

**Effective 5/7/2025**

**Part 1**  
**General Provisions**

**76-5c-101 Definitions.**

As used in this chapter:

- (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.
- (2) "Constructive awareness" means that:
  - (a) a reasonable inspection or observation by an individual under the circumstances would have disclosed the nature of the subject matter; and
  - (b) a failure to inspect or observe by the individual is either for the purpose of avoiding the disclosure or the individual is criminally negligent.
- (3) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.
- (4) "Criminally negligent" means the same as that term is defined in Section 76-2-103.
- (5) "Distribute" means to transfer possession of a material with or without consideration.
- (6) "Exhibit" means to show.
- (7)
  - (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:
    - (i) taken as a whole, appeals to the prurient interest in sex of minors;
    - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
    - (iii) taken as a whole, does not have serious value for minors.
  - (b) Serious value includes only serious literary, artistic, political, or scientific value for minors.
- (8) "Knowingly," regarding material or a performance, means an awareness, whether actual awareness or constructive awareness, of the character of the material or performance.
- (9)
  - (a) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication.
  - (b) "Material" includes undeveloped photographs, molds, printing plates, and other latent representational objects.
- (10) "Minor" means an individual younger than 18 years old.
- (11) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.
- (12) "Nudity" means:
  - (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;
  - (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
  - (c) the depiction of covered male genitals in a discernibly turgid state.
- (13) "Performance" means any physical human bodily activity, whether engaged in alone or with other individuals, including singing, speaking, dancing, acting, simulating, or pantomiming.
- (14) "Pornographic" means:

- (a) the average individual, applying contemporary community standards, finds that, taken as a whole, the material or performance appeals to prurient interest in sex;
  - (b) the material or performance is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and
  - (c) taken as a whole the material or performance does not have serious literary, artistic, political, or scientific value.
- (15) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.
- (16) "Sadomasochistic abuse" means:
- (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
  - (b) the condition of being fettered, bound, or otherwise physically restrained on the part of an individual clothed as described in Subsection (14)(a).
- (17) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of an individual's clothed or unclothed genitals, pubic area, buttocks, or, if the individual is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.
- (18) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-102 Evidence related to a material's or performance's literary, artistic, political, or scientific value.**

- (1) In a prosecution under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the actor for the sake of the matter's prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which the matter is used, the matter has no serious literary, artistic, political, or scientific value.
- (2) In a prosecution under this chapter neither the prosecution or the defense is required to introduce expert witness testimony to testify as to whether a material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-103 Relation to other state and local laws.**

- (1)
  - (a) A county, city, or other political subdivision has the right to regulate pornographic materials or materials harmful to minors as this chapter does not proscribe or limit the regulation of pornographic materials or materials harmful to minors by a county, city, or other political subdivision.
  - (b) Without limitation, a political subdivision may further regulate pornographic materials or materials harmful to minors by ordinances relating to:
    - (i) zoning;
    - (ii) licensing;

- (iii) public nuisances;
  - (iv) a specific type of business such as adult bookstores or drive-in movies; or
  - (v) use of blinder racks.
- (2) This chapter does not preclude the application of other laws of this state to pornographic materials or materials harmful to minors and, without limitation, this chapter is not in derogation of Subsection 76-9-1301(2) and Section 76-9-1306.
- (3)
- (a) The commission of a crime under this chapter offends public decency under Subsection 76-9-1301(2).
  - (b) It is the intent of this chapter to give the broadest meaning permissible under the United States Constitution and the Utah Constitution to the words "offends public decency" in Subsection 76-9-1301(2).

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-104 Injunctive relief -- Jurisdiction -- Consent to be sued.**

- (1)
- (a) Subject to Subsections (1)(b), (c), (d), and (e), a district court has full power, authority, and jurisdiction, upon application by any county attorney or city attorney within the county attorney's or city attorney's respective jurisdictions or the attorney general, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this chapter.
  - (b) No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined.
  - (c) The person sought to be enjoined is entitled to a trial of the issues commencing within three days after the day on which the answer to the complaint is filed and a decision by the court is required to be rendered within two days after the conclusion of the trial.
  - (d) If a final order or judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any pornographic material in the person's possession which is subject to the injunction.
  - (e) The sheriff receiving the material described in Subsection (1)(d) shall be directed to seize and destroy the material.
- (2) Any person not qualified to do business in the state who sends or brings any pornographic material into the state with the intent to distribute or exhibit the pornographic material to others in this state consents that the person may be sued in any proceedings commenced under this section.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-105 Lease void if property used for conduct prohibited by chapter.**

