

1 **§61-8A-1. Definitions.**

2 When used in this article, the following words, and any
3 variations thereof required by the context, shall have the meaning
4 ascribed to them in this section:

5 (a) "Adult" means a person eighteen years of age or older.

6 (b) "Computer" means an electronic, magnetic, optical,
7 electrochemical or other high-speed data processing device
8 performing logical, arithmetic or storage functions and includes
9 any data storage facility or communication facility directly
10 related to or operating in conjunction with such device. As used
11 in this article, computer includes file servers, mainframe systems,
12 desktop personal computers, laptop personal computers, tablet
13 personal computers, cellular telephones, game consoles and any
14 electronic data storage device or equipment. The term "computer"
15 includes any connected or directly related device, equipment or
16 facility which enables the computer to store, retrieve or
17 communicate computer programs, computer data or the results of
18 computer operations to or from a person, another computer or
19 another device, but such term does not include an automated
20 typewriter or typesetter, a portable hand-held calculator or other
21 similar device.

22 (c) "Computer network" means the interconnection of hardware
23 or wireless communication lines with a computer through remote

1 terminals, or a complex consisting of two or more interconnected
2 computers.

3 (d) "Display" means to show, exhibit or expose matter, in a
4 manner visible to general or invited public, including minors. As
5 used in this article, display shall include the placing or
6 exhibiting of matter on or in a billboard, viewing screen, theater,
7 marquee, newsstand, display rack, window, showcase, display case or
8 similar public place.

9 (e) "Distribute" means to transfer possession, transport,
10 transmit, sell or rent, whether with or without consideration.

11 (f) "Employee" means any individual who renders personal
12 services in the course of a business, who receives compensation and
13 who has no financial interest in the ownership or operation of the
14 business other than his or her salary or wages.

15 (g) "Internet" means the international computer network of
16 both federal and nonfederal interoperable packet switched data
17 networks.

18 (h) "Knowledge of the character of the matter" means having
19 awareness of or notice of the overall sexual content and character
20 of matter as depicting, representing or describing ~~obscene~~ harmful
21 matter.

22 (i) "Matter" means any visual, audio, or physical item,
23 article, production transmission, publication, exhibition, or live

1 performance, or reproduction thereof, including any two- or three-
2 dimensional visual or written material, film, picture, drawing,
3 video, graphic, or computer generated or reproduced image; or any
4 book, magazine, newspaper or other visual or written material; or
5 any motion picture or other pictorial representation; or any statue
6 or other figure; or any recording, transcription, or mechanical,
7 chemical, or electrical reproduction; or any other articles, video
8 laser disc, computer hardware and software, or computer generated
9 images or message recording, transcription, or object, or any
10 public or commercial live exhibition performed for consideration or
11 before an audience of one or more.

12 (j) "Minor" means an unemancipated person under eighteen years
13 of age.

14 (k) ~~Obscene~~ "Harmful matter" means any matter, however
15 produced, containing any representation or image of a person or
16 portion of the human body which depicts sexually explicit nudity,
17 sexual conduct, or sadomasochistic abuse and which is harmful to
18 minors, and any matter, however produced, containing explicit and
19 detailed verbal descriptions or narrative accounts of sexual
20 excitement, sexual conduct, or sadomasochistic abuse and which,
21 taken as a whole, is harmful to minors.

22 ~~(1) An average person, applying contemporary adult community~~
23 ~~standards, would find, taken as a whole, appeals to the prurient~~

1 ~~interest, is intended to appeal to the prurient interest, or is~~
2 ~~pandered to a prurient interest;~~

3 ~~(2) An average person, applying community standards, would~~
4 ~~find depicts or describes, in a patently offensive way, sexually~~
5 ~~explicit conduct; and~~

6 ~~(3) A reasonable person would find, taken as a whole, lacks~~
7 ~~serious literary, artistic, political or scientific value.~~

8 (1) "Parent" includes a biological or adoptive parent, legal
9 guardian or legal custodian.

10 (m) "Person" means any adult, partnership, firm, association,
11 corporation or other legal entity.

12 (n) "Sexually explicit conduct" means an ultimate sexual act,
13 normal or perverted, actual or simulated, including sexual
14 intercourse, sodomy, oral copulation, sexual bestiality, sexual
15 sadism and masochism, masturbation, excretory functions and lewd
16 exhibition of the genitals.

