

Reference: Applicable Laws

Title LXII - CRIMINAL CODE

Chapter 649-A - CHILD PORNOGRAPHY

Section 649-A:1 - Declaration of Findings and Purposes.

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.

649-A:2 Definitions. – In this chapter:

I. "Child" means any person under the age of 18 years.

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

III. "Sexually explicit conduct" 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, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, 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 such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or

(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or

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

V. (a) "Identifiable child" means a person:

(1) Who was a child at the time the visual depiction was created, adapted, or modified; or

(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and
(3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(b) The term "identifiable child" shall not be construed to require proof of the actual identity of the identifiable child.

VI. "Previous conviction" or "previously convicted" means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

Source. 1983, 448:2, eff. Aug. 23, 1983. 2008, 323:1, eff. Jan. 1, 2009.

649-A:3-a Distribution of Child Sexual Abuse Images. –

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II. (a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

Source. 2008, 323:2, eff. Jan. 1, 2009.

649-A:3-b Manufacture of Child Sexual Abuse Images. –

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

Source. 2008, 323:2, eff. Jan. 1, 2009.

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.

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. 1998, 361:2, eff. Jan. 1, 1999.

649-A:6 Proving Age of Child. – Whether a child depicted in a visual representation is a minor for the purposes of this chapter is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.

Source. 2008, 323:3, eff. Jan. 1, 2009.

649-A:7 Discovery. –

- I. In any criminal proceeding, any material that constitutes a visual representation of a child engaging in or being engaged in sexually explicit conduct shall remain in the care, custody, and control of the state or the court.
- II. The state shall provide ample opportunity for the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in anticipation of criminal litigation or for preparation for trial, to inspect, view, and examine the property or material at a state facility.
- III. Upon a defense motion or by agreement of the parties establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in anticipation of criminal litigation or for preparation for trial. The court protective order shall require that all such material or property provided to the defense be kept secure against theft and inadvertent disclosure to any other person and be maintained in a manner which deters copying or dissemination. Any person either handling or viewing such material or property shall sign a non-disclosure agreement agreeing to refrain from copying or publishing any visual representation of a child engaging in or being engaged in sexually explicit conduct. Any person who views any of the images shall certify in writing that he or she has not knowingly kept any material or property which would qualify as an image of child sexual abuse under state or federal law, and that all materials, property, and signed non-disclosure agreements shall be returned to the state at the end of the case.

Source. 2008, 323:3, eff. Jan. 1, 2009.

2014 New Hampshire Revised Statutes

Title LXII - CRIMINAL CODE

Chapter 649-A - CHILD PORNOGRAPHY

Section 649-A:3 - Possession of Child Sexual Abuse Images.

Universal Citation: [NH Rev Stat § 649-A:3 \(2014\)](#)

649-A:3 Possession of Child Sexual Abuse Images. –

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

Source. 1983, 448:2. 1991, 27:1. 1998, 361:1, eff. Jan. 1, 1999. 2008, 323:1, eff. Jan. 1, 2009.

Title XV - EDUCATION

Chapter 186 - THE STATE SCHOOL ORGANIZATION

Section 186:11 - Duties of State Board of Education.

IX-b. Health and Sex Education. Require school districts to adopt a policy allowing an exception to a particular unit of health or sex education instruction based on religious objections. Such policy shall include a provision for alternative learning sufficient to enable the child to meet state requirements for health education.

IX-c. Require school districts to adopt a policy allowing an exception to specific course material based on a parent's or legal guardian's determination that the material is objectionable. Such policy shall include a provision requiring the parent or legal guardian to notify the school principal or designee in writing of the specific material to which they object and a provision requiring an alternative agreed upon by the school district and the parent, at the parent's expense, sufficient to enable the child to meet state requirements for education in the particular subject area. The name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the material shall not be public information and shall be excluded from access under RSA 91-A.

From: Julie P [mailto:impressionsandesign@gmail.com]

Sent: Sunday, December 11, 2022 9:54 PM

To: Jap2

Subject:

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.

City of Dover law is as follows.

The full description is in the link below:

<https://ecode360.com/32591354>

ADULT BOOK, MAGAZINE OR VIDEO

Any book, pamphlet, magazine, video, printed matter or electronic media, however reproduced, which contains any matter enumerated in RSA 571-B:2, I(a), or explicit and detailed verbal descriptions or narrative accounts of sexual conduct and which, taken as a whole, is harmful to minors.

[Amended 2-12-2020 by Ord. No. 2020.01.08-001]

HARMFUL TO MINORS

That quality of any description or representation in whatever form of sexual conduct when it:

A. Predominantly appeals to the prurient interest of minors in sex, that is, an interest in lewdness or lascivious thoughts;

B. Depicts or describes sexual conduct in a manner so explicit as to be patently offensive to contemporary adult standards in the community with respect to what is suitable material for minors; and

C. Lacks serious literary, artistic, political or scientific value.

MINOR Any person under the age of 18 years.

SEXUAL CONDUCT

Human masturbation, sexual intercourse, actual or simulated, normal or perverted, or any touching of the genitals, pubic areas or buttocks of the human male or female or the breasts of the female, 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 sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

§ 41-3 Display of merchandise.

Any person, firm or corporation knowingly offering for sale adult books and/or magazines shall display them on shelves, book racks or other display devices at a height of no less than 60 inches from the floor level immediately in front of the display racks or shelves or, in the absence of shelves or book racks, having a minimum shelf height of 60 inches; adult books and magazines shall be displayed on shelves behind the operator or the sales register or checkout counter, and any adult book or magazine cover thereof containing pictures, photographs or drawings of a person or portion of the human body, which depicts sexual conduct and which, taken as a whole, is harmful to minors, shall not be open to public view.