

**New York
Penal Law, Article 235**

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Penal Law ARTICLE 235

OBSCENITY AND RELATED OFFENSES

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S 235.00 Obscenity; definitions of terms.

The following definitions are applicable to sections 235.05, 235.10 and 235.15:

1. "Obscene." Any material or performance is "obscene" if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.
2. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.
3. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
4. "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.
5. "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate,

disseminate or to offer or agree to do the same for purposes of resale.

6. "Simulated" means the explicit depiction or description of any of the types of conduct set forth in clause (b) of subdivision one of this section, which creates the appearance of such conduct.

7. "Criminal sexual act" means any of the types of sexual conduct defined in subdivision two of section 130.00 provided, however, that in any prosecution under this article the marital status of the persons engaged in such conduct shall be irrelevant and shall not be considered.

S 235.05 Obscenity in the third degree.

A person is guilty of obscenity in the third degree when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material; or

2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

Obscenity in the third degree is a class A misdemeanor.

S 235.06 Obscenity in the second degree.

A person is guilty of obscenity in the second degree when he commits the crime of obscenity in the third degree as defined in subdivisions one and two of section 235.05 of this chapter and has been previously convicted of obscenity in the third degree.

Obscenity in the second degree is a class E felony.

S 235.07 Obscenity in the first degree.

A person is guilty of obscenity in the first degree when, knowing its content and character, he wholesale promotes or possesses with intent to

wholesale promote, any obscene material.

Obscenity in the first degree is a class D felony.

S 235.10 Obscenity; presumptions.

1. A person who promotes or wholesale promotes obscene material, or possesses the same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.

2. A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

The provisions of this section shall not apply to public libraries or association libraries as defined in subdivision two of section two hundred fifty-three of the education law, or trustees or employees of such public libraries or association libraries when acting in the course and scope of their duties or employment.

S 235.15 Obscenity or disseminating indecent material to minors in the second degree; defense.

1. In any prosecution for obscenity, or disseminating indecent material to minors in the second degree in violation of subdivision three of section 235.21 of this article, it is an affirmative defense that the persons to whom allegedly obscene or indecent material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing,

disseminating or viewing the same.

2. In any prosecution for obscenity, it is an affirmative defense that the person so charged was a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of obscene material for sale, rental or exhibition or in the promotion, presentation or direction of any obscene performance, or is in any way responsible for acquiring obscene material for sale, rental or exhibition.

S 235.20 Disseminating indecent material to minors; definitions of terms.

The following definitions are applicable to sections 235.21, 235.22, 235.23 and 235.24 of this article:

1. "Minor" means any person less than seventeen years old.
2. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
4. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
5. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
6. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
 - (a) Considered as a whole, appeals to the prurient interest in sex of minors; and
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (c) Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.
7. The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:
 - (a) filter, screen, allow or disallow content;
 - (b) pick, choose, analyze or digest content; or
 - (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize or translate content.

S 235.21 Disseminating indecent material to minors in the second degree.

A person is guilty of disseminating indecent material to minors in the second degree when:

1. With knowledge of its character and content, he sells or loans to a minor for monetary consideration:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a)

hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or

2. Knowing the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he:

(a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or

(b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or

(c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture show or other presentation; or

3. Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally

uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor.

Disseminating indecent material to minors in the second degree is a class E felony.

S 235.22 Disseminating indecent material to minors in the first degree.

A person is guilty of disseminating indecent material to minors in the first degree when:

1. knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally

uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor; and

2. by means of such communication he importunes, invites or induces a minor to engage in sexual intercourse, oral sexual conduct or anal sexual conduct, or sexual contact with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his

benefit.

Disseminating indecent material to minors in the first degree is a class D felony.

S 235.23 Disseminating indecent material to minors; presumption and defenses.

1. A person who engages in the conduct proscribed by section 235.21 is presumed to do so with knowledge of the character and content of the material sold or loaned, or the motion picture, show or presentation exhibited or to be exhibited.

2. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision one or two of section 235.21 of this article, it is an affirmative defense that:

(a) The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and

(b) Such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was seventeen years old or more.

3. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article, it shall be a defense that:

(a) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(b) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to materials specified in such subdivision, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(c) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(d) The defendant has in good faith established a mechanism such that the labelling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

S 235.24 Disseminating indecent material to minors; limitations.

In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article:

1. No person shall be held to have violated such provisions solely for providing access or connection to or from a facility, system, or network not under that person`s control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(a) The limitations provided by this subdivision shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications.

(b) The limitations provided by this subdivision shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of such provisions that is owned or controlled by such person.

2. No employer shall be held liable under such provisions for the actions of an employee or agent unless the employee`s or agent`s conduct is within the scope of his employment or agency and the employer having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.