

**Superseded 7/1/2021**

**76-10-1204 Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.**

- (1) A person is guilty of distributing pornographic material when the person knowingly:
  - (a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;
  - (b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;
  - (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;
  - (d) writes, creates, or solicits the publication or advertising of pornographic material;
  - (e) promotes the distribution or exhibition of material the person represents to be pornographic;  
or
  - (f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.
- (2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.
- (3) It is a separate offense under this section for:
  - (a) each day's exhibition of any pornographic motion picture film; and
  - (b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (4)
  - (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
    - (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
    - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.
  - (b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
  - (c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
  - (d) Subsection (4)(a) supersedes Section 77-18-1.
- (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).
- (6)
  - (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:
    - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
      - (A) transmitting or routing data from one person to another person; or
      - (B) providing a connection between one person and another person;
    - (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and
    - (iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

- (b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
  - (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
  - (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
  - (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.