

Washington

Rev. Code Wash. (ARCW)

Rev. Code Wash. (ARCW) § 9.68.015. Obscene literature, shows, etc. -- Exemptions

Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

§ 9.68.030. Indecent articles, etc

Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor.

§ 9.68.050. "Erotic material" -- Definitions

- For the purposes of RCW 9.68.050 through 9.68.120:
 - (1) "Minor" means any person under the age of eighteen years;
 - (2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;
 - (3) "Person" means any individual, corporation, or other organization;
 - (4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings.

§ 9.68.060. "Erotic material" -- Determination by court -- Labeling -- Penalties

- (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.
- (2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.
- (3) If the superior court rules that the subject material is erotic material, then, following such adjudication:
 - (a) If the subject material is written or printed, or is a sound recording, the

court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

- (4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.
- (5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:
 - (a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;
 - (b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned for up to three hundred sixty-four days;
 - (c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year.

§ 9.68.070. Prosecution for violation of RCW 9.68.060 -- Defense

- In any prosecution for violation of RCW 9.68.060, it shall be a defense that:
 - (1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or
 - (2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or
 - (3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation.

§ 9.68.080. Unlawful acts

- (1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying him or her, for the purpose of purchasing or obtaining access to any material described in RCW

- 9.68.050.
(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050.

§ 9.68.090. Civil liability of wholesaler or wholesaler-distributor

No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his or her franchise or right to deal or exhibit as a result of his or her attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's, or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler, or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal.

§ 9.68.100. Exceptions to RCW 9.68.050 through 9.68.120

Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

§ 9.68.110. Motion picture operator or projectionist exempt, when

The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his or her employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he or she is so employed or unless he or she caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theatre or other place of showing.

§ 9.68.120. Provisions of RCW 9.68.050 through 9.68.120 exclusive

The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive.

§ 9.68.130. "Sexually explicit material" -- Defined -- Unlawful display

- (1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.
- (2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.
- (3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor.

§ 9.68.140. Promoting pornography -- Class C felony -- Penalties

A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state.

§ 9.68.900. Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

§ 9.68A.001. Legislative findings, intent

- The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.
- The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.
- The legislature further finds that children engaged in sexual conduct for financial

compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

- The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.
- The decisions of the Washington supreme court in *State v. Boyd*, 160 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution. The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:
 - (1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;
 - (2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;
 - (3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;
 - (4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;
 - (5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such

limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants.

History

2012 Wa. ALS 135 (2011 Wa. HB 2177), § 1, effective June 7, 2012. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.

§ 9.68A.005. Chapter not applicable to lawful conduct between spouses

This chapter does not apply to lawful conduct between spouses.

§ 9.68A.011. Definitions

- Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.
 - (1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.
 - (2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.
 - (3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.
 - (4) "Sexually explicit conduct" means actual or simulated:
 - (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
 - (b) Penetration of the vagina or rectum by any object;
 - (c) Masturbation;
 - (d) Sadomasochistic abuse;
 - (e) Defecation or urination for the purpose of sexual stimulation of the viewer;
 - (f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and
 - (g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.
 - (5) "Minor" means any person under eighteen years of age.
 - (6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

§ 9.68A.040. Sexual exploitation of a minor -- Elements of crime -- Penalty

- (1) A person is guilty of sexual exploitation of a minor if the person:
 - (a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
 - (b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
 - (c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.
- (2) Sexual exploitation of a minor is a class B felony punishable under chapter 9A.20 RCW.

§ 9.68A.050. Dealing in depictions of minor engaged in sexually explicit conduct

- (1) (a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:
 - (i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e); or
 - (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e).
 - (b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.
- (2) (a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:
 - (i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g); or
 - (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).
 - (b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense.

§ 9.68A.060. Sending, bringing into state depictions of minor engaged in sexually explicit conduct

- (1)
 - (a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e).
 - (b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

- (2)
 - (a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).
 - (b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

§ 9.68A.070. Possession of depictions of minor engaged in sexually explicit conduct

- (1)
 - (a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e).
 - (b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

- (2)
 - (a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).
 - (b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.
 - (c) For the purposes of determining the unit of prosecution under this

subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

§ 9.68A.075. Viewing depictions of a minor engaged in sexually explicit conduct

- (1) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.
- (2) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the second degree, a class C felony punishable under chapter 9A.20 RCW.
- (3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.
- (4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.

