

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

**MATERIAL HARMFUL TO MINORS**

**AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David L. Hogue**

Senate Sponsor: Darin G. Peterson

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding material harmful to minors.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of material that is harmful to a minor to include inappropriate violence; and
- ▶ provides a definition of inappropriate violence.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-1201**, as last amended by Chapter 9, Laws of Utah 2001

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

Section 1. Section **76-10-1201** is amended to read:



26 **76-10-1201. Definitions.**

27 For the purpose of this part:

28 (1) "Contemporary community standards" means those current standards in the  
29 vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

30 (2) "Distribute" means to transfer possession of materials whether with or without  
31 consideration.

32 (3) "Exhibit" means to show.

33 (4) (a) "Harmful to minors" means that quality of any description or representation, in  
34 whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when  
35 it:

36 ~~[(a)]~~ (i) taken as a whole, appeals to the prurient interest in sex of minors;

37 ~~[(b)]~~ (ii) is patently offensive to prevailing standards in the adult community as a whole  
38 with respect to what is suitable material for minors; and

39 ~~[(c)]~~ (iii) taken as a whole, does not have serious value for minors. Serious value  
40 includes only serious literary, artistic, political or scientific value for minors.

41 (b) "Harmful to minors" means that quality of any description or representation, in  
42 whatsoever form, of inappropriate violence.

43 (5) "Inappropriate violence" means any description or representation, in an interactive  
44 video or electronic game, of violence when it:

45 (a) is patently offensive to prevailing standards in the adult community as a whole with  
46 respect to what is suitable material for minors; and

47 (b) taken as a whole, does not have serious literary, artistic, political, or scientific value  
48 for minors, based on but not limited to, the following criteria:

49 (i) is glamorized or gratuitous;

50 (ii) is graphic violence used to shock or stimulate;

51 (iii) is graphic violence that is not contextually relevant to the material;

52 (iv) is so pervasive that it serves as the thread holding the plot of the material together;

53 (v) trivializes the serious nature of realistic violence;

54 (vi) does not demonstrate the consequences or effects of realistic violence;

55 (vii) uses brutal weapons designed to inflict the maximum amount of pain and damage;

56 (viii) endorses or glorifies torture or excessive weaponry; or

57 (ix) depicts lead characters who resort to violence freely.

58 [~~(5)~~] (6) "Knowingly" means an awareness, whether actual or constructive, of the  
59 character of material or of a performance. A person has constructive knowledge if a reasonable  
60 inspection or observation under the circumstances would have disclosed the nature of the  
61 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the  
62 disclosure or is criminally negligent.

63 [~~(6)~~] (7) "Material":

64 (a) means anything printed or written or any picture, drawing, photograph, motion  
65 picture, or pictorial representation, or any statue or other figure, or any recording or  
66 transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or  
67 may be used as a means of communication[~~. Material~~]; and

68 (b) includes undeveloped photographs, molds, printing plates, and other latent  
69 representational objects.

70 [~~(7)~~] (8) "Minor" means any person less than [~~eighteen~~] 18 years of age.

71 [~~(8)~~] (9) "Nudity" means the showing of the human male or female genitals, pubic area,  
72 or buttocks, with less than an opaque covering, or the showing of a female breast with less than  
73 an opaque covering, or any portion [~~thereof~~] of the female breast below the top of the nipple, or  
74 the depiction of covered male genitals in a discernibly turgid state.

75 [~~(9)~~] (10) "Performance" means any physical human bodily activity, whether engaged  
76 in alone or with other persons, including but not limited to singing, speaking, dancing, acting,  
77 simulating, or pantomiming.

78 [~~(10)~~] (11) "Public place" includes a place to which admission is gained by payment of  
79 a membership or admission fee, however designated, notwithstanding its being designated a  
80 private club or by words of like import.

81 [~~(11)~~] (12) "Sado-masochistic abuse" means flagellation or torture by or upon a person  
82 who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the  
83 condition of being fettered, bound, or otherwise physically restrained on the part of one so  
84 clothed.

85 [~~(12)~~] (13) "Sexual conduct" means acts of masturbation, sexual intercourse, or any  
86 touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a  
87 female, breast, whether alone or between members of the same or opposite sex or between

88 humans and animals in an act of apparent or actual sexual stimulation or gratification.  
89            [~~(13)~~] (14) "Sexual excitement" means a condition of human male or female genitals  
90 when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging  
91 in or witnessing sexual conduct or nudity.

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**Fiscal Note**  
**Bill Number HB0257S01**

**Material Harmful to Minors Amendments**

*17-Feb-06*

*10:21 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**