

**Vermont
13 V.S.A.**

13 V.S.A. § 2801. Definitions

As used in this act:

(1) "Minor" means any person less than eighteen years old.

(2) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

(3) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

(4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

(A) Predominantly appeals to the prurient, shameful or morbid interest of minors; and

(B) Is patently offensive to prevailing standards in the adult community in the state of Vermont as a whole with respect to what is suitable material for minors; and

(C) Is taken as a whole, lacks serious literary, artistic, political, or scientific value, for minors.

(7) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(8) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, sidewalk, or lobby of a building which has unrestricted access by the public.

Amended 1967, No. 340 (Adj. Sess.), § 1, eff. March 23, 1968; 1973, No. 204 (Adj. Sess.), §§ 1, 2.

§ 2802. Disseminating indecent material to a minor in the presence of the minor

(a) No person may, with knowledge of its character and content, sell, lend, distribute or give away to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image, including any such representation or image which is stored electronically, of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subdivision (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

(b) No person may, with knowledge of the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors:

(1) Exhibit such a motion picture, show or other presentation to a minor; or

(2) Sell or give away to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation; or

(3) Admit a minor to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation.

(c) This section shall apply only to acts occurring in the presence of the minor.

§ 2802a. Disseminating indecent material to a minor outside the presence of the minor

(a) No person may, with knowledge of its character and content, and with actual knowledge that the recipient is a minor, sell, lend, distribute or give away:

(1) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image, including any such representation or image which is communicated, transmitted, or stored electronically, of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(2) any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in subdivision (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

(b) No person may, with actual knowledge that the recipient or viewer is a minor, and with knowledge of the character and content of a motion picture, show or other presentation, including any such motion picture, show or presentation which is communicated, transmitted, or stored electronically, which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors:

(1) exhibit such a motion picture, show or other presentation to a minor; or

(2) sell or give away to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation.

(c) This section shall only apply to acts occurring outside the presence of the minor.

Added 2001, No. 41, § 8.

§ 2803. Distribution of indecent material

No person may hire, employ or permit a minor to sell, lend, distribute or give away material, the sale, lending, distribution or giving away of which to minors is prohibited by section 2802.

Amended 1967, No. 340 (Adj. Sess.), § 3, eff. March 23, 1968.

§ 2804. Exhibition of motion pictures

No person may, with knowledge of the character and content, exhibit a motion picture, show or other presentation, harmful to minors as defined in section 2801(6) of this title, which in whole or part depicts nudity and sexual conduct, as defined in section 2801, such that it may be viewed by minors from public property or private property not under the control of the person exhibiting the motion picture, show or other presentation.

Added 1971, No. 192 (Adj. Sess.); amended 1977, No. 262 (Adj. Sess.), eff. April 19, 1978.

§ 2804a. Publicly displaying sex or nudity for advertising purposes

No person may knowingly, publicly display nudity or sex for advertising purposes. A violation of this section occurs if a person:

(1) Displays publicly or causes to be displayed publicly for advertising purposes a picture, photograph, drawing, sculpture or other visual representation or image, including any such representation or image which is communicated, transmitted, or stored electronically, of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement, which is harmful to minors, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities; or

(2) Permits any public display described in this section on premises owned, rented or operated by him or her; or

(3) For advertising purposes, purchases space in any newspaper, magazine or other circular, printed in this state, in order to insert any article or advertisement which contains material harmful to minors.

Added 1973, No. 204 (Adj. Sess.), § 3; amended 1999, No. 124 (Adj. Sess.), § 8.

§ 2804b. Displaying obscene materials to minors

A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, he knowingly or recklessly permits a minor who is not accompanied by his parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

(1) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse which is harmful to minors; or

(2) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that pictorially reveals a person or portion of the human body, depicts nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, which is harmful to minors.

Added 1973, No. 204 (Adj. Sess.), § 4.

§ 2805. Presumption and defense

(a) A person who engages in conduct prohibited by sections 2802, 2802a, 2803, 2804, 2804a, or 2804b is presumed to do so with knowledge of the character and content of the material, or the motion picture, show or presentation exhibited or to be exhibited.

