

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: S3/27/97

# A Bill

SENATE BILL 611

4  
5 *By: Senators Ross and Hunter*

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 5, CHAPTER  
10 68, SUBCHAPTER 5 TO PROHIBIT THE DISSEMINATION OF INDECENT  
11 MATERIAL TO MINORS THROUGH ANY COMPUTER COMMUNICATION  
12 SYSTEM; AND FOR OTHER PURPOSES."

## Subtitle

15 "AN ACT TO PENALIZE THE DISSEMINATION OF  
16 INDECENT MATERIAL TO MINORS THROUGH ANY  
17 COMPUTER COMMUNICATION SYSTEM"

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 SECTION 1. Subchapter 5 of Chapter 68 of Title 5 of the Arkansas Code  
22 is amended to read as follows:

23 Subchapter 5.

24 ~~\_\_\_\_\_ Selling or Loaning Pornography to Minors.~~  
25 Disseminating Indecent Material to Minors.

26 "5-68-501. Definitions.

27 As used in this subchapter, unless the context otherwise requires:

28 (1) Minor means any person under the age of ~~seventeen (17)~~ eighteen  
29 (18) years;

30 (2) Nudity means the showing of the human male or female genitals,  
31 pubic area, or buttocks with less than a fully opaque covering, or the showing  
32 of the female breast with less than a fully opaque covering of any portion  
33 thereof below the top of the nipple, or the depiction of covered male genitals  
34 in a discernibly turgid state;

35 (3) Sexual conduct means acts of masturbation, homosexuality, sexual  
36 intercourse, or physical contact with a person's clothed or unclothed

1 genitals, pubic area, buttocks, or female breast;

2 (4) Sexual excitement means the condition of the human male or female  
3 genitals when in a state of sexual stimulation or arousal;

4 (5) Sadomasochistic abuse means flagellation or torture by or upon a  
5 person clad in undergarments, a mask or bizarre costume, or the condition of  
6 being fettered, bound, or otherwise physically restrained on the part of one  
7 so clothed;

8 (6) Harmful to minors means that quality of any description or  
9 representation, in whatever form, of nudity, sexual conduct, sexual  
10 excitement, or sadomasochistic abuse, when it:

11 (A) Predominantly appeals to the prurient, shameful, or morbid  
12 interest of minors; and

13 (B) Is patently offensive to prevailing standards in the adult  
14 community as a whole with respect to what is suitable material for minors; and

15 (C) Is utterly without redeeming social importance for minors;

16 (7) Knowingly means having general knowledge of, or reason to know, or  
17 a belief or ground for belief which warrants further inspection or inquiry of  
18 both:

19 (A) The character and content of any material described herein  
20 which is reasonably susceptible to examination by the defendant; and

21 (B) The age of the minor, provided that an honest mistake shall  
22 constitute an excuse from liability hereunder if the defendant made a  
23 reasonable bona fide attempt to ascertain the age of the minor.

24 (8) The term access software means software (including client or  
25 server software) or enabling tools that do not create or provide the content  
26 of the communication but that allow a user to do any one or more of the  
27 following:

28 (A) filter, screen, allow or disallow content;

29 (B) pick, choose, analyze or digest content; or

30 (C) transmit, receive, display, forward, cache, search, subset,  
31 organize, reorganize or translate content.

32 (9) Material means any book, magazine, newspaper, pamphlet, poster,  
33 print, picture, figure, image, description, motion picture, film, record,  
34 recording tape, CD-ROM disk, Magnetic disk memory, Magnetic tape memory, video  
35 tape or other media.

36 5-68-502. ~~Unlawful acts.~~ Disseminating indecent material to minors.

1 ~~\_\_\_\_\_ (a) It shall be unlawful for any person knowingly to sell or loan for~~  
2 ~~monetary consideration to a minor:~~

3 ~~\_\_\_\_\_ (1) Any picture, photograph, drawing, sculpture, motion picture~~  
4 ~~film, or similar visual representation or image of a person or portion of the~~  
5 ~~human body which depicts nudity, sexual conduct, or sadomasochistic abuse and~~  
6 ~~which is harmful to minors; or~~

7 ~~\_\_\_\_\_ (2) Any book, pamphlet, magazine, printed matter, however~~  
8 ~~reproduced, or sound recording which contains any matter enumerated in~~  
9 ~~subdivision (1) of this section or explicit and detailed verbal descriptions~~  
10 ~~or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic~~  
11 ~~abuse and which, taken as a whole, is harmful to minors.~~

12 ~~\_\_\_\_\_ (b) It shall be unlawful for any person knowingly to exhibit for a~~  
13 ~~monetary consideration to a minor or knowingly to sell to a minor an admission~~  
14 ~~ticket or pass or knowingly to admit a minor for a monetary consideration to~~  
15 ~~premises whereon there is exhibited a motion picture, show, or other~~  
16 ~~presentation which, in whole or in part, depicts nudity, sexual conduct, or~~  
17 ~~sadomasochistic abuse and which is harmful to minors.~~

18 (a) A person is guilty of disseminating indecent material to minors in  
19 the first degree if:

20 (1) Knowing the character and content of the communication which,  
21 in whole or in part, depicts actual or simulated nudity, sexual conduct or  
22 sadomasochistic abuse, and which is harmful to minors, he intentionally uses  
23 any computer communication system allowing the input, output, examination or  
24 transfer, of computer data or computer programs from one computer to another,  
25 to initiate or engage in such communications with a person who is a minor; and

26 (2) By means of such communication he importunes, invites or  
27 induces a minor to engage in sexual intercourse, deviate sexual intercourse,  
28 or sexual contact with him, or to engage in a sexual performance, obscene  
29 sexual performance, or sexual conduct for his benefit.

