

Senator Darin G. Peterson proposes the following substitute bill:

MATERIAL HARMFUL TO MINORS

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding a definition concerning materials harmful to minors.

Highlighted Provisions:

This bill:

► amends the definition of "harmful to minors" to remove an amendment made in the 2007 General Session and reinstate the prior statutory language.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1201, as last amended by Laws of Utah 2007, Chapters 123, and 337

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) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so
29 that the lower 2/3 of the material is concealed from view.

30 (2) "Contemporary community standards" means those current standards in the
31 vicinage where an offense alleged under this part has occurred, is occurring, or will occur.

32 (3) "Distribute" means to transfer possession of materials whether with or without
33 consideration.

34 (4) "Exhibit" means to show.

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

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

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

41 (iii) taken as a whole, does not have serious value for minors.

42 (b) Serious value includes only serious literary, artistic, political or scientific value for
43 minors.

44 (6) "Knowingly" means an awareness, whether actual or constructive, of the character
45 of material or of a performance. A person has constructive knowledge if a reasonable
46 inspection or observation under the circumstances would have disclosed the nature of the
47 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the
48 disclosure or is criminally negligent as described in Section 76-2-103.

49 (7) "Material" means anything printed or written or any picture, drawing, photograph,
50 motion picture, or pictorial representation, or any statue or other figure, or any recording or
51 transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or
52 may be used as a means of communication. Material includes undeveloped photographs,
53 molds, printing plates, and other latent representational objects.

54 (8) "Minor" means any person less than 18 years of age.

55 (9) "Negligently" means simple negligence, the failure to exercise that degree of care
56 that a reasonable and prudent person would exercise under like or similar circumstances.

57 (10) "Nudity" means:

58 (a) the showing of the human male or female genitals, pubic area, or buttocks, with less
59 than an opaque covering;

60 (b) the showing of a female breast with less than an opaque covering, or any portion of
61 the female breast below the top of the areola; or

62 (c) the depiction of covered male genitals in a discernibly turgid state.

63 (11) "Performance" means any physical human bodily activity, whether engaged in
64 alone or with other persons, including singing, speaking, dancing, acting, simulating, or
65 pantomiming.

66 (12) "Public place" includes a place to which admission is gained by payment of a
67 membership or admission fee, however designated, notwithstanding its being designated a
68 private club or by words of like import.

69 (13) "Sado-masochistic abuse" means:

70 (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a
71 mask, or in a revealing or bizarre costume; or

72 (b) the condition of being fettered, bound, or otherwise physically restrained on the part
73 of a person clothed as described in Subsection (13)(a).

74 (14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching
75 of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female,
76 breast, whether alone or between members of the same or opposite sex or between humans and
77 animals in an act of apparent or actual sexual stimulation or gratification.

78 (15) "Sexual excitement" means a condition of human male or female genitals when in
79 a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or
80 witnessing sexual conduct or nudity.