

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Hoofman**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 5-27-304 TO INCLUDE AS
9 CRIMINAL CONDUCT THE KNOWING ADVERTISEMENT, EXHIBITION,
10 AND DISPLAY FOR SALE OR DISTRIBUTION OF VISUAL OR PRINT
11 MEDIUM DEPICTING SEXUALLY EXPLICIT CONDUCT INVOLVING A
12 CHILD; TO INCLUDE SOLICITATION, RECEIPT, PURCHASE,
13 EXCHANGE, POSSESSION, VIEWING OR CONTROL OF VISUAL OR
14 PRINT MEDIUM DEPICTING SEXUALLY EXPLICIT CONDUCT INVOLVING
15 A CHILD; AND FOR OTHER PURPOSES."

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code § 5-27-304 is hereby amended to read as
20 follows:

21 "5-27-304. Pandering or possessing visual or print medium depicting
22 sexually explicit conduct involving a child.

23 (a) No person, with knowledge of the character of the visual or print
24 medium involved, shall do any of the following:

25 (1) Knowingly advertise for sale or distribution, sell,
26 distribute, transport, ship, exhibit, display, or receive for the purpose of
27 sale or distribution any visual or print medium depicting a child
28 participating or engaging in sexually explicit conduct;

29 (2) Knowingly solicit, receive, purchase, exchange, possess,
30 view, distribute or control any visual or print medium depicting a child
31 participating or engaging in sexually explicit conduct.

32 (b) Any person who violates subdivisions (a)(1) or (a)(2) of this
33 section shall be guilty of a Class C felony for the first offense and a Class
34 B felony for any subsequent offenses."

35

1 SECTION 2. It is the express intent of this act to eradicate the use of
2 children as subjects of pornographic materials. This act seeks to protect
3 victims of child pornography and to destroy a market for the exploitative use
4 of children. The use of children as subjects of pornographic material is
5 harmful to the physical and psychological health of children. Thus, this
6 state has a compelling interest in penalizing those who solicit, receive,
7 purchase, exchange, possess, view, distribute or control such material.

8 Additionally, advertising, selling and distributing child pornography
9 provides an economic motive for the production of such material. In
10 penalizing the possession and marketing of child pornography, it is the intent
11 of this act to significantly decrease production of, and demand for, the
12 material.

13 Similar legislation has been approved in several states and has been
14 upheld by the United States Supreme Court. *Osborne v. Ohio*, 58 U.S.L.W. 4467
15 (U.S. April 18, 1990) (No. 88-5968); *New York v. Ferber*, 458 U.S. 747 (1982).
16 See also Ala Code §13A-12-192 (1988); Ariz. Rev. Stat. Ann. §13-2552 (1989);
17 Colo. Rev. Stat. §18-6-403 (Supp. 1989); Fla. Stat. §827.071 (1989); Ga. Code
18 Ann. §16-12-100 (1989); Idaho Code §18-1507 (1987); Ill. Rev. Stat., ch. 38,
19 P. 11-20-.1 (1987); Kans. Stat. Ann §21-3516 (Supp. 1989); Minn. Stat.
20 §617.247 (1988); Mo. Rev.Stat. §573.037 (Supp. 1989); Neb. Rev. Stat. §28-809
21 (1989); Nev. Rev. Stat. §200.730 (1987); Ohio Rev. Code Ann. §§2907.322 and
22 2907.323 (Supp. 1989); Okla. Stat., Tit. 21, §1021.2 (Supp. 1989); S.D. Comp.
23 Laws Ann. §22-22-23-1, 22-22-23.1 (1988); Tex. Penal Code Ann. §43.26 (1989 &
24 Supp. 1989-1990); Utah Code Ann. §76-5a-3 (1)(a) (Sup. 1989); Wash. Rev. Code
25 §9.68A.070 (1989); W. Va. Code §61-8C-3 (1989).

26

27 SECTION 3. All provisions of this act of general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

30

31 SECTION 3. If any provisions of this act or the application thereof to
32 any person or circumstance is held invalid, the invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provisions or application, and to this end the provisions of this
35 act are declared to be severable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.