

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

N.J. Stat.

N.J. Stat. 2C:34-2. Obscenity for persons 18 years of age or older

2C:34-2. Obscenity for Persons 18 Years of Age or Older.

a. Definitions for purpose of this section:

(1) "Obscene material" means any description, narrative account, display, or depiction of sexual activity or anatomical area contained in, or consisting of, a picture or other representation, publication, sound recording, live performance, or film, which by means of posing, composition, format or animated sensual details:

(a) Depicts or describes in a patently offensive way, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, or lewd exhibition of the genitals,

(b) Lacks serious literary, artistic, political, or scientific value, when taken as a whole, and

(c) Is a part of a work, which to the average person applying contemporary community standards, has a dominant theme taken as a whole, which appeals to the prurient interest.

(2) "Exhibit" means the sale of admission to view obscene material.

b. A person who sells, distributes, rents or exhibits obscene material to a person 18 years of age or older commits a crime of the fourth degree. Sale of obscene material shall be deemed to include any form of transaction which results in the admission to a display or depiction of obscene material or temporary or permanent access to any obscene material.

Nothing contained herein or in section 3 of P.L. 1995, c.230 (C.2C:34-7) shall be construed to prohibit a municipality from adopting as a part of its zoning ordinances an ordinance permitting the sale, distribution, rental or exhibition of obscene material in which event such sale, distribution, rental or exhibition shall be deemed legal.

Amended 1982,c.211; 1989,c.54,s.1; 1995,c.230,s.1.

2C:34-3. Obscenity for persons under 18

2C:34-3. Obscenity For Persons Under 18. a. Definitions for purposes of this section:

(1) "Obscene material" means any description, narrative account, display, depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording, live performance or film, which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.

(2) "Obscene film" means any motion picture film or preview or trailer to a film, not including newsreels portraying actual current events or pictorial news of the day, in which a scene, taken by itself:

(a) Depicts a specified anatomical area or specified sexual activity, or the simulation of a specified sexual activity, or verbalization concerning a specified sexual activity; and

(b) Emits sensuality sufficient, in terms of the duration and impact of the depiction, to appeal to prurient interest.

(3) "Specified anatomical area" means:

(a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if covered. (4) "Specified sexual activity" means: (a) Human genitals in a state of sexual stimulation or arousal; or (b) Any act of human masturbation, sexual intercourse or deviate sexual intercourse;

or

(c) Fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

(5) "Knowingly" means:

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

(a) Having knowledge of the character and content of the material or film described herein; or
(b) Having failed to exercise reasonable inspection which would disclose its character and content.

(6) "Exhibit" means the sale of admission to view obscene material. (7) "Show" means cause or allow to be seen. b. Promoting obscene material.

(1) A person who knowingly sells, distributes, rents or exhibits to a person under 18 years of age obscene material is guilty of a crime of the third degree.

(2) A person who knowingly shows obscene material to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene material is at least four years older than the person under 18 years of age viewing the material.

c. Admitting to exhibition of obscene film.

(1) Any person who knowingly admits a person under 18 years of age to a theatre then exhibiting an obscene film is guilty of a crime of the third degree.

(2) A person who knowingly shows an obscene film to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene film is at least four years older than the person under 18 years of age viewing the film.

d. Presumption of knowledge and age.

The requisite knowledge with regard to the character and content of the film or material and of the age of the person is presumed in the case of an actor who sells, distributes, rents, exhibits or shows obscene material to a person under 18 years of age or admits to a film obscene for a person under 18 years of age a person who is under 18 years of age.

e. Defenses.

(1) It is an affirmative defense to a prosecution under subsections b. and c. which the defendant must prove by a preponderance of evidence that:

(a) The person under age 18 falsely represented in or by writing that he was age 18 or over;

(b) The person's appearance was such that an individual of ordinary prudence would believe him to be age 18 or over; and

(c) The sale, distribution, rental, showing or exhibition to or admission of the person was made in good faith relying upon such written representation and appearance and in the reasonable belief that he was actually age 18 or over.

(2) It is an affirmative defense to a prosecution under subsection c. that the defendant is an employee in a motion picture theatre who has no financial interest in that motion picture theatre other than his wages and has no decision-making authority or responsibility with respect to the selection of the motion picture show which is exhibited.

Amended 1989, c.54, s.2; 1999, c.227.

2C:34-3.1. Retailer defined

"Retailer," as used in this act, means any person who operates a store, newsstand, booth, concession or similar business with unimpeded access for persons under 18 years old, who is in the business of making sales of periodicals or other publications at retail containing pictures, drawings or photographs.

P.L. 1988, c. 17, s. 1.

2C:34-3.2. Display of obscene material

A municipality may enact an ordinance making it a petty disorderly persons offense for a retailer to display or permit to be displayed at his business premises any obscene material as defined in N.J.S. 2C:34-3, at a height of less than 5 feet or without a blinder or other covering placed or printed on the front of the material displayed. Any such ordinance shall contain a provision

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

stating that public display of the obscene material shall constitute presumptive evidence that the retailer knowingly made or permitted the display.

P.L. 1988, c. 17, s. 2.

2C:34-4. Public communication of obscenity

a. "Publicly communicate" means to display, post, exhibit, give away or vocalize material in such a way that its character and content may be readily and distinctly perceived by the public by normal unaided vision or hearing when viewing or hearing it in, on or from a public street, road, thoroughfare, recreation or shopping center or area, public transportation facility or vehicle used for public transportation.

b. A person who knowingly publicly communicates obscene material, as defined in section 2C:34-3 or causes or permits it to be publicly communicated on property he owns or leases or operates is guilty of a crime of the fourth degree.

c. Public communication of obscene material shall constitute presumptive evidence that the defendant made the communication or caused or permitted it to be made knowingly.

