

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 08-0894.01 Michael Dohr

SENATE BILL 08-125

SENATE SPONSORSHIP

Harvey, Penry, Cadman, Johnson, Kopp, Mitchell S., Renfroe, Schultheis, and Wiens

HOUSE SPONSORSHIP

Stephens, and Gardner C.

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF SEXUALLY EXPLICIT REPRESENTATIONS**
102 **THAT ARE HARMFUL TO MINORS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Recognizes the state's interest in protecting children from access to certain sexually explicit materials, and specifies that the general assembly's intent is to prohibit access to these materials by children without unconstitutionally inhibiting access by adults. Specifically allows municipalities to adopt ordinances concerning sexually explicit materials or performances that are harmful to minors.

Specifies criteria for determining whether material or a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 ADOPT ORDINANCES CONCERNING MATERIALS OR PERFORMANCES THAT
2 ARE HARMFUL TO MINORS.

3 **18-7-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "MATERIAL" MEANS A PICTURE, DRAWING, VIDEO OR DIGITAL
6 RECORDING, FILM, BOOK, MAGAZINE, OR OTHER WRITTEN OR ELECTRONIC
7 DEPICTION, DESCRIPTION, OR REPRESENTATION.

8 (2) "MINOR" MEANS A PERSON WHO IS YOUNGER THAN EIGHTEEN
9 YEARS OF AGE AND WHO IS NOT MARRIED OR JUDICIALLY EMANCIPATED.

10 (3) "NUDITY" MEANS THE SHOWING OF:

11 (a) UNCOVERED, OR LESS THAN OPAQUELY COVERED, HUMAN
12 GENITALS, PUBIC AREAS, OR BUTTOCKS OR THE NIPPLE OR ANY PORTION OF
13 THE AREOLA OF THE HUMAN FEMALE BREAST; OR

14 (b) COVERED HUMAN MALE GENITALS IN A DISCERNIBLY TURGID
15 STATE.

16 (4) "PERFORMANCE" MEANS A LIVE EXHIBITION WITH ITS PRIMARY
17 PURPOSE BEING FOR THE AUDIENCE'S SEXUAL GRATIFICATION.

18 (5) "SEXUAL ACTIVITY" MEANS ANY OF THE FOLLOWING ACTS:

19 (a) MASTURBATION, WHETHER PERFORMED ALONE OR WITH
20 ANOTHER HUMAN OR AN ANIMAL;

21 (b) VAGINAL, ANAL, OR ORAL INTERCOURSE, WHETHER
22 PERFORMED WITH ANOTHER HUMAN OR WITH AN ANIMAL;

23 (c) TOUCHING, IN AN ACT OF APPARENT SEXUAL STIMULATION OR
24 SEXUAL ABUSE, OF THE CLOTHED OR UNCLOTHED GENITALS, PUBIC AREAS,
25 OR BUTTOCKS OF ANOTHER PERSON OR THE CLOTHED OR UNCLOTHED
26 BREASTS OF A HUMAN FEMALE;

27 (d) TORTURE, PHYSICAL RESTRAINT BY BEING FETTERED OR

1 BOUND, OR FLAGELLATION THAT IS INTENDED TO DEPICT SEXUAL
2 STIMULATION OR SEXUAL ABUSE;

3 (e) EXCRETORY FUNCTIONS THAT ARE INTENDED AS AN ACT OF
4 APPARENT SEXUAL STIMULATION OR SEXUAL ABUSE; OR

5 (f) THE INSERTION OF ANY PART OF A PERSON'S BODY OR OF ANY
6 OBJECT INTO ANOTHER PERSON'S ANUS OR VAGINA, EXCEPT WHEN DONE
7 AS PART OF A GENERALLY RECOGNIZED MEDICAL PROCEDURE.

8 **18-7-503. Harmful to minors - standard.** (1) A MATERIAL OR
9 PERFORMANCE IS DEEMED HARMFUL TO MINORS IF THE MATERIAL OR
10 PERFORMANCE DEPICTS NUDITY OR SEXUAL ACTIVITY AND IF THE
11 MATERIAL OR PERFORMANCE, WHEN TAKEN AS A WHOLE, MEETS THE
12 FOLLOWING CRITERIA:

13 (a) A REASONABLE ADULT PERSON WOULD FIND THAT THE
14 MATERIAL OR PERFORMANCE HAS A PREDOMINANT TENDENCY TO APPEAL
15 TO THE PRURIENT INTEREST OF MINORS; AND

16 (b) A REASONABLE ADULT PERSON WOULD FIND THAT THE
17 DEPICTION OF NUDITY OR SEXUAL ACTIVITY IN THE MATERIAL OR
18 PERFORMANCE IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS IN THE
19 ADULT COMMUNITY CONCERNING WHAT IS SUITABLE FOR MINORS; AND

20 (c) A REASONABLE ADULT PERSON WOULD FIND THAT THE
21 MATERIAL OR PERFORMANCE LACKS SERIOUS LITERARY, ARTISTIC,
22 POLITICAL, OR SCIENTIFIC VALUE FOR MINORS.

