

TITLE 62

Criminal Code

CHAPTER 649A

Child Pornography

SECTION 649-A:1

§ 649-A:1 Declaration of Findings and Purposes. – I. The legislature finds that there has been a proliferation of exploitation of children through their use as subjects in sexual performances. The care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children. The public policy of the state demands the protection of children from exploitation through sexual performances.

II. It is the purpose of this chapter to facilitate the prosecution of those who exploit children in the manner specified in paragraph I. In accordance with the United States Supreme Court's decision in *New York v. Ferber*, this chapter makes the dissemination of visual representations of children under the age of 16 engaged in sexual activity illegal irrespective of whether the visual representations are legally obscene; and the legislature urges law enforcement officers to aggressively seek out and prosecute those who violate the provisions of this chapter.

Source. 1983, 448:2, eff. Aug. 23, 1983.

SECTION 649-A:2

§ 649-A:2 Definitions. – In this chapter:

I. "Child" means any person under the age of 16 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

III. "Sexual activity" means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, any lewd exhibitions of the genitals, flagellation or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any pose, play, dance or other performance, exhibited before an audience or reproduced in or designed to be reproduced in any book, magazine, pamphlet, motion picture film, photograph or picture.

Source. 1983, 448:2, eff. Aug. 23, 1983.

SECTION 649-A:3

§ 649-A:3 Offenses. – I. A person is guilty of a felony if he:

- (a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any visual representation of a child engaging in sexual activity; or
- (b) Presents or directs a visual representation of a child engaging in sexual activity, or participates in that portion of such visual representation which consists of a child engaging in sexual activity; or
- (c) Publishes, exhibits or otherwise makes available any visual representation of a child engaging in sexual activity; or
- (d) Possesses any visual representation of a child engaging in sexual activity for purposes of sale or other commercial dissemination.

II. An offense under paragraph I shall be:

- (a) A class B felony if such person has had no prior convictions in this state or another state for the conduct prohibited by paragraph I;
- (b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct prohibited by paragraph I.

III. A person is guilty of a misdemeanor if he:

- (a) Buys, procures, possesses, or controls any visual representation of a child engaging in sexual activity; or
- (b) Brings or causes to be brought into this state any visual representation of a child engaging in sexual activity.

Source. 1983, 448:2. 1991, 27:1, eff. Jan. 1, 1992.

SECTION 649-A:4

§ 649-A:4 Exemption. – A person shall not be guilty of a violation under this chapter if he is a librarian, or a paid or volunteer member of a library staff working under the supervision of a librarian, engaged in the normal course of his employment, or if he is

regularly employed by anybody as a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other nonmanagerial or nonsupervisory capacity in a motion picture theatre; provided that he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, and provided further that he is not in any way responsible for acquiring such material for sale, rental or exhibition.

Source. 1983, 448:2, eff. Aug. 23, 1983.

SECTION 649-A:5

§ 649-A:5 Justifiable Dissemination. – It is an affirmative defense to prosecution under this chapter that dissemination was restricted to institutions or persons having scientific, medical, educational, governmental or other similar justification for possessing a visual representation of a child engaging in sexual activity.

Source. 1983, 448:2, eff. Aug. 23, 1983.