

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 70

Session of
1977

INTRODUCED BY MESSRS. M. P. MULLEN, RENWICK, MRKONIC, C. GEORGE, DOMBROWSKI, FEE, LETTERMAN, YAHNER, BENNETT, GARZIA, LAUGHLIN, KLINGAMAN, CIMINI, McCLATCHY, MACKOWSKI, RUGGIERO, POLITE, KOLTER, DeMEDIO, PRATT, ARTHURS, MUSTO, MRS. GILLETTE, MESSRS. BELLOMINI, BRUNNER, DOYLE, GALLAGHER, S. E. HAYES JR., VALICENTI, TRELLO, PITTS, GIAMMARCO, ZITTERMAN, SALVATORE, ZELLER, VROON, LOGUE, A. C. FOSTER JR., HAMILTON, GOEBEL AND FISCHER, FEBRUARY 7, 1977

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 23, 1977

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further defining the offense of
3 obscenity, redefining obscene, and further providing for <—
4 injunctions, FURTHER PROVIDING CRIMINAL SANCTIONS AGAINST THE <—
5 SEXUAL EXPLOITATION OF CHILDREN, AND PROHIBITING THE
6 TRANSPORTATION OF CERTAIN MATERIALS RELATING TO THE SEXUAL
7 EXPLOITATION OF CHILDREN.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Subsections (a), (b), (c) and (h) of section 5903 <—~~
11 ~~of Title 18, act of November 25, 1970 (P.L.707, No.230), known~~
12 ~~as the Pennsylvania Consolidated Statutes, are amended and a~~
13 ~~subsection is added to read:~~

14 ~~§ 5903. Obscenity.~~

15 ~~(a) Offenses defined. Whoever knowing the obscene character~~
16 ~~of the material involved:~~

17 ~~(1) sells, lends, distributes, exhibits, gives away or~~

~~shows to any person 17 years of age or older or offers to sell, lend, distribute, exhibit or give away or show, or has in his possession with intent to sell, lend, distribute or give away or to show to any person 17 years of age or older, or [knowingly] advertises in any manner any obscene literature, motion picture, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of an obscene nature, or [whoever]~~

~~(2) designs, copies, draws, photographs, prints, utters, publishes or in any manner manufactures or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, figure, image, matter, article or thing or [whoever]~~

~~(3) writes, prints, publishes or utters or causes to be printed, published or uttered, any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, or whom, or by what means any obscene book, picture, writing, paper, comic book, figure, image, matter, article or thing named in this section can be purchased, obtained or had, or [whoever]~~

~~(4) hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section,~~

~~is guilty of a misdemeanor of the second degree. (b) Obscene defined.—"Obscene," as used in this section, means that which [, to the average person applying contemporary community standards, has as its dominant theme, taken as a whole, an appeal to prurient interest.] is determined as~~

~~obscene applying the following guidelines:~~

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

~~(2) whether the subject matter depicts or describes, in a patently offensive way, sexual conduct of a type hereinafter described; and~~

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

~~The types of sexual conduct referred to herein include patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, and patently offensive representations or descriptions of masturbation, sexual conduct such as female and/or male masturbation, fellatio, cunnilingus, anal sodomy, seminal ejaculation, sadomasochistic abuse, heterosexual intercourse and other excretory functions and lewd exhibition of the genitals.~~

~~"Community" for the purpose of applying the "contemporary community standards" herein shall be considered to be the State.~~

~~(c) Minors. It shall be unlawful for any person knowingly to [sell or loan for monetary or other valuable consideration] disseminate explicit sexual material, as hereinafter defined, to a minor, or to display explicit sexual material for sale in an area to which minors have access. "Explicit sexual material," as used in this subsection, means material which is obscene or is:~~

~~(1) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful~~

1 ~~to minors; or~~

2 ~~(2) any book, pamphlet, magazine, printed matter however~~
3 ~~reproduced, or sound recording which contains any matter~~
4 ~~enumerated in paragraph (1) hereof, or explicit and detailed~~
5 ~~verbal descriptions or narrative accounts of sexual~~
6 ~~excitement, sexual conduct, or sadomasochistic abuse and~~
7 ~~which, taken as a whole, is harmful to minors.~~

