

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 739 Session of
1997

INTRODUCED BY ARMSTRONG, WOGAN, MICOZZIE, BAKER, CLARK, OLASZ,
BIRMELIN, CLYMER, DeLUCA, LYNCH, MAITLAND, LEH, GEIST,
HENNESSEY, ROHRER, HESS, STERN, E. Z. TAYLOR, HERSHEY, BROWN,
HUTCHINSON, TRELLO, COY, SCHRODER, PHILLIPS, WOJNAROSKI,
BARRAR, TRUE, SCHULER, STRITTMATTER, EGOLF, FLEAGLE, YEWCIC,
BARLEY AND ZIMMERMAN, MARCH 11, 1997

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 11, 1997

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for obscenity.

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

5 Section 1. Section 5903(b), (h) and (j) of Title 18 of the
6 Pennsylvania Consolidated Statutes are amended to read:

7 § 5903. Obscene and other sexual materials and performances.

8 * * *

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

12 "Community." For the purpose of applying the "contemporary
13 community standards" in this section, community means [the
14 State] the political subdivision from which persons are drawn to
15 serve as jurors in a criminal proceeding.

16 "Knowing." As used in subsection (a), knowing means having

1 general knowledge of, or reason to know or a belief or ground
2 for belief which warrants further inspection or inquiry of, the
3 character and content of any material or performance described
4 therein which is reasonably susceptible of examination by the
5 defendant.

6 "Material." Any literature, including any book, magazine,
7 pamphlet, newspaper, storypaper, bumper sticker, comic book or
8 writing; any figure, visual representation, or image, including
9 any drawing, photograph, picture, videotape or motion picture.

10 "Nude." Means showing the human male or female genitals,
11 pubic area or buttocks with less than a fully opaque covering,
12 or showing the female breast with less than a fully opaque
13 covering of any portion thereof below the top of the nipple.

14 "Obscene." Any material or performance, if:

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

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

21 (3) the subject matter, taken as a whole, lacks serious
22 literary, artistic, political[, educational] or scientific
23 value.

24 "Performance." Means any play, dance or other live
25 exhibition performed before an audience.

26 "Sadomasochistic abuse." Means, in a sexual context,
27 flagellation or torture by or upon a person who is nude or clad
28 in undergarments, a mask or in a bizarre costume or the
29 condition of being fettered, bound or otherwise physically
30 restrained on the part of one who is nude or so clothed.

1 "Sexual conduct." Patently offensive representations or
2 descriptions of ultimate sexual acts, normal or perverted,
3 actual or simulated, including sexual intercourse, anal or oral
4 sodomy and sexual bestiality; and patently offensive
5 representations or descriptions of masturbation, excretory
6 functions, sadomasochistic abuse and lewd exhibition of the
7 genitals.

8 "Transportation facility." Any conveyance, premises or place
9 used for or in connection with public passenger transportation,
10 whether by air, rail, motor vehicle or any other method,
11 including aircraft, watercraft, railroad cars, buses, and air,
12 boat, railroad and bus terminals and stations.

13 * * *

14 (h) Criminal prosecution.--

15 (1) Any person who violates subsection (a), (c), (d) or
16 (f) is guilty of a [misdemeanor of the first degree] felony
17 of the third degree. [Violation of subsection (a) is a felony
18 of the third degree if the offender has previously been
19 convicted of a violation of subsection (a) or if the material
20 was sold, distributed, prepared or published for the purpose
21 of resale.]

22 (2) [Any person who violates subsection (c) or (d) is
23 guilty of a misdemeanor of the first degree. Violation of
24 subsection (c) or (d) is a felony of the third degree if the
25 offender has previously been convicted of a violation of
26 subsection (c) or (d).]

27 (3)] Findings made in an equity action shall not be
28 binding in the criminal proceedings.

29 * * *

30 (j) Exemptions.--

1 (1) Nothing in this section shall apply to any
2 recognized historical society or museum accorded charitable
3 status by the Federal Government, any county, city, borough,
4 township or town library, any public library, any library of
5 any school, college or university or any archive or library
6 under the supervision and control of the Commonwealth or a
7 political subdivision.

8 (2) This section shall not apply to the curriculum or
9 materials of any public school district or to the curriculum,
10 materials or courses of any accredited institution of higher
11 education.

12 * * *

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