

MATERIAL HARMFUL TO MINORS - AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott N. Howell

AN ACT RELATING TO CRIMINAL LAW; AMENDING PROVISIONS REGARDING SEXUAL OFFENSES AGAINST MINORS AND MATERIAL HARMFUL TO MINORS; AND MAKING TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-1206, as last amended by Chapter 164, Laws of Utah 1997

76-10-1212, as enacted by Chapter 92, Laws of Utah 1977

76-10-1213, as enacted by Chapter 92, Laws of Utah 1977

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-1206** is amended to read:

76-10-1206. Dealing in material harmful to a minor.

(1) A person is guilty of dealing in [~~harmful~~] material harmful to minors when, knowing that a person is a minor, or having failed to exercise reasonable care in ascertaining the proper age of a minor, he:

(a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a minor any [~~harmful~~] material harmful to [~~a minor~~] minors;

(b) intentionally produces, presents, or directs any performance before a minor, that is harmful to minors; or

(c) intentionally participates in any performance before a minor, that is harmful to minors.

(2) Each separate offense under this section is a third degree felony punishable by a minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days. This section supersedes Section 77-18-1.

(3) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than \$5,000

plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than one year. This section supersedes Section 77-18-1.

Section 2. Section **76-10-1212** is amended to read:

76-10-1212. Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.

(1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant [~~so~~as] to afford the magistrate the opportunity to examine this material.

(2) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by [~~such~~] other manner or means that he [~~deems~~] finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.

(3) [~~In the event that~~] (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within [~~10~~] ten days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.

(b) The magistrate shall set a hearing within seven days after the filing of this notice, or at [~~such other~~] another time [~~as~~] to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.

(c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.

(d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.

(e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.

(4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it ~~shall~~ may not be returned.

(5) (a) Procedures under this section for the seizure of allegedly pornographic material ~~shall be~~ or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state. ~~[Nothing contained in this]~~

(b) This section ~~shall~~ does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state ~~[of Utah]~~.

Section 3. Section **76-10-1213** is amended to read:

76-10-1213. Corporate defendants -- Summons -- Subpoena duces tecum.

(1) (a) The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic or harmful to minors, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or harmful to minors or ~~[in such other]~~ by another manner or means the magistrate ~~[deems]~~ finds necessary.

(b) Where practical, the material alleged to be pornographic or harmful to minors shall be

attached to the affidavit so as to afford the magistrate the opportunity to examine this material.

(c) The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier, or assistant cashier ~~[thereof]~~ of the corporation.

(2) The production of material alleged to be pornographic or harmful to minors in any proceedings under this part against a corporation may be compelled by the issuance and service of a subpoena duces tecum. ~~[It is not the intent of this]~~ This section ~~[to]~~ does not prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.