23 **18-7-504. Disseminating material or exhibiting a performance**
24 **that is harmful to minors - penalty.** (1) A PERSON COMMITS THE
25 OFFENSE OF DISSEMINATING MATERIAL THAT IS HARMFUL TO MINORS IF,
26 WITH OR WITHOUT FINANCIAL OR OTHER CONSIDERATION AND KNOWING
27 THE CHARACTER OR CONTENT OF THE MATERIAL, THE PERSON:

1 (a) SELLS, FURNISHES, PRESENTS, OR DISTRIBUTES TO A MINOR ANY
2 MATERIAL THAT IS HARMFUL TO MINORS; OR

3 (b) ALLOWS A MINOR TO REVIEW OR PERUSE ANY MATERIAL THAT
4 IS HARMFUL TO MINORS.

5 (2) A PERSON COMMITS THE OFFENSE OF EXHIBITING A
6 PERFORMANCE THAT IS HARMFUL TO MINORS IF, WITH OR WITHOUT
7 FINANCIAL OR OTHER CONSIDERATION AND KNOWING THE CHARACTER OR
8 CONTENT OF THE PERFORMANCE, THE PERSON ALLOWS A MINOR TO VIEW
9 A LIVE PERFORMANCE THAT IS HARMFUL TO MINORS.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
11 SUBSECTION (4) OF THIS SECTION, A MISTAKE AS TO A MINOR'S AGE IS NOT
12 A DEFENSE TO PROSECUTION UNDER THIS SECTION.

13 (4) IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER THIS
14 SECTION THAT:

15 (a) THE DEFENDANT IS A PARENT OR LEGAL GUARDIAN OF THE
16 MINOR; OR

17 (b) BEFORE DISSEMINATING OR EXHIBITING ANY MATERIAL OR
18 PERFORMANCE THAT IS HARMFUL TO MINORS, THE DEFENDANT REQUESTED
19 AND RECEIVED A DRIVER'S LICENSE, STUDENT IDENTIFICATION CARD, OR
20 OTHER DOCUMENT INDICATING THAT THE MINOR TO WHOM THE MATERIAL
21 OR PERFORMANCE WAS DISSEMINATED OR EXHIBITED WAS AT LEAST
22 EIGHTEEN YEARS OF AGE AND THE DEFENDANT REASONABLY BELIEVED
23 THE MINOR WAS AT LEAST EIGHTEEN YEARS OF AGE; OR

24 (c) THE DISSEMINATION OR EXHIBITION WAS MADE WITH THE PRIOR
25 CONSENT OF A PARENT OR LEGAL GUARDIAN OF THE MINOR; OR

26 (d) THE DEFENDANT WAS A TEACHER ACTING IN THE COURSE OF
27 HIS OR HER DUTY TEACHING REQUIRED MATERIAL IN A SCHOOL OR SCHOOL

1 DISTRICT; OR

2 (e) THE DEFENDANT WAS A SUBSTITUTE TEACHER ACTING IN THE
3 COURSE OF HIS OR HER DUTY TEACHING THE MATERIAL PROVIDED TO THE
4 SUBSTITUTE TEACHER.

5 (5) THE AFFIRMATIVE DEFENSES IN PARAGRAPHS (a), (c), (d), OR
6 (e) OF SUBSECTION (4) OF THIS SECTION SHALL NOT APPLY TO A
7 DEFENDANT THAT IS CHARGED WITH AN UNLAWFUL SEXUAL BEHAVIOR
8 OFFENSE AS DESCRIBED IN SECTION 16-22-102 (9), C.R.S., IN ADDITION TO
9 A CHARGE UNDER THIS SECTION OR TO A DEFENDANT THAT IS REQUIRED TO
10 REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 16-22-103, C.R.S.

11 (6) DISSEMINATING MATERIAL THAT IS HARMFUL TO MINORS OR
12 EXHIBITING A PERFORMANCE THAT IS HARMFUL TO MINORS IS A CLASS 2
13 MISDEMEANOR. EACH INDIVIDUAL DISSEMINATION OF MATERIAL THAT IS
14 HARMFUL TO MINORS AND EACH EXHIBITION OF A PERFORMANCE THAT IS
15 HARMFUL TO MINORS IS A SEPARATE OFFENSE.

16 **18-7-505. Severability.** IF ANY PROVISION OF THIS PART 5 OR THE
17 APPLICATION THEREOF TO A PERSON OR CIRCUMSTANCE IS HELD INVALID,
18 SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OF THIS PART 5
19 THAT MAY BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
20 APPLICATION. TO THIS END, THE PROVISIONS OF THIS PART 5 ARE
21 DECLARED TO BE SEVERABLE.

22 **SECTION 2. Effective date - applicability.** This act shall take
23 effect July 1, 2008, and shall apply to offenses committed on or after said
24 date.

25 **SECTION 3. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.