8 ~~* * *~~

9 ~~(h) Injunction. The district attorney of any county in~~
10 ~~which any person sells, lends, distributes, exhibits, gives away~~
11 ~~or shows, or is about to sell, lend, distribute, exhibit, give~~
12 ~~away or show, or has in his possession with intent to sell,~~
13 ~~resell, lend, distribute, exhibit, give away or show, any~~
14 ~~obscene literature, motion picture, book, magazine, pamphlet,~~
15 ~~newspaper, storypaper, paper, comic book, writing, drawing,~~
16 ~~photograph, figure or image, or any written or printed matter of~~
17 ~~an allegedly obscene nature, or any article or instrument of an~~
18 ~~obscene nature, may institute proceedings in equity in the court~~
19 ~~of common pleas of said county for the purpose of enjoining the~~
20 ~~sale, resale, lending, distribution, exhibit, gift or show of~~
21 ~~such allegedly obscene literature, motion picture, book,~~
22 ~~magazine, pamphlet, newspaper, storypaper, paper, comic book,~~
23 ~~writing, drawing, photograph, figure or image, or any written or~~
24 ~~printed matter of an allegedly obscene nature, or any article or~~
25 ~~instrument of an obscene nature, contrary to the provisions of~~
26 ~~this section, and for such purposes jurisdiction is hereby~~
27 ~~conferred upon said courts. A preliminary injunction may issue~~
28 ~~and a hearing thereafter be held thereon in conformity with the~~
29 ~~Rules of Civil Procedure upon the averment of the district~~
30 ~~attorney that the sale, resale, lending, distribution, exhibit,~~

~~gift or show of such publication or motion picture constitutes a danger to the welfare or peace of the community. Prior to the issuance of a preliminary injunction, sufficient notice of the application for an injunction shall have been given to the party to be enjoined, of the time and place where the application for such preliminary injunction is to be made and the nature thereof. Thereafter the defendant shall have the right to a hearing on whether the preliminary injunction shall be dissolved or made final, within three days of issuance of the preliminary injunction and decision shall be rendered by the court by filing a final decree in the office of the prothonotary within 24 hours of the conclusion of the hearing. The trial judge shall file a written memorandum supporting the final decree within five days after the decree is filed. The defendant, and solely at his option, shall have the right to trial by jury at the aforementioned hearing. Unless the hearing or trial is held and the decision is rendered within the times specified the preliminary injunction so issued shall be deemed dissolved unless the defendant has caused or agreed to the delay. The preliminary injunction may contain a provision directing the defendant to surrender to such peace officer as the court may direct all such obscene materials as may be involved in the offense enjoined and directing the peace officer to destroy such obscene materials at such time as the preliminary injunction becomes permanent and rights of review are exhausted. The district attorney shall not be required to give bond.~~

~~* * *~~

~~(j) Exemptions. Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough,~~

~~township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth, county, municipality or other political subdivision.~~

~~Section 2. The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of this act shall, nevertheless, remain valid, unless the court finds the valid provisions of this act are so essentially and inseparably connected with, and so depend upon, the void provision, that it cannot be presumed the Legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.~~

~~Section 3. This act shall take effect in 60 days.~~

SECTION 1. THE HEADING AND SUBSECTIONS (A), (B), (C),
(E)(6)(III), (G), (H) AND (I) OF SECTION 5903 OF TITLE 18, ACT
OF NOVEMBER 25, 1970 (P.L.707, NO.230), KNOWN AS THE
PENNSYLVANIA CONSOLIDATED STATUTES, ARE AMENDED AND SUBSECTIONS
ARE ADDED TO READ:

§ 5903. [OBSCENITY.] OBSCENE AND OTHER SEXUAL MATERIALS.

