

§ 5903. Obscene and other sexual materials and performances.

(a) Offenses defined.--No person, knowing the obscene character of the materials or performances involved, shall:

1. display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;
2. sell, lend, distribute, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner;
3. design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;
4. write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;
5. produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity;
6. hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;
7. knowingly take or deliver in any manner any obscene material into a State correctional institution, county prison, regional prison facility or any other type of correctional facility;
8. possess any obscene material while such person is an inmate of any State correctional institution, county prison, regional prison facility or any other type of correctional facility; or
9. knowingly permit any obscene material to enter any State correctional institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

(a.1) Dissemination of explicit sexual material via an electronic communication.--No person, knowing the content of the advertisement to be explicit sexual materials as

defined in subsection (c)(1) and (2), shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in section 5702 (relating to definitions) to one or more persons within this Commonwealth that contains explicit sexual materials as defined in subsection (c)(1) and (2) without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement.

(b) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Community."

For the purpose of applying the "contemporary community standards" in this section, community means the State.

"Knowing."

As used in subsections (a) and (a.1), knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.

"Material."

Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.

"Nude."

Means showing the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

"Obscene."

Any material or performance, if:

1. the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;
2. the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and
3. the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

"Performance."

Means any play, dance or other live exhibition performed before an audience.

"Sadomasochistic abuse."

Means, in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

"Sexual conduct."

Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

"Subject line."

The area of an electronic communication that contains a summary description of the content of the message.

"Transportation facility."

Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations.

(c) Dissemination to minors.--No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. "Explicit sexual materials," as used in this subsection, means materials which are obscene or:

1. any picture, photograph, drawing, sculpture, motion picture film, videotape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic 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 paragraph (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(d) Admitting minor to show.--It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

(e) Definitions.--As used in subsections (c) and (d) of this section:

1. "Minor" means any person under the age of 18 years.
2. "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully 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 discernibly turgid state.
3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality 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. "Sadomasochistic 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 sadomasochistic abuse, when it:
 - i. predominantly appeals to the prurient, shameful, or morbid interest of minors; and
 - ii. is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - iii. taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.
7. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
 - . the character and content of any material or performance described herein which is reasonably susceptible of examination by the defendant; and
 - i. the age of the minor: Provided, however, That an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(f) Requiring sale as condition of business dealings.--No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

(g) Injunction.--The attorney for the Commonwealth may institute proceedings in equity in the court of common pleas of the county in which any person violates or clearly is about to violate this section for the purpose of enjoining such violation. The court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The court shall hold a hearing within three days after demand by the attorney for the Commonwealth, one of which days must be a business day for the court, and a final decree shall be filed in the office of the prothonotary within 24 hours after the close of the hearing. A written memorandum supporting the decree shall be filed within five

days of the filing of the decree. The attorney for the Commonwealth shall prove the elements of the violation beyond a reasonable doubt. The defendant shall have the right to trial by jury at the said hearing.

(h) Criminal prosecution.--

1. Any person who violates subsection (a), (a.1) or (f) is guilty of a misdemeanor of the first degree. Violation of subsection (a) is a felony of the third degree if the offender has previously been convicted of a violation of subsection (a) or if the material was sold, distributed, prepared or published for the purpose of resale.
2. Any person who violates subsection (c) or (d) is guilty of a felony of the third degree. Violation of subsection (c) or (d) is a felony of the second degree if the offender has previously been convicted of a violation of subsection (c) or (d).
3. Findings made in an equity action shall not be binding in the criminal proceedings.

(i) **Right to jury trial.**--The right to trial by jury shall be preserved in all proceedings under this section.

(j) **Exemptions.**--Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

(k) **Ordinances or resolutions.**--Nothing in this chapter shall be construed to invalidate, supersede, repeal or preempt any ordinance or resolution of any political subdivision insofar as it is consistent with this chapter, and political subdivisions further retain the right to regulate any activities, displays, exhibitions or materials not specifically regulated by this chapter.

(l) **Penalty for attempt to evade prosecution.**--Any person who violates subsection (a.1) and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500 per message or to imprisonment for not more than 90 days, or both, for a first offense and a fine of not less than \$500 nor more than \$1000 or to imprisonment for not more than one year, or both, for a second or subsequent offense.

(m) **Concurrent jurisdiction to prosecute.**--The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a.1) and may refer to the district attorney, with the district attorney's consent, any violation or alleged violation of subsection (a.1) which may come to the Attorney General's attention.