- (1) If a tenant or occupant of real property uses the real property for an activity for which the tenant or occupant or tenant's or occupant's employee is convicted under any provision of this chapter, the conviction makes void the lease or other title under which the tenant or occupant holds at the option of the fee owner or any intermediate lessor.
- (2) Subject to Subsection (3), ten days after the day on which the fee owner or intermediate lessor gives notice in writing to the tenant or occupant that the fee owner or intermediate lessor is

- exercising the option to void the lease or other title as described in Subsection (1), the right of possession to the property reverts to the fee owner or intermediate lessor exercising the option.
- (3) The fee owner's or intermediate lessor's option described in Subsection (2) does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or the tenant's or occupant's employee.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-106 Corporate defendants -- Summons -- Subpoena duces tecum.**

- (1)
- (a) The attendance in court by a corporation for purposes of commencing or prosecuting a criminal action against the corporation under this chapter may be accomplished by the issuance and service of a summons issued by a magistrate if the magistrate finds probable cause that material in the possession of the corporation 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 by another manner or means the magistrate finds necessary.
- (b) Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit described in Subsection (1)(a) to provide the magistrate with the opportunity to examine the material.
- (c) The summons must be served upon the corporation by delivery of the summons to an officer, director, managing or general agent, or cashier, or assistant cashier of the corporation.
- (2) The production of material alleged to be pornographic or harmful to minors in any proceedings under this chapter against a corporation may be compelled by the issuance and service of a subpoena duces tecum.
- (3) This section does not prohibit or limit the use of a subpoena duces tecum in proceedings against individuals under this chapter.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-107 Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.**

- (1)
- (a) An affidavit for a search warrant shall be filed with a magistrate describing with specificity the material sought to be seized.
- (b) Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for a search warrant described in Subsection (1)(a) to provide the magistrate with the opportunity to examine the material.
- (2)
- (a) Upon the filing of an affidavit for a search warrant under Subsection (1), 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 another manner or means that the magistrate 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.
- (b) Upon making the determination that probable cause exists under Subsection (2)(a), the magistrate 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)
  - (a) If a search warrant is issued under Subsection (2) and the 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 the material at the time of the material's seizure may file a notice in writing with the magistrate within 10 days after the day on which the material was seized, to assert that the material is not pornographic or harmful to minors.
  - (b) The magistrate shall set a hearing within seven days after the filing of the notice described in Subsection (3)(a), or at another time with the consent of the claimant, at which evidence may be presented regarding whether there is probable cause to believe that the material seized is pornographic or harmful to minors.
  - (c)
    - (i) At the conclusion of the hearing described in Subsection (3)(b), the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.
    - (ii) The magistrate's determination described in Subsection (3)(c)(i) shall be rendered by the court within two days after the day on which the hearing described in Subsection (3)(b) concludes.
  - (d) If at the hearing described in Subsection (3)(b) the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, the material shall be returned to the person 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 the claimant, the court shall allow the film to be copied at the claimant's expense pending the hearing described in Subsection (3)(b).
- (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 the property may not be returned.
- (5)
  - (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.
  - (b) This section 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.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-108 Prosecution by county, district, or city attorney.**

- (1) Subject to Subsection (2), a prosecution for a violation of this chapter, including for a felony violation, shall be brought by the county attorney or, if within a prosecution district, the district attorney of the county where the violation occurs.
- (2) If a violation occurs in a city of the first or second class, a prosecution may be brought by the county attorney, district attorney, or city attorney, notwithstanding any provision of law limiting the powers of a city attorney.
- (3) All fines imposed for a violation of this chapter shall be paid to the county or city where the prosecuting attorney is located.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-109 Affirmative defenses.**

- (1) It is an affirmative defense to a prosecution under this chapter that the distribution of pornographic material is restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.
- (2) It is not a defense to a prosecution under this chapter that the actor is a motion picture projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate this chapter incident to the actor's employment.

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**76-5c-110 Exemptions to chapter.**

- (1) This chapter does not apply to the Department of Corrections or any treatment program by or under contract with the Department of Corrections when the use of material that is pornographic is limited to the assessment or treatment of an offender as defined in Section 64-13-1.
- (2) A woman breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a violation of this chapter, irrespective of whether the woman's breast is covered during or incidental to feeding.

Renumbered and Amended by Chapter 173, 2025 General Session

**76-5c-111 Severability clause.**

- (1) If any provision, part, section, or subsection of this chapter or the application of any provision, part, section, or subsection to any person or circumstance is held invalid by a final decision of a court, the remainder of this chapter shall be given effect without the invalid provision, part, section, or subsection or application.
- (2) The provisions of this chapter are severable.

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