

Utah

76-5a-1. Legislative determinations -- Purpose of chapter.

The Legislature of Utah determines that the sexual exploitation of minors is excessively harmful to their physiological, emotional, social, and mental development; that minors cannot intelligently and knowingly consent to sexual exploitation; that regardless of whether it is classified as legally obscene, material that sexually exploits minors is not protected by the First Amendment of the United States Constitution or by the First or Fifteenth sections of Article I of the Utah Constitution and may be prohibited; and that prohibition of and punishment for the distribution, possession, possession with intent to distribute, and production of materials that sexually exploit minors is necessary and justified to eliminate the market for those materials and to reduce the harm to the minor inherent in the perpetuation of the record of his sexually exploitive activities. It is the purpose of this chapter to prohibit the production, possession, possession with intent to distribute, and distribution of materials which sexually exploit minors, regardless of whether the materials are classified as legally obscene.

Amended by Chapter 226, 1985 General Session

76-5a-2. Definitions.

As used in this chapter:

(1) "Child pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child pornography with or without consideration.

(3) "Identifiable minor":

(a) means a person:

(i) (A) who was a minor at the time the visual depiction was created, adapted, or modified; or

(B) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature; and

(b) does not require proof of the actual identity of the identifiable minor.

(4) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

(5) "Minor" means a person younger than 18 years of age.

(6) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(7) "Produce" means the photographing, filming, taping, directing, producing, creating, designing, or composing of child pornography or the securing or hiring of persons to engage in the production of child pornography.

(8) "Sexually explicit conduct" means actual or simulated:

(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) masturbation;

(c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals or pubic area of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

- (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- (h) the explicit representation of the defecation or urination functions.

(9) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

76-5a-3. Sexual exploitation of a minor -- Offenses.

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person knowingly produces, distributes, possesses, or possesses with intent to distribute, child pornography; or

(b) if the person is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a).

(2) Sexual exploitation of a minor is a felony of the second degree.

(3) It is a separate offense under this section:

(a) for each minor depicted, and if more than one minor is depicted in the child pornography in violation of this section, the depiction of each individual minor in the child pornography is a separate offense; and

(b) each time the same minor is depicted in different child pornography.

(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

Amended by Chapter 176, 2001 General Session

76-5a-4. Determination whether material violates chapter.

In determining whether material is in violation of this chapter, the material need not be considered as a whole, but may be examined by the trier of fact in part only. It is not an element of the offense of sexual exploitation of a minor that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

Amended by Chapter 226, 1985 General Session

=====
=====