



“Obscenity” and “Materials Harmful to Minors” State Criminal Laws with Exemptions for Schools and Libraries

Obscenity is “unprotected speech” under the First Amendment.¹ As a result, government can restrict and even punish obscenity using criminal laws and other restrictions.

Every state makes it a crime to provide “obscene” or “harmful material” to minors, and defines these terms. Every state also establishes the consequences or punishment. If you are wondering how this content is allowed in schools, it is because the vast majority of states give schools and/or libraries broad exemptions or defenses to these criminal laws.² Most of these exemptions were implemented in the 1960’s and 70’s when public schools started teaching sex education. Yet, they are *huge* loopholes that allow schools and libraries to give sexualized content to children that, if your neighbor gave it, they could be charged with a crime and potentially locked-up.

Unfortunately, no one has made a serious legal challenge to obscenity exemptions based on their constitutional rights. Nonetheless, state obscenity laws are still enforced and may be the basis for a criminal complaint against those who initiate the harmful content. If you believe you have a basis for a criminal obscenity complaint, immediately contact the police and/or an attorney in your jurisdiction. For assistance finding an attorney, you can contact your state’s bar association. Please act immediately because time limitations called statutes of limitations may apply to your situation.

For more on challenging obscenity exemptions see Brolly, Kelly, “*Laws, Rules, and Rights: A Guide to Protecting Children in Public Schools*,” Double Umbrella Publications, LLC (2023), pp. 56-62 and Appendix A for the citations to various state obscenity laws and exemptions. For more information on obscenity exemptions, see Kelly’s podcast on ThinQ Media titled [“The Informed Parent.”](#)

AL: Obscenity – [Ala. Code §§ 13A-12-200.1 to 13A-12-200.12](#); Material Harmful to Minors – [13A-12-200.5](#); Affirmative Defenses – [13A-12-200.4](#); **AK:** [AK Stat § 11.61.128](#); No Exemptions; **AZ:** Material Harmful to Minors – [AZ Rev Stat § 13-3506](#); No Exemptions; **AR:** Obscenity – [AR Code §§ 5-68-301 to 5-68-308](#); Defenses – [AR Code § 5-68-308](#); **CA:** Obscenity and Harmful Matter – [CA Penal Code §§ 313 to 313.5](#); Defense – [CA Penal Code § 313.3](#); **CO:** Materials Harmful to Minors – [CO Rev Stat §§ 18-7-501 to 18-7-5-4](#); Exemption – [18-7-503](#); **CT:** Obscenity – [CT Gen Stat §§ 53a-193 to 53a-196](#); Defenses – [53a-195](#); **DE:** Obscenity – [11 DE Code §§ 1361 to](#)

¹ *Roth v. U.S.*, 354 U.S. 476 (1957) (holding that obscenity is unprotected speech); *Ginsburg v. New York*, 390 U.S. 629 (1968) (holding that states may use a different definition of obscenity for material deemed harmful to minors than the definition of obscenity for adults). Unprotected speech also includes: false or deceptive advertising (*Bd. of Tr. of State Univ. of New York v. Fox*, 492 U.S. 469 (1989)), fighting words (*Bd. of Tr. of State Univ. of New York v. Fox*, 492 U.S. 469 (1989)), and defamation (using state tort laws).

² Reisman, Judith A., and McAlister, Mary E., “Materials Deemed Harmful to Minors Are Welcomed into Classrooms and Libraries via Educational “Obscenity Exemptions,” *Liberty University Law Review*, Vol 12: Iss. 3, Article 3, 2018.

