

IC 35-49

ARTICLE 49. OBSCENITY AND PORNOGRAPHY

IC 35-49-1

Chapter 1. Definitions

IC 35-49-1-0.1

Repealed

(Repealed by P.L.63-2012, SEC.84.)

IC 35-49-1-1

Definitions applicable throughout article

Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.311-1983, SEC.33.

IC 35-49-1-2

"Distribute"

Sec. 2. "Distribute" means to transfer possession for a consideration.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-3

"Matter"

Sec. 3. "Matter" means:

- (1) any book, magazine, newspaper, or other printed or written material;
- (2) any picture, drawing, photograph, motion picture, digitized image, or other pictorial representation;
- (3) any statue or other figure;
- (4) any recording, transcription, or mechanical, chemical, or electrical reproduction; or
- (5) any other articles, equipment, machines, or materials.

As added by P.L.311-1983, SEC.33. Amended by P.L.3-2002, SEC.3.

IC 35-49-1-4

"Minor"

Sec. 4. "Minor" means any individual under the age of eighteen (18) years.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-5

"Nudity"

Sec. 5. "Nudity" means:

- (1) the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;
- (2) the showing of the female breast with less than a fully opaque covering of any part of the nipple; or
- (3) the depiction of covered male genitals in a discernibly turgid state.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-6

"Owner"

Sec. 6. "Owner" means any person who owns or has legal right to possession of any matter.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-7

"Performance"

Sec. 7. "Performance" means any play, motion picture, dance, or other exhibition or presentation, whether pictured, animated, or live, performed before an audience of one (1) or more persons.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-8

"Sado-masochistic abuse"

Sec. 8. "Sado-masochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-9

"Sexual conduct"

Sec. 9. "Sexual conduct" means:

- (1) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5);
- (2) exhibition of the uncovered genitals in the context of masturbation or other sexual activity;
- (3) exhibition of the uncovered genitals of a person under sixteen (16) years of age;
- (4) sado-masochistic abuse; or
- (5) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal.

As added by P.L.311-1983, SEC.33. Amended by P.L.158-2013, SEC.645.

IC 35-49-1-10

"Sexual excitement"

Sec. 10. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

As added by P.L.311-1983, SEC.33.

IC 35-49-2

Chapter 2. General Provisions

IC 35-49-2-1

Obscene matter or performance

Sec. 1. A matter or performance is obscene for purposes of this article if:

- (1) the average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;
- (2) the matter or performance depicts or describes, in a patently offensive way, sexual conduct; and
- (3) the matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-2

Matter or performance harmful to minors

Sec. 2. A matter or performance is harmful to minors for purposes of this article if:

- (1) it describes or represents, in any form, nudity, sexual conduct, sexual excitement, or sado-masochistic abuse;
- (2) considered as a whole, it appeals to the prurient interest in sex of minors;
- (3) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors; and
- (4) considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-3

Arrest; search; seizure of matter; motion pictures

Sec. 3. (a) Whenever a person:

- (1) offers matter for distribution to the public as stock-in-trade of a lawful business or activity; or
- (2) exhibits matter at a commercial theater showing regularly scheduled performances to the general public;

the person may be arrested under this article only if the arresting officer has first obtained an arrest warrant, and matter may be seized as evidence only if a search warrant has first been obtained.

(b) The quantity of matter seized may encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

(c) If:

- (1) the subject of a seizure under this chapter is a motion picture that is allegedly harmful to minors; and
- (2) the defendant or owner of the motion picture proves that other copies of the motion picture are not available for exhibition;

the court shall order that the defendant or owner may, at his own expense, copy the motion picture and continue showing the motion picture to adults pending a preliminary determination under section 4(b) of this chapter.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-4

Adversary hearing; application; preliminary determination

Sec. 4. (a) Within ten (10) days after:

(1) matter is obtained by seizure or by purchase under this article; or

(2) the defendant is arrested under this article;

whichever is later, and before trial, the state, the defendant, an owner, or any other party in interest of any matter seized or purchased may apply for and obtain a prompt adversary hearing for the purpose described in subsection (b).

(b) At the adversary hearing, the court shall make a preliminary determination of whether the matter is:

(1) probably obscene; or

(2) probably harmful to minors.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-5

Application of article

Sec. 5. This article does not limit the power of political subdivisions to adopt or enforce zoning ordinances regulating the use of real property.

As added by P.L.311-1983, SEC.33.

IC 35-49-3
Chapter 3. Crimes

IC 35-49-3-0.1

Repealed

(Repealed by P.L.63-2012, SEC.85.)

IC 35-49-3-1

Sale, distribution, or exhibition of obscene matter

Sec. 1. A person who knowingly or intentionally:

- (1) sends or brings into Indiana obscene matter for sale or distribution; or
- (2) offers to distribute, distributes, or exhibits to another person obscene matter;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.

As added by P.L.311-1983, SEC.33. Amended by P.L.214-2013, SEC.41; P.L.158-2013, SEC.646; P.L.168-2014, SEC.106.

IC 35-49-3-2

Obscene performance

Sec. 2. A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor. However, the offense is a Level 6 felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.

As added by P.L.311-1983, SEC.33. Amended by P.L.214-2013, SEC.42; P.L.158-2013, SEC.647; P.L.168-2014, SEC.107.

IC 35-49-3-3

Dissemination of matter or conducting performance harmful to minors

Sec. 3. (a) Except as provided in subsection (b), a person who knowingly or intentionally:

- (1) disseminates matter to minors that is harmful to minors;
- (2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;
- (4) engages in or conducts a performance before minors that is harmful to minors;
- (5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the

minor's parent or guardian;

(6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or

(7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;

commits a Level 6 felony.

(b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer network unless:

(1) the matter is obscene under IC 35-49-2-1;

(2) the matter is child pornography under IC 35-42-4-4; or

(3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

As added by P.L.311-1983, SEC.33. Amended by P.L.59-1995, SEC.4; P.L.3-2002, SEC.4; P.L.140-2006, SEC.35; P.L.158-2013, SEC.648.

IC 35-49-3-4

Defense to prosecution for dissemination of matter or conducting performance harmful to minors

Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

(1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment;

(3) that the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or

(4) that the defendant was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of the defendant's employment and that the defendant had no financial interest in the place where the defendant was so employed.

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was

used to disseminate matter to a minor that is harmful to minors.

(2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.

(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:

(1) the image is disseminated to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image; or

(2) the dissemination of the image violates:

(A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(C) a workplace violence restraining order issued under IC 34-26-6;

(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;

(F) a no contact order issued as a condition of probation;

(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially

similar to an order described in clauses (A) through (I);
(K) an order that is substantially similar to an order described
in clauses (A) through (I) and is issued by an Indian:

- (i) tribe;
- (ii) band;
- (iii) pueblo;
- (iv) nation; or
- (v) organized group or community, including an Alaska
Native village or regional or village corporation as defined
in or established under the Alaska Native Claims
Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and
services provided by the United States to Indians because of
their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.

*As added by P.L.311-1983, SEC.33. Amended by P.L.180-2011,
SEC.4; P.L.158-2013, SEC.649.*