **obscene**, child pornography, conducive to the creation of a hostile or dangerous school environment, pervasively vulgar, excessively violent, or sexually harassing in the school environment all as defined by any applicable state or federal laws and the policies adopted pursuant to this Subsection. Such policies shall include but not be limited to prohibitions against accessing sites containing information on the manufacturing or production of bombs or other incendiary devices.

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- B. Any policies adopted by a governing authority of a public elementary or secondary school pursuant to the provisions of this Section shall include the use of computer-related technology or the use of Internet service provider technology designed to block access or exposure to any harmful material as specified in Subsection A of this Section, or both.
- C. The provisions of this Section shall not prohibit any authorized employee or student of a public elementary or secondary school from having unfiltered or unrestricted access to the Internet or an online service for legitimate scientific or educational purposes as determined and approved by the employing governing authority.
- D. The provisions of this Section shall not prohibit any authorized student in a public elementary or secondary school from having unfiltered or unrestricted access to the Internet or online services of a newspaper with a daily circulation of at least one thousand.

## § 51:1426. Unfair acts or practices

- A. If a provider of Internet service knows or has reason to know that a subscriber currently resides in Louisiana, the provider shall make available to the subscriber a product or service which enables the subscriber to control a child's use of the Internet.
- B. The product or service provided for in Subsection A of this Section must enable the subscriber to do all of the following:
  - (1) Block access to specific websites or domains deemed inappropriate by the subscriber in Subsection A of this Section.
  - (2) Restrict access exclusively to specific websites or domains deemed inappropriate by the subscriber in Subsection A of this Section.
  - (3) Allow the subscriber to monitor a child's use of the Internet service by providing a report to the subscriber of the specific websites or domains that the child has visited or has attempted to visit but could not access the websites or domains because the websites or domains were blocked or restricted by the subscriber.
- C. For the purposes of this Section, a provider of Internet service shall be deemed to know that a subscriber in Subsection A is a Louisiana resident if the subscriber identifies this state as the subscriber's place of residence at the time of the subscription.
- D. If a product or service described in this Section is reasonably and commercially available for the technology utilized by the subscriber to access the Internet service, the provider of Internet service shall do all of the following:
  - (1) Provide to the subscriber in Subsection A, at the time of subscription, notice of the availability of the product or service which enables the subscriber to control a child's use of the Internet.
  - (2) Make the product or service described in Subsection A of this Section available to the subscriber, either directly or through a third party vendor. The provider may charge for the product or service.
- E. Any violation of this Section shall be an unfair trade practice and shall subject the violator to any and all actions and penalties provided for in this Chapter.