[(A) OFFENSES DEFINED.--WHOEVER SELLS, LENDS, DISTRIBUTES,
EXHIBITS, GIVES AWAY OR SHOWS TO ANY PERSON 17 YEARS OF AGE OR
OLDER OR OFFERS TO SELL, LEND, DISTRIBUTE, EXHIBIT OR GIVE AWAY
OR SHOW, OR HAS IN HIS POSSESSION WITH INTENT TO SELL, LEND,
DISTRIBUTE OR GIVE AWAY OR TO SHOW TO ANY PERSON 17 YEARS OF AGE
OR OLDER, OR KNOWINGLY ADVERTISES IN ANY MANNER ANY OBSCENE
LITERATURE, BOOK, MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER,
PAPER, COMIC BOOK, WRITING, DRAWING, PHOTOGRAPH, FIGURE OR

1 IMAGE, OR ANY WRITTEN OR PRINTED MATTER OF AN OBSCENE NATURE, OR
2 ANY ARTICLE OR INSTRUMENT OF AN OBSCENE NATURE, OR WHOEVER
3 DESIGNS, COPIES, DRAWS, PHOTOGRAPHS, PRINTS, UTTERS, PUBLISHES
4 OR IN ANY MANNER MANUFACTURES OR PREPARES ANY SUCH BOOK,
5 PICTURE, DRAWING, MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER,
6 PAPER, COMIC BOOK, WRITING, FIGURE, IMAGE, MATTER, ARTICLE OR
7 THING OR WHOEVER WRITES, PRINTS, PUBLISHES OR UTTERS OR CAUSES
8 TO BE PRINTED, PUBLISHED OR UTTERED, ANY ADVERTISEMENT OR NOTICE
9 OF ANY KIND GIVING INFORMATION, DIRECTLY OR INDIRECTLY, STATING
10 OR PURPORTING TO STATE WHERE, HOW, OR WHOM, OR BY WHAT MEANS ANY
11 OBSCENE BOOK, PICTURE, WRITING, PAPER, COMIC BOOK, FIGURE,
12 IMAGE, MATTER, ARTICLE OR THING NAMED IN THIS SECTION CAN BE
13 PURCHASED, OBTAINED OR HAD, OR WHOEVER HIRES, EMPLOYS, USES OR
14 PERMITS ANY MINOR OR CHILD TO DO OR ASSIST IN DOING ANY ACT OR
15 THING MENTIONED IN THIS SECTION, IS GUILTY OF A MISDEMEANOR OF
16 THE SECOND DEGREE.

17 (B) OBSCENE DEFINED.--"OBSCENE," AS USED IN THIS SECTION,
18 MEANS THAT WHICH, TO THE AVERAGE PERSON APPLYING CONTEMPORARY
19 COMMUNITY STANDARDS, HAS AS ITS DOMINANT THEME, TAKEN AS A
20 WHOLE, AN APPEAL TO PRURIENT INTEREST.

21 (C) MINORS.--IT SHALL BE UNLAWFUL FOR ANY PERSON KNOWINGLY
22 TO SELL OR LOAN FOR MONETARY OR OTHER VALUABLE CONSIDERATION TO
23 A MINOR:]

24 (A) PUBLIC DISPLAY OF OBSCENE MATERIALS.--NO PERSON, KNOWING
25 THE OBSCENE CHARACTER OF THE MATERIALS INVOLVED, SHALL DISPLAY
26 OR CAUSE OR PERMIT THE DISPLAY OF ANY OBSCENE MATERIALS IN OR ON
27 ANY WINDOW, SHOWCASE, NEWSSTAND, DISPLAY RACK, BILLBOARD,
28 DISPLAY BOARD, VIEWING SCREEN, MOTION PICTURE SCREEN, MARQUEE OR
29 SIMILAR PLACE IN SUCH MANNER THAT THE DISPLAY IS VISIBLE FROM
30 ANY PUBLIC STREET, HIGHWAY, SIDEWALK, TRANSPORTATION FACILITY OR

1 OTHER PUBLIC THOROUGHFARE. ANY PERSON WHO VIOLATES THE
2 PROVISIONS OF THIS SUBSECTION COMMITS A MISDEMEANOR OF THE
3 SECOND DEGREE.

4 (B) DEFINITIONS.--AS USED IN THIS SECTION THE FOLLOWING
5 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
6 SUBSECTION:

7 "COMMUNITY." FOR THE PURPOSE OF APPLYING THE "CONTEMPORARY
8 COMMUNITY STANDARDS" IN THIS SECTION, COMMUNITY MEANS THE STATE.