§ 9.68A.080. Reporting of depictions of minor engaged in sexually explicit conduct -- Civil immunity

- (1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.
- (2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.
- (3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report.

§ 9.68A.090. Communication with minor for immoral purposes -- Penalties

- (1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone

the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

- (2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of an electronic communication.

§ 9.68A.100. Commercial sexual abuse of a minor -- Penalties

- (1) A person is guilty of commercial sexual abuse of a minor if:
 - (a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
 - (b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
 - (c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.
- (2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.
- (3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.
- (4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

§ 9.68A.101. Promoting commercial sexual abuse of a minor -- Penalty

- (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse of a minor or profits from a minor engaged in sexual conduct.
- (2) Promoting commercial sexual abuse of a minor is a class A felony.
- (3) For the purposes of this section:
 - (a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.
 - (b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

- (4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

§ 9.68A.102. Promoting travel for commercial sexual abuse of a minor -- Penalty

- (1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.
- (2) Promoting travel for commercial sexual abuse of a minor is a class C felony.
- (3) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.

§ 9.68A.103. Permitting commercial sexual abuse of a minor -- Penalty

- (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.
- (2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

§ 9.68A.105. Additional fee assessment

- (1)
 - (a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and 9.68A.102, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.
 - (b) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.
 - (c) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.
- (2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.
- (3) For the purposes of this section:
 - (a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city

prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

§ 9.68A.110. Certain defenses barred, permitted

- (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:
 - (a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or
 - (b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.
- (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.
- (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.
- (4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.
- (5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.
- (6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:
 - (a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:
 - (i) He or she was engaged in a research activity;

- (ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and
 - (iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or
 - (b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:
 - (i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;
 - (ii) The research is directly related to a legislative activity; and
 - (iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.
- (7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

§ 9.68A.120. Seizure and forfeiture of property

- The following are subject to seizure and forfeiture:
 - (1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.
 - (2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:
 - (a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - (b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;
 - (c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and
 - (d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.
 - (3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.
 - (4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:
 - (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting

or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or
(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

§ 9.68A.130. Recovery of costs of suit by minor

A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees.

§ 9.68A.150. Allowing minor on premises of live erotic performance -- Definitions - - Penalty

- (1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material.
- (2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.
- (3) For the purposes of this section:
 - (a) "Minor" means any person under the age of eighteen years.
 - (b) "Erotic materials" means live performance:
 - (i) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and
 - (ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and
 - (iii) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.
 - (c) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.
 - (d) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

§ 9.68A.910. Severability -- 1984 c 262

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

§ 9.68A.911. Severability -- 1989 c 32

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

§ 9.68A.912. Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

§ 7.42.010. Obscene prints and articles -- Jurisdiction to enjoin

The superior courts shall have jurisdiction to enjoin the sale or distribution of **obscene** prints and articles as hereinafter specified.

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§ 7.42.020. Injunction authorized

The prosecuting attorney of every county of the state, in which a person, firm, or corporation sells or distributes or offers to sell or distribute or has in his possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy or indecent, or which contains an article or instrument of indecent use or purports to be for indecent use or purpose, may maintain an action in the name of the state for an injunction against such person, firm, or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure or image or any written or printed matter of indecent character, herein described.

§ 7.42.030. Trial by jury -- Judgment

The person, firm, or corporation sought to be enjoined shall be entitled to a trial by jury of the issues within a reasonable time after joinder of issue and a judgment shall be entered by the court within two days of the conclusion of the trial. No injunction or restraining order shall be issued prior to the conclusion of the trial.

§ 7.42.040. Matter to be surrendered to sheriff -- Seizure, destruction

In the event that a final order or judgment of injunction be entered in favor of the state and against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in RCW 7.42.020, and each sheriff shall be directed to seize and destroy the same.

§ 7.42.050. Prosecuting attorney need not file undertaking prior to order -- Nonliability

In any action brought as herein provided, the prosecuting attorney shall not be required to file any undertaking before the issuance of an injunction order provided for in RCW 7.42.040, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.