(b) In any prosecution arising under section 2802, 2802a, 2803 or 2804, it is an affirmative defense:

(1) That the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older; or

(2) That the defendant was in a parental or guardianship relationship with the minor; or that the minor was accompanied by a parent or legal guardian; or

(3) That the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

(c) In any prosecution arising out of sections 2804a and 2804b, it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for literary, political, scientific or artistic purposes; or

(2) That the public display was exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting; or

(3) That the defendant was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Amended 1967, No. 340 (Adj. Sess.), § 4, eff. March 23, 1968; 1973, No. 204 (Adj. Sess.), § 5; 2001, No. 41, § 9.

§ 2806. Severability

If any part or provision of this section or its application to any person or circumstances is for any reason adjudged invalid or unconstitutional by a court of competent jurisdiction, that judgment

shall be limited in its effect to the facts involved in the controversy in which that judgment shall have been rendered and shall not affect the validity of the remainder of this section or its application to other persons and circumstances; and the legislature declares that it would have enacted this section without the invalid part, provision or application had that invalidity been apparent.

Amended 1967, No. 340 (Adj. Sess.), § 5, eff. March 23, 1968.

§ 2807. Penalty

A person who violates any provision of section 2802, 2802a, 2803, 2804, 2804a or 2804b shall be imprisoned not more than one year or fined not more than \$ 1,000.00, or both.

Added 1967, No. 340 (Adj. Sess.), § 6, eff. March 23, 1968; amended 1973, No. 204 (Adj. Sess.), § 6; 2001, No. 41, § 10.

§ 2808. Uniformity

The provisions of this chapter shall be applicable and uniform throughout the state and all political subdivisions and municipalities therein, and no local authority shall enact any ordinances, rules or regulations in conflict with the provisions thereof.

Added 1973, No. 204 (Adj. Sess.), § 7.

§ 2809. Civil action prerequisite for criminal prosecution

Where evidence of conduct prohibited under section 2802(a)(2) of this title consists entirely of written matter in a book or other publication however reproduced, a criminal prosecution may be commenced only after violation of a final injunction prohibiting such conduct.

Added 1973, No. 204 (Adj. Sess.), § 8.

§ 2810. Commencement of civil action

(a) Whenever a prosecuting officer within this state has cause to believe that any person is engaging in or is about to engage in this state in conduct prohibited by this chapter, he may institute a civil action in the superior court in the county wherein such act is believed to be taking place or about to take place seeking a declaratory judgment that the material involved is in fact harmful to minors and seeking an injunction against the prohibited conduct.

(b) Any person who has or is about to disseminate, exhibit, publicly display or display to minors the material involved in such a proceeding may, as a matter of right, intervene in the proceedings and shall thereupon have all of the rights of a party and shall be bound by a determination in the proceeding.

(c) The provisions of the Vermont rules of civil procedure shall apply to a proceeding hereunder except as otherwise provided or inconsistent with this chapter.

(d) Upon the issuance of a search warrant pursuant hereto by a judge of a superior court of this state, a single copy of the material purportedly harmful to minors may be seized to secure and preserve evidence for civil and criminal proceedings under this chapter, subject to the following

procedures:

(1) If only a single copy of such material is available within the jurisdiction, the defendant shall provide a duplicate to or make that copy available for duplication by the prosecuting officer during such period when the material is not on sale or exhibition.

(2) If only a single copy is available in the jurisdiction and circumstances prevent its duplication as provided for in paragraph (1) of this subsection, the prosecuting officer may, upon a showing of probable cause that such material will not be available at trial, obtain a special warrant for the sole purpose of duplicating the material to secure and preserve it as evidence. Application for the special warrant shall be on notice to defendant and include a statement setting out the circumstances which make duplication under paragraph (1) of this subsection impossible, the time and date the materials are to be seized and specify the time and date, not to exceed twenty-four hours after such seizure, when such material is to be returned.

Added 1973, No. 204 (Adj. Sess.), § 9.