9 "KNOWING." AS USED IN SUBSECTION (A), KNOWING MEANS HAVING
10 GENERAL KNOWLEDGE OF, OR REASON TO KNOW OR A BELIEF OR GROUND
11 FOR BELIEF WHICH WARRANTS FURTHER INSPECTION OR INQUIRY OF, THE
12 CHARACTER AND CONTENT OF ANY MATERIAL DESCRIBED THEREIN WHICH IS
13 REASONABLY SUSCEPTIBLE OF EXAMINATION BY THE DEFENDANT.

14 "OBSCENE MATERIALS." ANY LITERATURE, INCLUDING ANY BOOK,
15 MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER, COMIC BOOK OR
16 WRITING, AND ANY FIGURE, VISUAL REPRESENTATION, OR IMAGE
17 INCLUDING ANY DRAWING, PHOTOGRAPH, PICTURE OR MOTION PICTURE,
18 IF:

19 (1) THE AVERAGE PERSON APPLYING CONTEMPORARY COMMUNITY
20 STANDARDS WOULD FIND THAT THE SUBJECT MATTER TAKEN AS A WHOLE
21 APPEALS TO THE PRURIENT INTEREST; AND

22 (2) THE SUBJECT MATTER DEPICTS OR DESCRIBES IN A
23 PATENTLY OFFENSIVE WAY, SEXUAL CONDUCT OF A TYPE DESCRIBED IN
24 THIS SECTION; AND

25 (3) THE SUBJECT MATTER, TAKEN AS A WHOLE, LACKS SERIOUS
26 LITERARY, ARTISTIC, POLITICAL, EDUCATIONAL OR SCIENTIFIC
27 VALUE.

28 "SEXUAL CONDUCT." PATENTLY OFFENSIVE REPRESENTATIONS OR
29 DESCRIPTIONS OF ULTIMATE SEXUAL ACTS, NORMAL OR PERVERTED,
30 ACTUAL OR SIMULATED, AND PATENTLY OFFENSIVE REPRESENTATIONS OR

1 DESCRIPTIONS OF MASTURBATION, SEXUAL CONDUCT SUCH AS FEMALE
2 AND/OR MALE MASTURBATION, FELLATIO, CUNILINGUS, ANAL SODOMY,
3 SEMINAL EJACULATION, SADOMASOCHISTIC ABUSE, HETEROSEXUAL
4 INTERCOURSE AND OTHER EXCRETORY FUNCTIONS AND LEWD EXHIBITION OF
5 THE GENITALS.

6 "TRANSPORTATION FACILITY." ANY CONVEYANCE, PREMISES OR PLACE
7 USED FOR OR IN CONNECTION WITH PUBLIC PASSENGER TRANSPORTATION,
8 WHETHER BY AIR, RAIL, MOTOR VEHICLE OR ANY OTHER METHOD,
9 INCLUDING AIRCRAFT, WATERCRAFT, RAILROAD CARS, BUSES, AND AIR,
10 BOAT, RAILROAD AND BUS TERMINALS AND STATIONS.

11 (C) DISSEMINATION TO MINORS.--NO PERSON SHALL KNOWINGLY
12 DISSEMINATE BY SALE, LOAN, OR OTHERWISE EXPLICIT SEXUAL
13 MATERIALS TO A MINOR. "EXPLICIT SEXUAL MATERIALS," AS USED IN
14 THIS SUBSECTION, MEANS MATERIALS WHICH ARE OBSCENE AS DEFINED IN
15 SUBSECTION (B) OR:

16 (1) ANY PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION
17 PICTURE FILM, OR SIMILAR VISUAL REPRESENTATION OR IMAGE OF A
18 PERSON OR PORTION OF THE HUMAN BODY WHICH DEPICTS NUDITY,
19 SEXUAL CONDUCT, OR SADOMASOCHISTIC ABUSE AND WHICH IS HARMFUL
20 TO MINORS; OR

21 (2) ANY BOOK, PAMPHLET, MAGAZINE, PRINTED MATTER HOWEVER
22 REPRODUCED, OR SOUND RECORDING WHICH CONTAINS ANY MATTER
23 ENUMERATED IN [CLAUSE] PARAGRAPH (1) [HEREOF], OR EXPLICIT
24 AND DETAILED VERBAL DESCRIPTIONS OR NARRATIVE ACCOUNTS OF
25 SEXUAL EXCITEMENT, SEXUAL CONDUCT, OR SADOMASOCHISTIC ABUSE
26 AND WHICH, TAKEN AS A WHOLE, IS HARMFUL TO MINORS.

