

Representative David L. Hogue proposes to substitute the following bill:

**PENALTY FOR EXPOSING MINORS TO
SEXUALLY EXPLICIT MEDIA**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Hogue

This act modifies the Criminal Code by providing that the offense of dealing harmful material to minors includes the act of intentionally, knowingly, or recklessly allowing minors access to movies containing material harmful to minors. This act provides penalties for this offense, and increases the severity of the penalties for repeat offenses.

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

AMENDS:

76-10-1206, as last amended by Chapter 53, Laws of Utah 2000

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 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 material harmful to 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) (a) A person, including any owner or operator under Subsection (2)(b), is guilty of dealing in material harmful to minors when, knowing that a person is a minor, or having failed to



26 exercise reasonable care in ascertaining the actual age of a minor, he:

27 (i) ~~h [intentionally, knowingly, or] h~~ recklessly ~~h~~ **OR WITH CRIMINAL NEGLIGENCE h** allows
27a a minor to have access to viewing a
28 motion picture containing material harmful to minors; or

29 (ii) fails to take reasonable measures, in context of the location where the motion picture
30 is being exhibited, to prevent a minor from having access to viewing a motion picture containing
31 material harmful to minors.

32 (b) A person under (2)(a) includes a person who is the owner or operator of a commercial
33 establishment open to the public and where a motion picture containing material harmful to minors
34 is being exhibited, whether or not the owner or operator is present at the commercial establishment
35 at the time of the violation of this Subsection (2).

36 (c) Each offense involving a minor under this Subsection (2) is a separate offense.

37 ~~[(2)] (3) (a)~~ Each separate offense under ~~[this section]~~ Subsection (1) is a third degree
38 felony punishable by a minimum mandatory fine of not less than \$300 plus \$10 for each article
39 exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence
40 in any way, for a term of not less than 14 days. This ~~[section]~~ Subsection (3)(a) supersedes Section
41 77-18-1.

42 (b) Each separate offense under Subsection (2) is a class h [A] B h misdemeanor
42a h [-punishable by

43 a minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited up to the
44 maximum allowed by law and by incarceration of not more than 14 days] h .

45 ~~[(3)] (4) (a)~~ If a defendant has already been convicted once under ~~[this section]~~ Subsection
46 (1), each separate further offense is a second degree felony punishable by a minimum mandatory
47 fine of not less than \$5,000 plus \$10 for each article exhibited up to the maximum allowed by law
48 and by incarceration, without suspension of sentence in any way, for a term of not less than one
49 year. This ~~[section]~~ Subsection (4)(a) supersedes Section 77-18-1.

50 (b) If a defendant has already been convicted once under Subsection (2), each separate
51 second offense under Subsection (2) is a h [third degree felony punishable by a minimum mandatory
52 fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law
53 and by incarceration of not more than 14 days] CLASS A MISDEMEANOR h .

54 (5) If a defendant has already been convicted two or more times under Subsection (2), each
55 separate further offense under Subsection (2) is a h [second] THIRD h degree felony h [punishable
55a by a

55a minimum

56 mandatory fine of not less than \$5,000 plus \$10 for each article exhibited up to the maximum] h

57 ~~h [allowed by law and by incarceration, without suspension of sentence in any way, for a term of not~~
58 ~~less than one year. This Subsection (5) supersedes Section 77-18-1] h .~~

59 (6) If an act committed under Subsection (2) amounts to an offense subject to a greater
60 penalty than under Subsection (3)(b), (4)(b), or (5), this section does not prohibit prosecution and
61 sentencing for the more serious offense.