

MONTANA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

Mont. Code Anno. §

45-8-201 Obscenity.

- (1) A person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly:
 - (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age;
 - (b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age;
 - (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age;
 - (d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;
 - (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or
 - (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.
- (2) A thing is obscene if:
 - (a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
 - (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or
 - (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and
 - (b) taken as a whole the material:
 - (i) applying contemporary community standards, appeals to the prurient interest in sex;
 - (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and
 - (iii) lacks serious literary, artistic, political, or scientific value.
- (3) In any prosecution for an offense under this section, evidence is admissible to show:
 - (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
 - (b) the artistic, literary, scientific, educational, or other merits of the material;
 - (c) the degree of public acceptance of the material in the community;
 - (d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the material; or
 - (e) the purpose of the author, creator, publisher, or disseminator.
- (4) A person convicted of obscenity shall be fined at least \$ 500 but not more than \$ 1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.
- (5) Cities, towns, or counties may adopt ordinances or resolutions that are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

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45-8-203 Certain motion picture theater employees not liable for prosecution.

- (1)
 - (a) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where the person is regularly employed.
 - (b) The term does not include a manager of the motion picture theater.
- (2) An employee is not liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of regular employment at a showing open to the public.

45-8-205 Definitions.

- As used in 45-8-205 through 45-8-208, the following definitions apply:
 - (1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:
 - (a) its dominant theme appeals to a minor's prurient interest in sex;
 - (b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and
 - (c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.
 - (2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).
 - (3) "Minor" means a person under 18 years of age.
 - (4) "Newsstand" means a stand that distributes or sells newspapers or magazines.
 - (5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.
 - (6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

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- (7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.
- (8) "Sexual conduct" includes:
 - (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.
 - (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;
 - (c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.
- (9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

45-8-206 Public display or dissemination of obscene material to minors.

- (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:
 - (a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.
 - (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or
 - (c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.
- (2) A person does not violate this section if:
 - (a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;
 - (b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;
 - (c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;
 - (d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

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- (e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

45-8-207 Notice of violation.

Before a county attorney may prosecute a person for a continuing violation of 45-8-206, the county attorney shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that the person will be prosecuted if the person does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question of whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

45-8-208 Penalties.

- (1) A person who is convicted of violating 45-8-206 is guilty of a misdemeanor and may be fined an amount not to exceed \$ 500 or be imprisoned for a term not to exceed 6 months, or both.
- (2) For purposes of 45-8-206, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

45-5-504 Indecent exposure.

- (1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:
 - (a) abuse, humiliate, harass, or degrade another; or
 - (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.
- (2)
 - (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$ 500 or be imprisoned in the county jail for a term of not more than 6 months, or both.
 - (b) On a second conviction, the person shall be fined an amount not to exceed \$ 1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.
 - (c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$ 10,000.