27 * * *

28 (E) DEFINITIONS.--AS USED IN SUBSECTIONS (C) AND (D) [OF
29 THIS SECTION]:

30 * * *

1 (6) "HARMFUL TO MINORS" MEANS THAT QUALITY OF ANY
2 DESCRIPTION OR REPRESENTATION, IN WHATEVER FORM, OF NUDITY,
3 SEXUAL CONDUCT, SEXUAL EXCITEMENT, OR SADOMASOCHISTIC ABUSE,
4 WHEN IT:

5 (I) PREDOMINANTLY APPEALS TO THE PRURIENT, SHAMEFUL,
6 OR MORBID INTEREST OF MINORS; AND

7 (II) IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS
8 IN THE ADULT COMMUNITY AS A WHOLE WITH RESPECT TO WHAT IS
9 SUITABLE MATERIAL FOR MINORS[; AND

10 (III) IS UTTERLY WITHOUT REDEEMING SOCIAL IMPORTANCE
11 FOR MINORS].

12 * * *

13 [(G) REQUIRING SALE.--A PERSON WHO KNOWINGLY REQUIRES ANY
14 DISTRIBUTOR OR RETAIL SELLER AS A CONDITION TO SALE OR DELIVERY
15 FOR RESALE OR CONSIGNMENT OF ANY LITERATURE, BOOK, MAGAZINE,
16 PAMPHLET, NEWSPAPER, STORYPAPER, PAPER, COMIC BOOK, WRITING,
17 DRAWING, PHOTOGRAPH, FIGURE OR IMAGE, OR ANY WRITTEN OR PRINTED
18 MATTER OF AN OBSCENE NATURE, OR ANY ARTICLE OR INSTRUMENT OF AN
19 OBSCENE NATURE TO PURCHASE OR TAKE BY CONSIGNMENT FOR PURPOSES
20 OF SALE, RESALE, OR DISTRIBUTION ANY OBSCENE LITERATURE, BOOK,
21 MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER, PAPER, COMIC BOOK,
22 WRITING, DRAWING, PHOTOGRAPH, FIGURE OR IMAGE, OR ANY WRITTEN OR
23 PRINTED MATTER OF AN OBSCENE NATURE OR ANY ARTICLE OR INSTRUMENT
24 OF AN OBSCENE NATURE, IS GUILTY OF A MISDEMEANOR OF THE SECOND
25 DEGREE.

26 (H) INJUNCTION.--THE DISTRICT ATTORNEY OF ANY COUNTY IN
27 WHICH ANY PERSON SELLS, LENDS, DISTRIBUTES, EXHIBITS, GIVES AWAY
28 OR SHOWS, OR IS ABOUT TO SELL, LEND, DISTRIBUTE, EXHIBIT, GIVE
29 AWAY OR SHOW, OR HAS IN HIS POSSESSION WITH INTENT TO SELL,
30 RESELL, LEND, DISTRIBUTE, EXHIBIT, GIVE AWAY OR SHOW, ANY

