

Tennessee

37-1-601. Prevention of child sexual abuse deemed priority of state - Comprehensive approach - Purpose and construction of part.

(a) The incidence of child sexual abuse has a tremendous impact on the victimized child, siblings, family structure, and inevitably on all citizens of this state, and has caused the general assembly to determine that the prevention of child sexual abuse shall be a priority of this state. To further this end, it is the intent of the general assembly that a comprehensive approach for the detection, intervention, prevention and treatment of child sexual abuse be developed for the state and that this planned, comprehensive approach be used as a basis for funding.

(b) The purpose of this part shall be the same as that of part 4 of this chapter, and, except as may be expressly herein provided, the provisions of this part shall not be construed as repealing any provisions of part 4 of this chapter or of any other statute, but shall be supplementary thereto and cumulative thereof.

[Acts 1985, ch. 478, § 2; 1987, ch. 145, § 1.]

39-13-504. Aggravated sexual battery.

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

[Acts 1989, ch. 591, § 1; 1993, ch. 289, § 1.]

39-17-901. Part definitions.

The following definitions apply in this part, unless the context requires otherwise:

(1) "Actual or constructive knowledge": a person is deemed to have constructive knowledge of the contents of material who has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material;

(2) "Community" means the judicial district, as defined in § 16-2-506, in which a violation is alleged to have occurred;

(3) "Distribute" means to transfer possession of, whether with or without consideration;

(4) "Excess violence" means the depiction of acts of violence in such a graphic and/or bloody manner as to exceed common limits of custom and candor, or in such a manner that it is apparent that the predominant appeal of the material is portrayal of violence for violence's sake;

(5) "Final judgment" or "conviction" means all direct appeals have been exhausted including an application for appeal or for certiorari to the Tennessee or United States supreme court;

(6) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse when the matter or performance:

(A) Would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) Taken as whole lacks serious literary, artistic, political or scientific values for minors;

(7) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture film, videocassette or other pictorial representation, or any statue, figure, device, theatrical production or electrical reproduction, or any other article, equipment, machine or material that is obscene as defined by §§ 39-17-901 - 39-17-917;

(8) "Minor" means any person who has not reached eighteen (18) years of age and is not emancipated;

(9) "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;

(10) "Obscene" means:

(A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;

(B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and

(C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(11) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(12) "Prurient interest" means a shameful or morbid interest in sex;

(13) "Sadomasochistic abuse" means flagellation or torture or physical restraint by or upon a person for the purpose of sexual gratification of either person;

(14) "Sexual conduct" means:

(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. A sexual act is simulated when it depicts explicit sexual activity which gives the appearance of ultimate sexual acts, anal, oral or genital. "Ultimate sexual acts" means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy; or

(B) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals; and

(15) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

[Acts 1989, ch. 591, § 1; 1990, ch. 1092, §§ 1-3.]

39-17-1002. Definitions.

The following definitions apply in §§ 39-17-1002 - 39-17-1007 unless the context requires otherwise:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction; or

(C) Any text or image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval;

(3) "Minor" means any person who has not reached eighteen (18) years of age;

(4) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(5) "Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise;

(6) "Prurient interest" means a shameful or morbid interest in sex;

(7) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sado-masochistic abuse including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals or pubic area of any person.

[Acts 1990, ch. 1092, § 7; 1995, ch. 216, § 1; 1999, ch. 343, §§ 1-4; 2001, ch. 147, § 1.]

39-17-1003. Sexual exploitation of a minor.

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) In a prosecution under this section, the trier of fact may infer that a participant is a minor if the material through its title, text, visual representation or otherwise represents or depicts the participant as a minor.

(c) A violation of this section is a Class E felony.

[Acts 1990, ch. 1092, § 7.]

39-17-1004. Aggravated sexual exploitation of a minor.

(a) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) In a prosecution under this subsection (a), the trier of fact may infer that a participant is a minor if the material through its title, text, visual representation or otherwise represents or depicts the participant as a minor.

(3) A violation of this subsection (a) is a Class C felony.

(b) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material which is obscene, as defined in § 39-17-901(10), or possess with the intent to promote, sell, distribute, transport, purchase or exchange such material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) In a prosecution under this subsection (b), the trier of fact may infer that a participant is a minor if the material through its title, text, visual representation or otherwise represents or depicts the participant as a minor.

(3) A violation of this subsection (b) is a Class B felony.

[Acts 1990, ch. 1092, § 7.]

39-17-1005. Especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance or in the production of material which includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) In a prosecution under this section, the trier of fact may infer that a participant is a minor if the material through its title, text, visual representation or otherwise represents or depicts the participant as a minor.

(c) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution under § 39-13-502, for aggravated rape or § 39-13-504, for aggravated sexual battery.

[Acts 1990, ch. 1092, § 7.]

39-17-1005. Especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance or in the production of material which includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) In a prosecution under this section, the trier of fact may infer that a participant is a minor if the material through its title, text, visual representation or otherwise represents or depicts the participant as a minor.

(c) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution under § 39-13-502, for aggravated rape or § 39-13-504, for aggravated sexual battery.

[Acts 1990, ch. 1092, § 7.]

39-17-1007. Issuance of process.

No process except as otherwise provided shall be issued for the violation of §§ 39-17-1003 - 39-17-1005 unless it is issued upon the application of the district attorney general of the district.

[Acts 1990, ch. 1092, § 7.]

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