17 **§61-8A-2. Distribution and display to minor of harmful matter;**
18 **penalties; defenses.**

19 (a) Any adult, with knowledge of the character of the matter,
20 who knowingly and intentionally distributes, offers to distribute,
21 or displays to a minor any ~~obscene~~ harmful matter, is guilty of a
22 felony and, upon conviction thereof, shall be fined not more than
23 \$25,000, or confined in a state correctional facility for not more

1 than five years, or both.

2 (b) It is a defense to a prosecution under the provisions of
3 this section that the ~~obscene~~ harmful matter:

4 (1) Was displayed in an area from which minors are physically
5 excluded and the matter so located cannot be viewed by a minor from
6 nonrestricted areas; or

7 (2) Was covered by a device, commonly known as a "blinder
8 rack," such that the lower two thirds of the cover of the material
9 is not exposed to view; or

10 (3) Was enclosed in an opaque wrapper such that the lower two
11 thirds of the cover of the material was not exposed to view; or

12 (4) Was displayed or distributed after taking reasonable steps
13 to receive, obtain or check an adult identification card, such as
14 a driver's license or other technically or reasonably feasible
15 means of verification of age.

16 (c) It is a defense to an alleged violation under this section
17 that a parent had taken reasonable steps to limit the minor's
18 access to the ~~obscene~~ harmful matter.

19 **§61-8A-3. Exemptions from criminal liability.**

20 The criminal provisions of section two of this article do not
21 apply to:

22 (a) A bona fide school, in the presentation of local or state
23 approved curriculum;

1 (b) A public library, or museum, which is displaying or
2 distributing any ~~obscene~~ harmful matter to a minor only when the
3 minor was accompanied by his or her parent;

4 (c) A licensed medical or mental health care provider, or
5 judicial or law-enforcement officer, during the course of medical,
6 psychiatric, or psychological treatment or judicial or
7 law-enforcement activities;

8 (d) A person who did not know or have reason to know, and
9 could not reasonably have learned, that the person to whom the
10 ~~obscene~~ harmful matter was distributed or displayed was a minor and
11 who took reasonable measures to ascertain the identity and age of
12 the minor;

13 (e) A person who routinely distributes ~~obscene~~ harmful matter
14 by the use of telephone, computer network or the Internet and who
15 distributes such matter to any minor under the age of eighteen
16 years after the person has taken reasonable measures to prevent
17 access by minors to the ~~obscene~~ harmful matter; or

18 (f) A radio or television station, cable television service or
19 other telecommunications service regulated by the federal
20 communications commission.

21 **§61-8A-4. Use of harmful matter with intent to seduce minor.**

22 Any adult, having knowledge of the character of the matter,
23 who knows that a person is a minor and distributes, offers to

1 distribute or displays by any means any ~~obscene~~ harmful matter to
2 the minor, and such distribution, offer to distribute, or display
3 is undertaken with the intent or for the purpose of facilitating
4 the sexual seduction or abuse of the minor, is guilty of a felony
5 and, upon conviction thereof, shall be fined not more than \$25,000,
6 or confined in a state correctional facility for not more than five
7 years, or both. For a second and each subsequent commission of
8 such offense, such person is guilty of a felony and, upon
9 conviction, shall be fined not more than \$50,000 or confined in a
10 state correctional facility for not more than ten years, or both.

11 **§61-8A-5. Employment or use of minor to produce harmful matter or**
12 **assist in doing sexually explicit conduct; penalties.**

13 Any adult who, with knowledge that a person is a minor or who
14 fails to exercise reasonable care in ascertaining the age of a
15 minor, hires, employs or uses such minor to produce ~~obscene~~ harmful
16 matter or to do or assist in doing any sexually explicit conduct,
17 is guilty of a felony and, upon conviction thereof, shall be fined
18 not more than \$50,000 or confined in a state correctional facility
19 for not more than ten years, or both.

NOTE: The purpose of this bill is to revise the definition of
obscene matter to contain specific matter that is harmful to minors
for the purposes of the article preventing the preparation,
distribution or exhibition of such matter to minors, and to revise

the article to reflect the definitional change.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.