§ 7.42.060. Knowledge of contents chargeable after service

Every person, firm, or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in RCW 7.42.020, after the service upon him of a summons and complaint in an action brought by the prosecuting attorney pursuant to this chapter is chargeable with knowledge of the contents thereof.

§ 7.42.070. Exemptions

Nothing in this chapter shall apply to any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

§ 7.42.900. Severability -- 1959 c 105

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

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§ 7.48.050. Moral nuisances -- Definitions

The definitions set forth in this section shall apply throughout this chapter as they relate to moral nuisances.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.

(5) "Matter" shall mean a live performance, a motion picture film, or a publication or any combination thereof.

(6) "Moral nuisance" means a nuisance which is injurious to public morals.

(7) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(8) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(9) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(10) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(11) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

§ 7.48.100. Moral nuisance -- Immunity of certain motion picture theatre employees

The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, if such projectionist, usher, or ticket taker (1) has no financial interest in the place wherein he is so employed, other than his salary, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under RCW 7.48.050 through 7.48.100 as now or hereafter amended, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters.

§ 7.48A.010. Definitions

The definitions set forth in this section shall apply throughout this chapter.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual or violent conduct which appears in the lewd matter, or knowledge of the acts of lewdness or prostitution which occur on the premises, or knowledge that controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, or injection or any other means.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.

(5) "Matter" shall mean a live performance, a motion picture film, or a publication or any combination thereof.

(6) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Film, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(7) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(8) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(9) "Prurient" means that which incites lasciviousness or lust.

(10) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or coin-operated machine.

(11) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

§ 7.48A.020. Moral nuisances -- Declaration of

The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition, or where lewd live performances are publicly exhibited as a regular course of business;

(2) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(3) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(4) Every place which, as a regular course of business, is used for the purpose of lewdness or prostitution, and every such place in or upon which acts of lewdness or prostitution are conducted, permitted, carried on, continued, or exist;

(5) All houses, housing units, other buildings, or places of resort where controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered, or possessed, or where any such substance not obtained in a manner

authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, injection, or any other means.

§ 7.48A.030. Civil actions -- Who may bring

Any of the following parties may bring a civil action in the superior court of any county where a moral nuisance is alleged to have been maintained:

- (1) The prosecuting attorney for the county where the alleged moral nuisance is located;
- (2) The city attorney for the city where the alleged moral nuisance is located; or
- (3) The attorney general.

The rules of evidence, burden of proof, and all other rules of court shall be the court rules generally applicable to civil cases in this state: PROVIDED, That the standard of proof on the issue of obscenity shall be clear, cogent, and convincing evidence.

§ 7.48A.070. Findings

The legislature finds that actions against moral nuisances as declared in RCW 7.48A.020 (1) through (4) involve balancing the safeguards necessary to protect constitutionally protected speech and the community and law enforcement efforts to curb dissemination of obscene matters. The legislature finds that the difficulty in ascertaining and obtaining originals and copies of obscene matters for evidentiary purposes thwarts legitimate enforcement efforts. The legislature finds that the balancing of the concerns warrants specific discovery procedures applicable to actions against moral nuisances involving obscene matters.

§ 7.48A.120. Production of discovery materials -- Temporary injunction

If the court finds at the hearing for an injunction, that the accounting, inventory, personal property, and contents of the place alleged to be a nuisance provide evidence of a moral nuisance as defined by RCW 7.48A.020 (1) through (4), the court may order the defendant to produce to the plaintiff a limited number of original films, film plates, publications, videotapes, any other obscene matter, and other discovery materials the court determines is necessary for evidentiary purposes to resolve the action on the merits.

The court may issue a temporary injunction enjoining the defendant and all other persons from removing or in any manner interfering with the court-ordered discovery. This discovery procedure supplements and does not replace any other discovery procedures and rules generally applicable to civil cases in this state.

§ 10.37.130. Obscene literature -- Description

An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or **obscene** book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or **obscenity** thereof.

§ 9A.88.010. Indecent exposure.

- (1) A person is guilty of indecent exposure if he or she intentionally makes any open and **obscene** exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.
- (2)
 - (a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.
 - (b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.
 - (c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in RCW 9.94A.030.