30 (b) Disseminating indecent material to minors in the first degree is a  
31 Class D felony.

32 (c) A person is guilty of disseminating indecent material to minors in  
33 the second degree if:

34 (1) Knowing the character and content of the communication which,  
35 in whole or in part, depicts actual or simulated nudity, sexual conduct or  
36 sadomasochistic abuse, and which is harmful to minors, he intentionally uses

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

4 (2) He knowingly, sells, loans, displays, presents, distributes,  
5 allows to view or otherwise disseminates to a minor:

6 (A) Any picture, photograph, drawing, sculpture, motion  
7 picture film, or similar visual representation or image of a person or portion  
8 of the human body which depicts nudity, sexual conduct, or sadomasochistic  
9 abuse and which is harmful to minors; or

10 (B) Any book, pamphlet, magazine, printed matter, however  
11 reproduced, or sound recording which contains any matter enumerated in  
12 subdivision (1) of this section or explicit and detailed verbal descriptions  
13 or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic  
14 abuse and which, taken as a whole, is harmful to minors; or

15 (3) Knowing the character and content of a motion picture, show  
16 or other presentation which, in whole or in part, depicts nudity, sexual  
17 conduct or sadomasochistic abuse, and which is harmful to minors, he:

18 (A) Exhibits such motion picture, show or other  
19 presentation to a minor whether or not for a monetary consideration; or

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

23 (C) Admits a minor whether or not for a monetary  
24 consideration to premises whereon there is exhibited or to be exhibited such  
25 motion picture show or other presentation.

26 (d) Disseminating indecent material to minors in the second degree is a  
27 Class A misdemeanor.

28 5-68-503. Penalties. Disseminating indecent material to minors;  
29 presumption and defenses.

30 ~~Any person violating any provision of this subchapter shall be guilty of~~  
31 ~~a misdemeanor and, upon conviction, shall be subject to a fine of not less~~  
32 ~~than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or~~  
33 ~~imprisonment of not less than three (3) months nor more than six (6) months,~~  
34 ~~or both fine and imprisonment.~~

35 (a) A person who engages in the conduct proscribed by § 5-68-502 is  
36 presumed to do so with knowledge of the character and content of the material

1 sold or loaned, or the motion picture, show or presentation exhibited or to be  
2 exhibited.

3 (b) In any prosecution for disseminating indecent material to minors in  
4 the second degree pursuant to subsection (c) of § 5-68-502, it is an  
5 affirmative defense that:

6 (1) The defendant had reasonable cause to believe that the minor  
7 involved was eighteen years old or more; and

8 (2) Such minor exhibited to the defendant a driver's license,  
9 birth certificate or other official or apparently official document purporting  
10 to establish that such minor was eighteen years old or more.

11 (c) In any prosecution for disseminating indecent material to minors in  
12 the second degree pursuant to subsection (c) of § 5-68-502 or disseminating  
13 indecent material to minors in the first degree pursuant to subsection (a) of  
14 § 5-68-502, it shall be a defense that:

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

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

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

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

33 5-68-504. Disseminating indecent material to minors; limitations.

34 In any prosecution for disseminating indecent material to minors:

35 (a) No person shall be held to have violated such provisions solely for  
36 providing access or connection to or from a facility, system, or network not

1 under that person's control, including transmission, downloading,  
2 intermediate storage, access software, or other related capabilities that are  
3 incidental to providing such access or connection that do not include the  
4 creation of the content of the communication.

5 (1) The limitations provided by subsection (a) shall not be  
6 applicable to a person who is a conspirator with an entity actively involved  
7 in the creation or knowing distribution of communications that violate such  
8 provision, or who knowingly advertises the availability of such  
9 communications.

10 (2) The limitations provided by subsection (a) of this section  
11 shall not be applicable to a person who provides access or connection to a  
12 facility, system, or network engaged in the violation of such provisions that  
13 is owned or controlled by such person.

14 (b) No employer shall be held liable under such provisions for the  
15 actions of an employee or agent unless the employee's or agent's conduct is  
16 within the scope of his employment or agency and the employer having knowledge  
17 of such conduct, authorizes or ratifies such conduct, or recklessly disregards  
18 such conduct."

19

20 SECTION 2. All provisions of this act of a general and permanent nature  
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
22 Revision Commission shall incorporate the same in the Code.

23

24 SECTION 3. If any provision of this act or the application thereof to  
25 any person or circumstance is held invalid, such invalidity shall not affect  
26 other provisions or applications of the act which can be given effect without  
27 the invalid provision or application, and to this end the provisions of this  
28 act are declared to be severable.

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

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33 SECTION 5. EMERGENCY. It is found and determined by the General  
34 Assembly of the State of Arkansas that several cases have come to light  
35 wherein pedophiles have engaged in sexually explicit communications with  
36 minors and have then attempted to arrange sexual encounters with the minors.

1 Recognizing the seriousness of this problem, Congress enacted the  
2 Communications Decency Act of 1996 to prohibit the interstate transmission of  
3 obscene telecommunications. This bill addresses intrastate communications and  
4 is consistent with the federal statute. Protecting our children from  
5 pedophiles and from those disseminating indecent material to children requires  
6 the immediate and active intervention of the criminal law, not passive  
7 reliance on technology or even the vigilance of parents and teachers.  
8 Therefore an emergency is declared to exist and this act being immediately  
9 necessary for the preservation of the public peace, health and safety shall  
10 become effective on the date of its approval by the Governor. If the bill is  
11 neither approved nor vetoed by the Governor, it shall become effective on the  
12 expiration of the period of time during which the Governor may veto the bill.  
13 If the bill is vetoed by the Governor and the veto is overridden, it shall  
14 become effective on the date the last house overrides the veto.

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/s/Ross et al