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CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
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ARTICLE 29 . OBSCENITY AND RELATED OFFENSES

Preliminary Draft No. 2; February 1970

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Subcommittee No. 1

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Section 1. Definitions. As used in this Article, unless the context requires otherwise:

(1) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(2) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

(3) "Furnishes" means to sell, give, rent, loan or otherwise provide.

(4) "Minor" means an unmarried person who has not reached his 18th birthday.

(5) "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the nipple, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

(6) "Obscene performance" means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

(7) "Obscenities" means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

(8) "Public thoroughfare, depot or vehicle" means any street, highway, park, depot or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public.

(9) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

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

Section 2. Furnishing obscene materials to minors. A person commits the crime of furnishing obscene materials to minors if, knowing or having good reason to know the character of the material furnished, he furnishes to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture, film or other visual representation or image of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement; or

(2) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, or any sound recording which contains matter of the nature described in subsection (1) of this section, or obscenities, or explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement or sado-masochistic abuse.

Section 3. Sending obscene materials to minors. (1) A person commits the crime of sending obscene materials to minors if, within this state, he knowingly arranges for or dispatches for delivery to a minor, whether the delivery is to be made within or outside this state, by mail, delivery service or any other means, any of the materials enumerated in section 2 of this Article.

(2) Unless the defendant knows or has good reason to know that the person to whom the materials are sent is a minor, it is a defense to a prosecution under this section that the defendant caused to be printed on the outer package, wrapper or cover of the materials to be delivered, in words or substance, "This package (wrapper) (publication) contains material that, by Oregon law, cannot be furnished to a minor."

Section 4. Exhibiting an obscene performance to a minor. (1) A person commits the crime of exhibiting an obscene performance to a minor if the minor is unaccompanied by his parent or lawful guardian, and for a monetary consideration or other valuable commodity or service, the person knowingly or recklessly:

- (a) Exhibits an obscene performance to the minor; or
- (b) Sells an admission ticket or other means to gain entrance to an obscene performance to the minor; or
- (c) Permits the admission of the minor to premises whereon there is exhibited an obscene performance.

(2) No employe is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employe is acting within the scope of his regular employment at a showing open to the public.

(3) As used in this section, "employe" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed, but does not include a manager of the motion picture theater.

Section 5. Displaying obscene materials to minors. A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business, he knowingly or recklessly permits a minor who is not accompanied by his parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

(1) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse; or

(2) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that reveals a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse.

Section 6, Defenses. In any prosecution under sections 2 to 5 of this Article it is an affirmative defense for the defendant to prove:

(1) That from the minor's appearance the defendant had no reason to suspect that the minor was under 18 years of age, or that if he had reason to or did so suspect, he made reasonable efforts to determine the minor's age. Reasonable effort shall not consist of merely asking the minor his age.

(2) That, in instances in which the defendant's action would not have been criminal had the minor been accompanied by his parent or guardian, the minor was accompanied by an adult, and the defendant had no reason to suspect that the adult accompanying the minor was not the minor's parent or guardian.

(3) That the defendant was in a parental or guardianship relationship with the minor.

(4) That the defendant was a bona fide school, museum or public library, or was acting in his capacity as an employe of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

(5) That the defendant was charged with the sale, showing or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation.

Section 7. Publicly displaying nudity or sex for advertising purposes. A person commits the crime of publicly displaying nudity or sex for advertising purposes if, for advertising purposes, he knowingly:

(1) Displays publicly or causes to be displayed publicly a picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities, or any obscenities; or

(2) Permits any display described in subsection (1) of this section on premises owned, rented or operated by him.

Section 8. Defenses. In any prosecution for violation of section 7 of this Article it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or

(2) That the public display was of nudity, exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting.