
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1019 Session of
1987

INTRODUCED BY CALTAGIRONE, TRELLO AND FOX, APRIL 7, 1987

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 7, 1987

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, revising provisions relating to
3 obscene and other sexual materials.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 5903 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 5903. Obscene and other sexual materials.

9 (a) Offenses defined.--No person, knowing the obscene
10 character of the materials involved, shall:

11 [(1) display or cause or permit the display of any
12 explicit sexual materials as defined in subsection (c) in or
13 on any window, showcase, newsstand, display rack, billboard,
14 display board, viewing screen, motion picture screen, marquee
15 or similar place in such manner that the display is visible
16 from any public street, highway, sidewalk, transportation
17 facility or other public thoroughfare, or in any business or
18 commercial establishment where minors, as a part of the

1 general public or otherwise, are or will probably be exposed
2 to view all or any part of such materials;

3 (2)] (1) sell, lend, distribute, exhibit, give away or
4 show any obscene materials to any person 17 years of age or
5 older or offer to sell, lend, distribute, exhibit or give
6 away or show, or have in his possession with intent to sell,
7 lend, distribute, exhibit or give away or show any obscene
8 materials to any person 17 years of age or older, or
9 knowingly advertise any obscene materials in any manner;

10 [(3)] (2) design, copy, draw, photograph, print, utter,
11 publish or in any manner manufacture or prepare any obscene
12 materials;

13 [(4)] (3) write, print, publish, utter or cause to be
14 written, printed, published or uttered any advertisement or
15 notice of any kind giving information, directly or
16 indirectly, stating or purporting to state where, how, from
17 whom, or by what means any obscene materials can be
18 purchased, obtained or had; or

19 [(5)] (4) hire, employ, use or permit any minor child to
20 do or assist in doing any act or thing mentioned in this
21 subsection.

22 (b) Definitions.--As used in this section the following
23 words and phrases shall have the meanings given to them in this
24 subsection:

25 "Community." For the purpose of applying the "contemporary
26 community standards" in this section, community means the State.

27 "Knowing." As used in subsection (a), knowing means having
28 general knowledge of, or reason to know or a belief or ground
29 for belief which warrants further inspection or inquiry of, the
30 character and content of any material described therein which is

1 reasonably susceptible of examination by the defendant.

2 "Obscene materials." [Any literature, including any book,
3 magazine, pamphlet, newspaper, storypaper, comic book or
4 writing, and any figure, visual representation, or image
5 including any drawing, photograph, picture or motion picture,
6 if:] Any material, whether through pictures, photographs,
7 drawings, writings, cartoons, recordings, films, video tapes,
8 telephonic transmissions or other medium, is "obscene" if the
9 following apply:

10 (1) the average person applying contemporary community
11 standards would find that the subject matter taken as a whole
12 appeals to the prurient interest;

13 (2) the subject matter depicts or describes in a
14 patently offensive way, sexual conduct of a type described in
15 this section; and

16 (3) the subject matter, taken as a whole, lacks serious
17 literary, artistic, political, educational or scientific
18 value.

19 "Prurient." A lascivious, unhealthy, degrading, shameful or
20 morbid interest in sexual conduct, sadomasochistic sexual abuse
21 or lewd exhibition of the genitals. Material may be deemed to
22 appeal to the prurient interest when it is designed, marketed,
23 promoted or disseminated to cater or appeal to such an interest.
24 Where the material is designed for and primarily disseminated or
25 promoted to a clearly defined deviant sexual group, rather than
26 the public at large, the prurient appeal requirement is
27 satisfied if the dominant theme of the material, taken as a
28 whole, appeals to the prurient interest in sex of the members of
29 that intended and probable recipient group.

30 "Sadomasochistic sexual abuse." Actual or simulated

1 flagellation, rape, torture or other physical or sexual abuse,
2 by or upon a person who is nude or partially denuded, or in a
3 condition of being fettered, bound or otherwise physically
4 restrained, for the actual or simulated purpose of sexual
5 gratification or abuse or represented in the context of a sexual
6 relationship.

7 "Sexual conduct." Patently offensive representations or
8 [descriptions of ultimate sexual acts, normal or perverted,
9 actual or simulated, and patently offensive representations or
10 descriptions of masturbation, excretory functions and lewd
11 exhibition of the genitals.] depictions of ultimate sexual acts,
12 normal or perverted, actual or simulated, involving a person or
13 persons, or a person or persons and an animal, including
14 patently offensive representations or depictions of
15 masturbation, excretory functions or products thereof,
16 sadomasochistic sexual abuse or a lewd exhibition of the
17 genitals.

18 "Transportation facility." Any conveyance, premises or place
19 used for or in connection with public passenger transportation,
20 whether by air, rail, motor vehicle or any other method,
21 including aircraft, watercraft, railroad cars, buses, and air,
22 boat, railroad and bus terminals and stations.

23 (c) [Dissemination to minors.--No person shall knowingly
24 disseminate by sale, loan or otherwise explicit sexual materials
25 to a minor. "Explicit sexual materials," as used in this
26 subsection, means materials which are obscene or:] Offenses
27 defined.--No person knowing the sexually explicit character of
28 the materials involved shall:

29 (1) Display or cause or permit the display of any
30 explicit sexual material which is harmful to minors in any

1 window, showcase, newsstand, display rack, billboard, viewing
2 screen, motion picture screen, marquee or similar place in
3 such manner that the display is visible from any public
4 street, highway, sidewalk, transportation facility or other
5 public thoroughfare, or in any business or commercial
6 establishment where minors, as a part of the general public
7 or otherwise, are or will probably be exposed to view all or
8 any part of such material; however, as it pertains to the
9 display of explicit sexual material in newsstands or display
10 racks, a person shall be deemed not to have "displayed"
11 material harmful to minors if the material is kept behind
12 devices commonly known as "blinder racks" so that the lower
13 two-thirds of the material is not exposed to view.

14 (2) Disseminate by sale, loan or otherwise explicit
15 sexual materials to a minor. "Explicit sexual materials," as
16 used in this subsection, includes:

17 [(1)] (i) any picture, photograph, drawing,
18 sculpture, motion picture film, video or similar visual
19 representation or image of a person or portion of the
20 human body which depicts nudity, sexual conduct[,] or
21 sadomasochistic sexual abuse and which is harmful to
22 minors; or

23 [(2)] (ii) any book, pamphlet, magazine, printed
24 matter however reproduced, or sound recording which
25 contains any matter enumerated in [paragraph (1)]
26 subparagraph (i), or sexual explicit and detailed verbal
27 descriptions or narrative accounts of sexual excitement,
28 sexual conduct[,] or sadomasochistic sexual abuse and
29 which, taken as a whole, is harmful to minors.

30 (d) Admitting minor to show.--It shall be unlawful for any

1 person knowingly to exhibit for monetary consideration to a
2 minor or knowingly to sell to a minor an admission ticket or
3 pass or knowingly to admit a minor for a monetary consideration
4 to premises whereon there is exhibited[,] a motion picture show
5 or other presentation which, in whole or in part, depicts
6 nudity, sexual conduct[,] or sadomasochistic abuse and which is
7 harmful to minors, except that the foregoing shall not apply to
8 any minor accompanied by his parent.

9 (e) Definitions.--As used in subsections (c) and (d) of this
10 section:

11 (1) "Minor" means any person under the age of 17 years.

12 (2) "Nudity" means the showing of the human male or
13 female genitals, pubic area[,] or buttocks with less than a
14 fully opaque covering, or the showing of the female breast
15 with less than a fully opaque covering of any portion thereof
16 below the top of the nipple, or the depiction of covered male
17 genitals in a discernibly turgid state.

18 (3) "Prurient" means a lascivious, unhealthy,
19 degrading, shameful or morbid interest in sexual conduct,
20 sexually explicit nudity, sadomasochistic sexual abuse or
21 lewd exhibition of the genitals or homosexual acts. Material
22 may be deemed to appeal to the prurient interest when it is
23 designed, marketed, promoted or disseminated to cater or
24 appeal to such an interest. Where the material is designed
25 for and primarily disseminated or promoted to a clearly
26 defined deviant sexual group, rather than the public at
27 large, the prurient appeal requirement is satisfied if the
28 dominant theme of the material, taken as a whole, appeals to
29 the prurient interest in sex of the members of that intended
30 and probable recipient group.

1 [(3)] (4) "Sexual conduct" means [acts of masturbation,
2 homosexuality, sexual intercourse, or physical contact with a
3 person's clothed or unclothed genitals, pubic area, buttocks
4 or, if such person be a female, breast.] depictions or
5 representations of ultimate sexual acts, normal or perverted,
6 actual or simulated, involving a person or persons, or a
7 person or persons and an animal, including acts of
8 masturbation, sexual intercourse, fellatio, cunnilingus,
9 analingus or physical contact with a person's nude or
10 partially denuded genitals, pubic area, perineum, anal
11 region, or, if such person be a female, a breast, or acts of
12 sadomasochistic sexual abuse or homosexuality.

13 [(4)] (5) "Sexual excitement" means the condition of
14 human male or female genitals when in a state of sexual
15 stimulation or arousal.

16 [(5)] (6) "Sadomasochistic [abuse" means flagellation or
17 torture by or upon a person clad in undergarments, a mask or
18 bizarre costume, or the condition of being fettered, bound or
19 otherwise physically restrained on the part of one so
20 clothed.] sexual abuse" means actual or simulated
21 flagellation, rape, torture or other physical or sexual
22 abuse, by or upon a person who is nude or partially denuded,
23 or in a condition of being fettered, bound or otherwise
24 physically restrained, for the actual or simulated purpose of
25 sexual gratification or abuse or represented in the context
26 of a sexual relationship.

27 [(6)] (7) "Harmful to minors" means that quality of any
28 description or representation, in whatever form, of nudity,
29 sexual conduct, sexual excitement[,] or sadomasochistic
30 abuse, when it:

1 (i) predominantly appeals to the prurient, shameful,
2 or morbid interest of minors; and

3 (ii) is patently offensive to prevailing standards
4 in the adult community as a whole with respect to what is
5 suitable material for minors; and

6 (iii) [is utterly without redeeming social
7 importance for minors.] the subject matter, taken as a
8 whole, lacks serious literary artistic, political,
9 educational or scientific value.

10 [(7)] (8) "Knowingly" means having general knowledge of,
11 or reason to know, or a belief or ground for belief which
12 warrants further inspection or inquiry of both:

13 (i) the character and content of any material
14 described herein which is reasonably susceptible of
15 examination by the defendant; and

16 (ii) the age of the minor: Provided, however, That
17 an honest mistake shall constitute an excuse from
18 liability hereunder if the defendant made a reasonable
19 bona fide attempt to ascertain the true age of such
20 minor.

21 (f) Requiring sale as condition of business dealings.--No
22 person shall knowingly require any distributor or retail seller
23 as a condition to sale or delivery for resale or consignment of
24 any literature, book, magazine, pamphlet, newspaper, storypaper,
25 paper, comic book, writing, drawing, photograph, figure or
26 image, or any written or printed matter, or any article or
27 instrument to purchase or take by consignment for purposes of
28 sale, resale or distribution any obscene literature, book,
29 magazine, pamphlet, newspaper, storypaper, paper, comic book,
30 writing, drawing, photograph, figure or image, or any written or

1 printed matter of an obscene nature or any article or instrument
2 of an obscene nature.

3 (g) [Injunction.--The attorney for the Commonwealth may
4 institute proceedings in equity in the court of common pleas of
5 the county in which any person violates or clearly is about to
6 violate this section for the purpose of enjoining such
7 violation. The court shall issue an injunction only after
8 written notice and hearing and only against the defendant to the
9 action. The court shall hold a hearing within three days after
10 demand by the attorney for the Commonwealth, one of which days
11 must be a business day for the court, and a final decree shall
12 be filed in the office of the prothonotary within 24 hours after
13 the close of the hearing. A written memorandum supporting the
14 decree shall be filed within five days of the filing of the
15 decree. The attorney for the Commonwealth shall prove the
16 elements of the violation beyond a reasonable doubt. The
17 defendant shall have the right to trial by jury at the said
18 hearing.] Injunctive actions.--

19 (1) When there is reason to believe that any person is
20 violating, is about to violate, or is possessing any material
21 with intent to violate any of the provisions of this section,
22 the attorney for the Commonwealth may institute and maintain
23 an action for preliminary and permanent injunctive relief to
24 enjoin the violation in the court of common pleas having
25 jurisdiction. No bond shall be required of the official
26 bringing the action, and the official shall not be liable for
27 costs or damages, other than court costs, by reason of the
28 injunctive orders not being granted or where judgment is
29 entered in favor of the defendant by the trial or an
30 appellate court. A citizen of the county may also bring such

1 an action, but shall post a bond in an amount not less than
2 \$500. Such actions shall be brought in the name of the
3 Commonwealth.

4 (2) The court shall hold the hearing on the preliminary
5 injunction within two days, not counting Saturdays, Sundays
6 or legal holidays, after service of the complaint and motion
7 for preliminary injunction upon the defendants. The court
8 shall then issue an order granting or denying the preliminary
9 injunction within 24 hours after the conclusion of the
10 hearing, regarding the material or performance adjudged
11 obscene or harmful to minors. No right of jury trial shall
12 attach to the hearing on a preliminary injunction, but the
13 duty rests on the plaintiff to prove by clear and convincing
14 evidence that the offense is being or is about to be
15 committed. If the defendants who have been served fail to
16 appear at the hearing, then a preliminary injunction shall be
17 issued on the date of the hearing. The finding of the court
18 regarding the obscenity or that that subject matter is
19 harmful to minors at the preliminary injunction stage shall
20 not be binding upon the final order on the merits at trial on
21 the permanent injunction. The court shall reserve the right
22 to reconsider its preliminary finding based upon any further
23 evidence or testimony which may be introduced at the trial.
24 If the court enters a final order denying a permanent
25 injunction on the basis that the material or performance is
26 not obscene or harmful to minors as a whole, then no contempt
27 shall be found for violation of the preliminary injunction
28 relating thereto.

29 (3) The court shall set the matter for a hearing on the
30 permanent injunction according to the provisions of the rules

1 or other order of court. The defendant shall have the right
2 to demand a hearing on the permanent injunction within ten
3 days of the issue or denial of the preliminary injunction.
4 Either party shall have the right of trial by jury on the
5 issue of the obscenity or harmful to minors nature of the
6 material or performance involved at the hearing for the
7 permanent injunction, and the jury shall render a special and
8 separate verdict as to the nature of the subject matter. The
9 duty rests on the plaintiff to prove by clear and convincing
10 evidence that the offense is being or is about to be
11 committed by the defendants. It shall be the duty of the
12 trier of fact to determine all issues of fact concerning the
13 obscene or harmful to minors nature of the subject matter,
14 including the elements of appeal to prurient interest,
15 community standards, patent offensiveness and serious value,
16 without the need for expert testimony or other evidence other
17 than the material or performance itself. Expert testimony or
18 other evidence on these issues may be entered by either party
19 and will be entitled to such weight as the trier of fact
20 deems appropriate under the circumstances. The court shall
21 then issue an order granting or denying the permanent
22 injunction within five days after the conclusion of the
23 trial, regarding the material or performance adjudged obscene
24 or harmful to minors.

25 (4) In the event that the court issues a permanent
26 injunction, it shall also issue an order directing a law
27 enforcement officer to seize and hold all copies of the
28 subject matter which are in the possession of the defendants.
29 Such material shall be held until the exhaustion of all
30 appellate remedies and may then be disposed of by order of

1 the court.

2 (5) Violation of a preliminary or permanent injunction
3 shall be punishable as contempt of court.

4 (h) Criminal prosecution.--

5 (1) Any person who violates subsection (a) [or (f) is
6 guilty of a misdemeanor of the first degree. Violation of
7 subsection (a) is a felony of the third degree if the
8 offender has previously been convicted of a violation of
9 subsection (a) or if the material was sold, distributed,
10 prepared or published for the purpose of resale], (c)(2) or
11 (f) is guilty of a felony of the third degree.

12 (2) Any person who violates subsection (c)(1) or (d) is
13 guilty of a misdemeanor of the first degree. Violation of
14 subsection (c)(1) or (d) is a felony of the third degree if
15 the offender has previously been convicted of a violation of
16 subsection (c)(1) or (d).

17 (3) Findings made in an equity action shall not be
18 binding in the criminal proceedings.

19 (i) Right to jury trial.--The right to trial by jury shall
20 be preserved in all proceedings under this section.

21 (j) Exemptions.--Nothing in this section shall apply to any
22 recognized historical society or museum accorded charitable
23 status by the Federal Government, any county, city, borough,
24 township or town library, any public library, any library of any
25 school, college or university or any archive or library under
26 the supervision and control of the Commonwealth or a political
27 subdivision.

28 (k) Ordinances or resolutions.--Nothing in this chapter
29 shall be construed to invalidate, supersede, repeal or preempt
30 any ordinance or resolution of any political subdivision insofar

1 as it is consistent with this chapter, and political
2 subdivisions further retain the right to regulate any
3 activities, displays, exhibitions or materials not specifically
4 regulated by this chapter.

5 Section 2. This act shall take effect in 60 days.