

**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) intentionally, knowingly, or recklessly allows 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 A misdemeanor 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.

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 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.

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 second degree felony punishable by a minimum  
56 mandatory fine of not less than \$5,000 plus \$10 for each article exhibited up to the maximum

57 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.

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.