§ 2811. Procedure

Any party or intervenor shall have the right to trial by jury to determine whether the material is harmful to minors. The verdict of the jury shall be unanimous. At the trial, all parties shall have the right to submit evidence, including expert testimony.

Added 1973, No. 204 (Adj. Sess.), § 10.

§ 2812. Judgment

(a) If the court or jury, as the case may be, finds the material not to be harmful to minors, the court shall enter said declaration in the judgment and dismiss the suit.

(b) If the court or jury, as the case may be, finds the material to be harmful to minors, the court may in its judgment or in subsequent orders of enforcement thereof enter a permanent injunction against any and all defendants prohibiting them from disseminating, distributing, exhibiting or displaying the materials declared to be harmful to minors.

(c) A final declaration obtained pursuant to this act may be used to form the basis for an injunction or to establish scienter in a criminal proceeding.

Added 1973, No. 204 (Adj. Sess.), § 11.

§ 2813. Injunctions

The prosecuting officer may seek a preliminary injunction on notice to defendant and upon a showing of compelling facts which demonstrate that an irreparable harm will be inflicted on the community if the materials are disseminated until such time as a permanent injunction, if warranted, can be obtained.

§ 2605. Voyeurism

- (a) As used in this section:

(1) "Bona fide private investigator or bona fide security guard" means an individual lawfully providing services, whether licensed or unlicensed, pursuant to 26 V.S.A. §§3151 and 3151a.

(2) "Female breast" means any portion of the female breast below the top of the areola.

(3) "Circumstances in which a person has a reasonable expectation of privacy" means circumstances in which a reasonable person would believe that his or her intimate areas would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which a person knowingly disrobes in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas.

(4) "Intimate areas" means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.

(5) "Place where a person has a reasonable expectation of privacy" means:

(A) a place in which a reasonable person would believe that he or she could disrobe in privacy, without his or her undressing being viewed by another; or

(B) a place in which a reasonable person would expect to be safe from unwanted intrusion or surveillance.

(6) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(7) "View" means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

- (b) No person shall intentionally view, photograph, film, or record in any format:
 - (1) the intimate areas of another person without that person's knowledge and consent while the person being viewed, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy; or
 - (2) the intimate areas of another person without that person's knowledge and consent and under circumstances in which the person has a reasonable expectation of privacy.
- (c) No person shall display or disclose to a third party any image recorded in violation of subsection (b), (d), or (e) of this section.
- (d) No person shall intentionally conduct surveillance or intentionally photograph, film, or record in any format a person without that person's knowledge and consent while the person being surveilled, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy within a home or residence. Bona fide private investigators and bona fide security guards engaged in otherwise lawful activities within the scope of their employment are exempt from this subsection.
- (e) No person shall intentionally photograph, film, or record in any format a person without that person's knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act as defined in section 3251 of this title.
- (f) This section shall apply to a person who intentionally views, photographs, films, or records the intimate areas of a person as part of a security or theft prevention policy or program at a place of business.
- (g) This section shall not apply to:
 - (1) a law enforcement officer conducting official law enforcement activities in accordance with state and federal law; or
 - (2) official activities of the department of corrections, a law enforcement agency, the agency of human services, or a court for security purposes or

during the investigation of alleged misconduct by a person in the custody of the department of corrections, a law enforcement agency, the agency of human services, or a court.

- (h) This section is not intended to infringe upon the freedom of the press to gather and disseminate news as guaranteed by the First Amendment to the Constitution of the United States.
- (i) It shall be an affirmative defense to a violation of subsection (b) of this section that the defendant was a bona fide private investigator or bona fide security guard conducting surveillance in the ordinary course of business, and the violation was unintentional and incidental to otherwise legal surveillance. However, an unintentional and incidental violation of subsection (b) of this section shall not be a defense to a violation of subsection (c).
- (j) For a first offense, a person who violates subsection (b), (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$ 1,000.00, or both. For a second or subsequent offense, a person who violates subsection (b), (d), or (e) of this section shall be imprisoned not more than three years or fined not more than \$ 5,000.00, or both. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$ 5,000.00, or both.