[1365](#); Defenses – [11 DE Code § 1362](#); **FL**: Obscenity – [FL Stat § 847.001 to 847.202](#); Exemption for “approved instructional materials” – [FL Stat § 847.012\(5\)](#); **GA**: Harmful Material – [O.C.G.A. § 16-12-103](#); Exceptions – [O.C.G.A. § 16-12-104](#); **HI**: Promoting Pornography, Exemptions – [HI Rev Stat § 712-1215](#); **ID**: Harmful Material – [ID Code §§ 18-1513 to 18-1517](#); Defenses – [ID Code § 18-1517](#); **IL**: Obscenity and Affirmative Defenses – [720 ILCS 5/ Sec. 11-20\(f\)](#); **IN**: Crimes, Obscenity – [IN Code § 35-49-3-3](#); Defenses – [IN Code § 35-49-3-4](#); **IA**: Obscenity – [IA Code §§ 728.1 to 728.15](#); Defenses – [728.7](#); **KS**: Obscenity to Minors and Defenses – [KS Stat § 21-6401](#); **KY**: Pornography – [KY Rev Stat § 531](#); Exemptions – [KY Rev Stat § 531.070](#); **LA**: Obscenity and Exemptions – [LA Rev Stat § 14:106\(D\)\(1\)](#); **ME**: Obscenity to Minors and Exemptions – [17 ME Rev Stat § 2911\(2\)](#); **MD**: Obscenity – [MD Crim Law Code Ann § 11-201 to 211](#); Exemption – [MD Crim Law Code Ann § 11-210](#); **MA**: Obscenity, Defenses – [MA Gen L ch 272 § 29](#); and [272 § 31](#); **MI**: Obscenity – [MI Comp L §§ 751.361 to 370](#); [752.365](#); Exemptions – [752.367](#); **MN**: Obscenity – [MN Stat § 617.293](#); and [617.294](#); Definitions – [617.292](#); Exemptions [617.295](#); **MS**: Morals & Decency – [MS Code §§ 97-29-101 to 97-29-109](#); Exemption – [97-101-107](#); **MO**: Promoting Obscenity – [MO Rev Stat § 573.020](#); No exemptions; **MT**: Obscenity, Minors – [MT Code § 45-8-201](#); and [45-8-206](#); Exemptions for school employees largely removed in 2023 by HB 234, which follows the growing trend to impose criminal penalties on school employees who disseminate “materials deemed harmful to minors”; **NE**: Obscenity to Minors – [NE Code §§ 28-807 et seq.](#); [28-808](#); Defenses – [28-815\(1\)](#); **NV**: Crimes, Obscenity – [NV Rev Stat §§ 201.015 et seq](#); Exemptions – [201.237](#); **NH**: Obscenity – [NH Rev Stat §§ 650:1 to 650:6](#); Exemptions – [650:4](#); **NJ**: Obscenity for Persons Under 18 – [NJ Rev Stat § 2C:34-3](#); No Exemption; **NM**: [NM Stat §§ 30-37-1 to 30-37-5](#); Exclusions, Defenses – [§ 30-37-5](#); **NY**: Obscenity to Minors – [NY Educ L § 235](#); Defenses – [NY Educ L § 235.15\(1\)](#); **NC**: Harmful Material to Minors – [NC Gen Stat §§ 14-190.13 to 14-190.20](#); Defenses – [14-190.15\(c\)\(2\)](#); **ND**: Obscenity – [N.D.C.C. §§ 12.1-27.1](#); Exceptions – [12.1-27.1-11](#); **OH**: Obscenity, Defenses – [Ohio Rev Code § 2907.31 to 2907.31\(B\)](#); **OK**: Materials Harmful to Minors – [21 OK Stat § 1040.76](#); **OR**: Harmful Materials – [OR Rev Stat §§ 167.057 to .105](#); Defenses – [167.085\(2\)](#); **PA**: Obscenity – [18 PA Cons Stat § 5903](#); Exemptions – [5903\(j\)](#); **RI**: [RI Gen L § 11-31-10](#); Affirmative Defenses – [11-31-16](#); **SC**: Harmful Material to Minors, Exemption – [SC Code § 16-15-375 to 16-15385\(c\)\(2\)](#); **SD**: Obscenity – [SD Codified L §§ 22-24-27 to 22-24-30](#); Defenses – [22-24-31\(4\)](#); **TN**: Obscene Material to Minors, and Exceptions – [TN Code § 39-17-901 to 39-17-902\(e\)](#); **TX**: Obscenity, Harmful Material, Defenses – [TX Penal Code § 43.235](#); Defenses repealed September 2025 with SB 412; **UT**: Harmful Materials to Minors – [UT Code §§ 76-5c-105 to 76-5c-211](#); Defenses – [76-5c-109](#); [UT Code § 76-5c-211](#) – Making it a crime to deactivate a pornography device filter on a minor’s device); **VT**: Obscenity – [13 V.S.A. §§ 2801 - 2813](#); Presumption & Defense – [§ 2805](#); **VA**: Obscenity – [VA Code §§ 18.2-372 to 18.2-389](#); Exceptions to Crimes – [18.2-383](#); **WA**: Crimes, Obscenity – [WA Rev Code §§ 9.68.015 to 9.68.900](#); Exemptions – [WA Rev Code § 9.68.015](#); **WV**: Obscenity, Minors – [WV Code §§ 61-8A-1 to 61-8A-7](#); Exemptions – [61-8A-3](#); **WI**: Obscenity, Exemption – [WI Stat. § 994.21\(8\)\(b\)](#); **WY**: Obscenity, Exemption – [WY Stat. § 6-4-302](#).

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