1 OBSCENE LITERATURE, BOOK, MAGAZINE, PAMPHLET, NEWSPAPER,
2 STORYPAPER, PAPER, COMIC BOOK, WRITING, DRAWING, PHOTOGRAPH,
3 FIGURE OR IMAGE, OR ANY WRITTEN OR PRINTED MATTER OF AN OBSCENE
4 NATURE, OR ANY ARTICLE OR INSTRUMENT OF AN OBSCENE NATURE, MAY
5 INSTITUTE PROCEEDINGS IN EQUITY IN THE COURT OF COMMON PLEAS OF
6 SAID COUNTY FOR THE PURPOSE OF ENJOINING THE SALE, RESALE,
7 LENDING, DISTRIBUTION, EXHIBIT, GIFT OR SHOW OF SUCH OBSCENE
8 LITERATURE, BOOK, MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER,
9 PAPER, COMIC BOOK, WRITING, DRAWING, PHOTOGRAPH, FIGURE OR
10 IMAGE, OR ANY WRITTEN OR PRINTED MATTER OF AN OBSCENE NATURE, OR
11 ANY ARTICLE OR INSTRUMENT OF AN OBSCENE NATURE, CONTRARY TO THE
12 PROVISIONS OF THIS SECTION, AND FOR SUCH PURPOSES JURISDICTION
13 IS HEREBY CONFERRED UPON SAID COURTS. A PRELIMINARY INJUNCTION
14 MAY ISSUE AND A HEARING THEREAFTER BE HELD THEREON IN CONFORMITY
15 WITH THE RULES OF CIVIL PROCEDURE UPON THE AVERMENT OF THE
16 DISTRICT ATTORNEY THAT THE SALE, RESALE, LENDING, DISTRIBUTION,
17 EXHIBIT, GIFT OR SHOW OF SUCH PUBLICATION CONSTITUTES A DANGER
18 TO THE WELFARE OR PEACE OF THE COMMUNITY. THE DISTRICT ATTORNEY
19 SHALL NOT BE REQUIRED TO GIVE BOND.]

20 (G) REQUIRING SALE AS CONDITION OF BUSINESS DEALINGS.--NO
21 PERSON SHALL KNOWINGLY REQUIRE ANY DISTRIBUTOR OR RETAIL SELLER,
22 AS A CONDITION TO SALE OR DELIVERY FOR RESALE OR CONSIGNMENT OF
23 ANY LITERATURE, BOOK, MAGAZINE, PAMPHLET, NEWSPAPER, STORYPAPER,
24 PAPER, COMIC BOOK, WRITING, DRAWING, PHOTOGRAPH, MOTION PICTURE,
25 FIGURE OR IMAGE, RESALE OR DISTRIBUTION ANY OBSCENE MATERIAL OR
26 ANY ARTICLE OR INSTRUMENT OF AN OBSCENE NATURE. ANY PERSON WHO
27 VIOLATES THE PROVISIONS OF THIS SUBSECTION COMMITS A MISDEMEANOR
28 OF THE SECOND DEGREE.

29 (H) INJUNCTION.--THE ATTORNEY FOR THE COMMONWEALTH MAY
30 INSTITUTE PROCEEDINGS IN EQUITY IN THE COURT OF COMMON PLEAS OF

1 THE COUNTY IN WHICH ANY PERSON VIOLATES OR CLEARLY IS ABOUT TO
2 VIOLATE THIS SECTION FOR THE PURPOSE OF ENJOINING SUCH
3 VIOLATION. THE COURT SHALL ISSUE AN INJUNCTION ONLY AFTER
4 WRITTEN NOTICE AND HEARING AND ONLY AGAINST THE DEFENDANT TO THE
5 ACTION. THE COURT SHALL HOLD A HEARING WITHIN THREE DAYS AFTER
6 DEMAND BY THE ATTORNEY FOR THE COMMONWEALTH, ONE OF WHICH DAYS
7 MUST BE A BUSINESS DAY FOR THE COURT, AND A FINAL DECREE SHALL
8 BE FILED IN THE OFFICE OF THE PROTHONOTARY WITHIN 24 HOURS AFTER
9 THE CLOSE OF THE HEARING. A WRITTEN MEMORANDUM SUPPORTING THE
10 DECREE SHALL BE FILED WITHIN FIVE DAYS OF THE FILING OF THE
11 DECREE. THE ATTORNEY FOR THE COMMONWEALTH SHALL PROVE THE
12 ELEMENTS OF THE VIOLATION BEYOND A REASONABLE DOUBT. THE
13 DEFENDANT, AND SOLELY AT HIS OPTION, SHALL HAVE THE RIGHT TO
14 TRIAL BY JURY AT THE SAID HEARING.

