

New Hampshire
TITLE LXII
CRIMINAL CODE
CHAPTER 649-A
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.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-A
CHILD PORNOGRAPHY
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.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-A
CHILD PORNOGRAPHY
Section 649-A:3

649-A:3 Offenses. -

I. A person is guilty of a felony if such person:

(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; or

(e) Knowingly buys, procures, possesses, or controls any visual representation of a child engaging in sexual activity; or

(f) Knowingly brings or causes to be brought into this state any visual representation of a child engaging in sexual activity.

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.

Source. 1983, 448:2. 1991, 27:1, eff. Jan. 1, 1992. 1998, 361:1, eff. Jan. 1, 1999.

TITLE LXII

CRIMINAL CODE

CHAPTER 649-A

CHILD PORNOGRAPHY

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.

TITLE LXII

CRIMINAL CODE

CHAPTER 649-A

CHILD PORNOGRAPHY

Section 649-A:5

649-A:5 Justifiable Dissemination. - It is an affirmative defense to prosecution under this chapter that dissemination was:

I. 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; or

II. Of the same material available in the same or another form in any public library in the state.

Source. 1983, 448:2, eff. Aug. 23, 1983. 1998, 361:2, eff. Jan. 1, 1999.

TITLE LXII

CRIMINAL CODE

CHAPTER 649-B

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:1

649-B:1 Short Title. - This chapter shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1998."

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII

CRIMINAL CODE

CHAPTER 649-B

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:2

649-B:2 Definition. - In this chapter, "child" means any person under the age of 16 years.

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-B
COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:3

649-B:3 Computer Pornography Prohibited. -

I. No person shall knowingly:

- (a) Compile, enter into, or transmit by means of computer;
- (b) Make, print, publish, or reproduce by other computerized means;
- (c) Cause or allow to be entered into or transmitted by means of computer; or
- (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or

advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

II. Any person who violates the provisions of this section is guilty of a class B felony.

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-B
COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:4

649-B:4 Certain Uses of Computer Services Prohibited. - Any person who knowingly utilizes a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any of the following is guilty of a class B felony:

- I. Any offense under RSA 632-A, relative to sexual assault and related offenses.
- II. Indecent exposure and lewdness under RSA 645:1, II; or
- III. Endangering a child, as defined in RSA 639:3.

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-B
COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:5

649-B:5 Owners or Operators of Computer Services Liable. -

I. It shall be a class A misdemeanor for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to commit a violation of this chapter.

II. Any out-of-state computer service company doing business in New Hampshire which receives a subpoena from the state of New Hampshire resulting from an investigation of a violation of this chapter shall respond to such subpoena within 14 days. Failure to respond may result in the suspension or revocation of such company's right to do business in New Hampshire.

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII
CRIMINAL CODE
CHAPTER 649-B
COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Section 649-B:6

649-B:6 State Criminal Jurisdiction. - A person is subject to prosecution for engaging in any conduct proscribed by this chapter within this state, or for engaging in such conduct outside this state if by such

conduct the person commits a violation of this chapter involving a child or an individual the person believes to be a child, residing within this state.

Source. 1998, 361:3, eff. Jan. 1, 1999.

TITLE LXII

CRIMINAL CODE

CHAPTER 650

OBSCENE MATTER

General Provisions

Section 650:1

650:1 Definitions. - In this chapter:

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

II. "Knowledge" means general awareness of the nature of the content of the material.

III. "Material" means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

IV. Material is "obscene" if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive; and

(c) It lacks serious literary, artistic, political or scientific value.

V. "Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

VI. "Sexual conduct" means human masturbation, 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 depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

VII. "Child" means a person under the age of 18.

Source. 1971, 518:1. 1976, 46:3. 1977, 199:3. 1994, 60:1, eff. Jan. 1, 1995.

TITLE LXII

CRIMINAL CODE

CHAPTER 650

OBSCENE MATTER

General Provisions

Section 650:2

650:2 Offenses. -

I. A person is guilty of a misdemeanor if he commits obscenity when, with knowledge of the nature of content thereof, he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene material; or

(b) Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

(c) Publishes, exhibits or otherwise makes available any obscene material; or

(d) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) Sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

II. A person who commits any of the acts specified in subparagraphs (a) through (e) of paragraph I with knowledge that such act involves a child in material deemed obscene pursuant to this chapter is guilty of:

(a) A class B felony if such person has had no prior convictions in this state or another state for the conduct described in this paragraph;

(b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

III. For the second and for each subsequent violation of paragraph I, such person shall be guilty of a class B felony.

Source. 1971, 518:1. 1976, 46:4. 1977, 199:2. 1983, 448:3. 1994, 60:2, eff. Jan. 1, 1995.

TITLE LXII
CRIMINAL CODE
CHAPTER 650
OBSCENE MATTER
General Provisions
Section 650:3

650:3 Exemption. - A motion picture projectionist or motion picture machine operator who is regularly employed by anybody to operate a projecting machine in a public motion picture theatre shall not be guilty of a violation under this chapter because of the picture which is being projected if he is required to project it as part of his employment.

Source. 1971, 518:1, eff. Nov. 1, 1973.

TITLE LXII
CRIMINAL CODE
CHAPTER 650
OBSCENE MATTER
General Provisions
Section 650:4

650:4 Justifiable and Non-Commercial Private Dissemination. - It is an affirmative defense to prosecution under this chapter that dissemination was restricted to:

I. Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

II. Non-commercial dissemination to personal associates of the accused who are not under 18 years of age.

Source. 1971, 518:1, eff. Nov. 1, 1973.

TITLE LXII
CRIMINAL CODE
CHAPTER 650
OBSCENE MATTER
General Provisions
Section 650:5

650:5 Evidence; Adjudication of Obscenity. - In any prosecution under this chapter, evidence shall be admissible to show:

I. The character of the audience for which the material was designed or to which it was directed;

II. What the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed;

III. The degree of public acceptance of the material in this state;

IV. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and

V. The good repute of the author, creator, publisher or other person from whom the material originated;

VI. Expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into determination of the issue of obscenity.

Source. 1971, 518:1. 1976, 46:5, eff. June 1, 1976.

TITLE LXII

CRIMINAL CODE
CHAPTER 650
OBSCENE MATTER
Preliminary Hearing
Section 650:6

650:6 Preliminary Hearing. -

I. No recognized or established school, museum, public library or governmental agency, nor any person acting as an employee or agent of such institution, shall be arrested, charged or indicted for any violation of a provision of this chapter until such time as the material involved has first been the subject of an adversary hearing wherein such institution or person is made a defendant, and, after such material is declared by the court to be obscene matter, such institution or person continues to engage in the conduct prohibited by this chapter. The sole issue at the hearing shall be whether the material is obscene matter.

II. The adversary hearing prescribed in paragraph I of this section may be initiated only by complaint of the county attorney or the attorney general. Hearing on the complaint shall be held in the superior court of the county in which the alleged violation occurs. Notice of the complaint and of the hearing shall be given by registered mail or personal service. The notice shall state the nature of the violation, the date, place and time of the hearing, and the right to present and cross-examine witnesses. In addition to the defendant, any other interested party may appear at the hearing in opposition to the complaint and may present and cross-examine witnesses. For the purposes of this paragraph, the term "interested party" includes, but is not limited to the manufacturer of the material alleged to be harmful to minors.

III. The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this chapter subsequent to notice of the judgment finding the material to be obscene matter shall be subject to criminal prosecution notwithstanding the appeal from the judgment.

Source. 1979, 397:2, eff. Aug. 22, 1979.

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