L.1978, c. 95, s. 2C:34-4, eff. Sept. 1, 1979.

§ 2C:34-6. Definitions

- As used in sections 2 and 3 of this act:
 - a. "Sexually oriented business" means:
 - (1) A commercial establishment which as one of its principal business purposes offers for sale, rental, or display any of the following:
 - Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a "specified sexual activity" or "specified anatomical area"; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any one time, and where the images so displayed are characterized by the depiction of a "specified sexual activity" or "specified anatomical area"; or instruments, devices, or paraphernalia which are designed for use in connection with a "specified sexual activity"; or
 - (2) A commercial establishment which regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity," or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a "specified sexual activity" or "specified anatomical area."
 - b. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.
 - c. "Specified anatomical area" means:
 - (1) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
 - (2) Human male genitals in a discernibly turgid state, even if covered.
 - d. "Specified sexual activity" means:
 - (1) The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast; or

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (2) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

§ 2C:34-7. Sexually oriented business; location, building requirements; penalty

- a. Except as provided in a municipal zoning ordinance adopted pursuant to N.J.S.2C:34-2, no person shall operate a sexually oriented business within 1,000 feet of any existing sexually oriented business, or any church, synagogue, temple or other place of public worship, or any elementary or secondary school or any school bus stop, or any municipal or county playground or place of public resort and recreation, or any hospital or any child care center, or within 1,000 feet of any area zoned for residential use. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act where another sexually oriented business, an elementary or secondary school or school bus stop, or any municipal or county playground or place of public resort and recreation, or any hospital or any child care center, is subsequently established within 1,000 feet, or a residential district or residential lot is subsequently established within 1,000 feet.
- b. Every sexually oriented business shall be surrounded by a perimeter buffer of at least 50 feet in width with plantings, fence, or other physical divider along the outside of the perimeter sufficient to impede the view of the interior of the premises in which the business is located. The municipality may, by ordinance, require the perimeter buffer to meet additional requirements or standards. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act.
- c. No sexually oriented business shall display more than two exterior signs, consisting of one identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size.
- d. A person who violates this section is guilty of a crime of the fourth degree.

§ 2C:24-4. Endangering welfare of children

- a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1, R.S. 9:6-3 and P.L. 1974, c. 119, § 1 (C. 9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.
- b. (1) As used in this subsection:
 - "Child" means any person under 16 years of age.
 - "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.
 - "Prohibited sexual act" means
 - (a) Sexual intercourse; or
 - (b) Anal intercourse; or
 - (c) Masturbation; or

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.
- "Reproduction" means, but is not limited to, computer generated images.
 - (2) (Deleted by amendment, P.L. 2001, c. 291).
 - (3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.
 - (4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.
 - (5)
 - (a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.
 - (b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.
 - (6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

§ 2C:33-12.1. Abating nuisance

- a. In addition to the penalty imposed in case of conviction under N.J.S. 2C:33-12 or under section 2 of P.L.1995, c.167 (C.2C:33-12.2), the court may order the immediate abatement of the nuisance, and for that purpose may order the seizure and forfeiture or destruction of any chattels, liquors, **obscene** material or other personal property which may be found in such building or place, and which the court is satisfied from the evidence were possessed or used with a purpose of maintaining the nuisance. Any such forfeiture shall be in the name and to the use of the State of New Jersey, and the court shall direct the forfeited property to be sold at public sale, the proceeds to be paid to the treasurer of the county wherein conviction was had.
- b. If the owner of any building or place is found guilty of maintaining a nuisance, the court may order that the building or place where the nuisance was maintained be closed and not used for a period not exceeding one year from the date of the conviction.

§ 2C:33-12.2. Sexually oriented business, nuisance; crime

- a. As used in this act:
 - (1) "Sexually oriented business" means:
 - (a) A commercial establishment which as one of its principal business purposes offers for sale, rental, or display any of the following:
 - Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a "specified sexual activity" or "specified anatomical area"; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any one time, and where the images so displayed are characterized by the depiction of a "specified sexual activity" or "specified anatomical area"; or instruments, devices, or paraphernalia which are designed for use in connection with a "specified sexual activity"; or
 - (b) A commercial establishment which regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity," or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a "specified sexual activity" or "specified anatomical area";
 - (2) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.
 - (3) "Specified anatomical area" means:
 - (a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
 - (b) Human male genitals in a discernibly turgid state, even if covered.
 - (4) "Specified sexual activity" means:
 - (a) The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast; or
 - (b) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.
- b. In addition to any activities proscribed by the provisions of N.J.S. 2C:33-12, a person is guilty of maintaining a nuisance when the person owns or operates a

NEW JERSEY STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

sexually oriented business which offers for public use booths, screens, enclosures or other devices which facilitate sexual activity by patrons.

- c. Notwithstanding any other provision of law, a municipality shall have the power to determine restrictions, if any, on the hours of operation of sexually oriented businesses.
- d. A person who violates this act is guilty of a crime of the fourth degree.

§ 2C:14-4. Lewdness

- a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.
- b. A person commits a crime of the fourth degree if:
 - (1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.
 - (2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.
- c. As used in this section:
- "lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.