15 (I) CRIMINAL PROSECUTION FOR ENJOINED ACTIVITIES.--

16 (1) ANY PERSON WHO VIOLATES SUBSECTION (A) OR (G) AS TO
17 THE MATTERS ENJOINED PURSUANT TO SUBSECTION (H) COMMITS A
18 MISDEMEANOR OF THE SECOND DEGREE.

19 (2) ANY PERSON WHO VIOLATES SUBSECTION (C) OR (D) AS TO
20 MATTERS ENJOINED PURSUANT TO SUBSECTION (H) COMMITS A
21 MISDEMEANOR OF THE FIRST DEGREE.

22 (3) ELEMENTS OF THE OFFENSE SHALL BE DETERMINED DE NOVO
23 AT THE CRIMINAL PROCEEDING AND FINDINGS MADE IN THE EQUITY
24 ACTION SHALL NOT BE BINDING IN THE CRIMINAL PROCEEDINGS.

25 [(I)] (J) RIGHT TO JURY TRIAL.--THE RIGHT TO TRIAL BY JURY
26 SHALL BE PRESERVED IN ALL PROCEEDINGS UNDER THIS SECTION.

27 (K) EXEMPTIONS.--NOTHING IN THIS SECTION SHALL APPLY TO ANY
28 RECOGNIZED HISTORICAL SOCIETY OR MUSEUM ACCORDED CHARITABLE
29 STATUS BY THE FEDERAL GOVERNMENT, ANY COUNTY, CITY, BOROUGH,
30 TOWNSHIP OR TOWN LIBRARY, ANY PUBLIC LIBRARY, ANY LIBRARY OF ANY

1 SCHOOL, COLLEGE OR UNIVERSITY OR ANY ARCHIVE OR LIBRARY UNDER
2 THE SUPERVISION AND CONTROL OF THE COMMONWEALTH OR A POLITICAL
3 SUBDIVISION.

4 SECTION 2. TITLE 18 OF THE ACT IS AMENDED BY ADDING A
5 SECTION TO READ:

6 § 5905. SEXUAL EXPLOITATION OF CHILDREN.

7 (A) DEFINITIONS.--AS USED IN THIS SECTION THE FOLLOWING
8 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
9 SUBSECTION:

10 "CHILD." ANY INDIVIDUAL WHO HAS NOT ATTAINED THE AGE OF 16.

11 "PROHIBITED SEXUAL CONDUCT." THE TERM MEANS AND APPLIES TO
12 ALL FORMS OF SEXUAL INTERCOURSE, AND INTERCOURSE, MASTURBATION,
13 BESTIALITY, SADISM, MASOCHISM, FELLATIO, CUNNILINGUS, ANY OTHER
14 SEXUAL ACTIVITY AND NUDITY WHEN SUCH NUDITY IS TO BE DEPICTED
15 FOR THE PURPOSES OF SEXUAL STIMULATION OR GRATIFICATION OF ANY
16 INDIVIDUAL WHO MAY VIEW SUCH NUDE DEPICTION.

17 (B) ENGAGEMENT IN PROHIBITED SEXUAL ACT.--A PERSON COMMITS A
18 FELONY OF THE FIRST DEGREE IF SUCH PERSON CAUSES OR KNOWINGLY
19 PERMITS ANY CHILD TO ENGAGE IN A PROHIBITED SEXUAL ACT OR IN THE
20 SIMULATION OF A PROHIBITED SEXUAL ACT AND SUCH PERSON KNOWS, HAS
21 REASON TO KNOW OR INTENDS THAT SUCH PROHIBITED ACT MAY BE
22 PHOTOGRAPHED, DRAWING, SKETCHED OR FILMED OR THAT ANY PHOTOGRAPH
23 DRAWING, SKETCH OR FILM DEPICTING SUCH PROHIBITED ACT MAY BE
24 TRANSPORTED, SHIPPED OR MAILED THROUGH INTRASTATE COMMERCE,
25 INTERSTATE COMMERCE OR FOREIGN COMMERCE OR MAY AFFECT INTRASTATE
26 COMMERCE, INTERSTATE COMMERCE OR FOREIGN COMMERCE.

