

CHAPTER 13-1200. PORNOGRAPHIC AND HARMFUL MATERIALS AND PERFORMANCES.

13-1201. DEFINITIONS. For the purpose of this part:

- A. "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.
- B. "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.
- C. "Distribute" means to transfer possession of materials whether with or without consideration.
- D. "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is for the purpose of avoiding the disclosure.
- E. "Exhibit" means to show.
- F. "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 a female breast with less than a full, opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
- G. "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 the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.
- H. "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.
- I. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- J. "Minor" means any person less than 18 years of age.

13-1204. DISTRIBUTING PORNOGRAPHIC MATERIAL.

- A. A person is guilty of distributing pornographic material when he knowingly:
1. Sends or brings any pornographic material into this municipality with intent to distribute or exhibit it to others; or
 2. Prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others; or
 3. Distributes or offers to distribute, exhibits or offers to exhibit, any pornographic material to others; or
 4. Writes, creates, or solicits the publication or advertising of pornographic material; or
 5. Promotes the distribution or exhibition of material which he represents to be pornographic; or
 6. Presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion thereof which makes it pornographic.
- B. Each separate offense under this section is a class B misdemeanor punishable by a minimum mandatory fine of not less than \$100 plus \$10 for each article exhibited up to a maximum of \$_____ and by incarceration, without suspension of sentence in any way, for a term of not less than seven days.

13-1205. INDUCING ACCEPTANCE OF PORNOGRAPHIC MATERIAL.

- A. A person is guilty of inducing acceptance of pornographic material when he knowingly:
1. Requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material; or
 2. Denies, revokes, or threatens to deny or revoke a franchise or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material.
- B. A violation of this section is a class B misdemeanor punishable by a fine of not less than \$_____ and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days.

13-1208. **AFFIRMATIVE DEFENSES.** The following shall be affirmative defenses to prosecution under this part:

- A. That the distribution of pornographic material was restricted to institutions or persons having scientific, education, governmental, or other similar justification for possessing pornographic material; or
- B. That the actor was a motion picture projectionist or a motion picture machine operator who is regularly employed to operate a projection machine in a public motion picture theater and he is required to project the material as part of his employment.