27 (C) DEPICTION OF PROHIBITED SEXUAL ACT.--A PERSON COMMITS A
28 FELONY OF THE FIRST DEGREE IF SUCH PERSON PHOTOGRAPHS, DRAWS,
29 SKETCHES OR FILMS A CHILD ENGAGING IN A PROHIBITED SEXUAL ACT OR
30 IN THE SIMULATION OF A PROHIBITED SEXUAL ACT AND SUCH PERSON

1 KNOWS, HAS REASON TO KNOW OR INTENDS THAT ANY PHOTOGRAPH,
2 DRAWING, SKETCH OR FILM MADE BY SUCH PERSON DEPICTING A
3 PROHIBITED SEXUAL ACT MAY BE TRANSPORTED, SHIPPED OR MAILED
4 THROUGH INTRASTATE COMMERCE, INTERSTATE COMMERCE OR FOREIGN
5 COMMERCE OR MAY AFFECT INTRASTATE COMMERCE, INTERSTATE COMMERCE
6 OR FOREIGN COMMERCE.

7 (D) TRANSPORTATION OF MATERIALS DEPICTING PROHIBITED SEXUAL
8 ACTS.--A PERSON COMMITS A FELONY OF THE THIRD DEGREE IF SUCH
9 PERSON KNOWINGLY TRANSPORTS, SHIPS OR MAILES THROUGH, OR IN ANY
10 MANNER AS TO AFFECT, INTRASTATE COMMERCE, INTERSTATE COMMERCE OR
11 FOREIGN COMMERCE ANY PHOTOGRAPH, DRAWING, SKETCH OR FILM
12 DEPICTING A CHILD ENGAGING IN A PROHIBITED SEXUAL ACT OR IN THE
13 SIMULATION OF A PROHIBITED SEXUAL ACT.

14 (E) DISSEMINATION OF MATERIALS DEPICTING PROHIBITED SEXUAL
15 ACTS.--A PERSON COMMITS A FELONY OF THE FIRST DEGREE IF SUCH
16 PERSON DISTRIBUTES FOR SALE, SELLS OR ATTEMPTS TO SELL IN ANY
17 MANNER ANY PHOTOGRAPH, DRAWING, SKETCH OR FILM WHICH DEPICTS A
18 CHILD ENGAGING IN A PROHIBITED SEXUAL ACT OR THE SIMULATION OF A
19 PROHIBITED SEXUAL ACT AND SUCH MATERIAL WAS TRANSPORTED, SHIPPED
20 OR MAILED THROUGH, OR IN A MANNER AS TO AFFECT INTRASTATE
21 COMMERCE, INTERSTATE COMMERCE, OR FOREIGN COMMERCE.

22 (F) SPECIAL PENALTY ESTABLISHED.--ANY PERSON WHO COMMITS A
23 FELONY OF THE FIRST DEGREE AS PROVIDED IN THIS SECTION SHALL BE
24 SENTENCED TO PAY A FINE OF NOT LESS THAN \$25,000 NOR MORE THAN
25 \$50,000 AND A TERM OF IMPRISONMENT OF NOT LESS THAN 10 YEARS NOR
26 MORE THAN 20 YEARS.

27 SECTION 3. THE PROVISIONS OF THIS ACT SHALL BE SEVERABLE. IF
28 ANY PROVISION OF THIS ACT IS FOUND BY A COURT OF RECORD TO BE
29 UNCONSTITUTIONAL AND VOID, THE REMAINING PROVISIONS OF THIS ACT
30 SHALL, NEVERTHELESS, REMAIN VALID, UNLESS THE COURT FINDS THE

1 VALID PROVISIONS OF THIS ACT ARE SO ESSENTIALLY AND INSEPARABLY
2 CONNECTED WITH, AND SO DEPEND UPON, THE VOID PROVISION, THAT IT
3 CANNOT BE PRESUMED THE LEGISLATURE WOULD HAVE ENACTED THE
4 REMAINING VALID PROVISIONS WITHOUT THE VOID ONE; OR UNLESS THE
5 COURT FINDS THE REMAINING VALID PROVISIONS, STANDING ALONE, ARE
6 INCOMPLETE AND ARE INCAPABLE OF BEING EXECUTED IN ACCORDANCE
7 WITH THE LEGISLATIVE INTENT.

8 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.