REVISED CODE
OF
DELAWARE
1935

TO WHICH ARE ADDED
THE DECLARATION OF INDEPENDENCE
THE CONSTITUTION OF THE UNITED STATES
AND
THE CONSTITUTION OF DELAWARE

PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY

THE STAR PUBLISHING COMPANY
Wilmington, Del.
1936
2552. Sec. 54. Admission of Certain Minors to Certain Dance Houses; Misdemeanor; Penalty.—Any person in charge of any dance house, concert, salon, theatre, museum or similar place of amusement where wines or spirits or malt liquors are served or given away, who admits or permits to remain therein, any minor under the age of eighteen years, unless accompanied by his or her parents or guardian, shall be guilty of a misdemeanor, and, on conviction thereof before any court of record or justice of the peace, shall be punished by a fine not exceeding one hundred dollars.
Code 1915, 2228.

2553. Sec. 55. Abduction &c. of Child Under Twelve Years of Age; Misdemeanor; Penalty:—Whoever shall, without the color of right, forcibly abduct, take or convey away any child under the age of twelve years, from the home or usual place of abode of such child, or from the custody and control of the parent or parents or lawful guardian or guardians of such child, or be accessory thereto, or whoever shall, without such color of right, and against the consent of the parent or parents, or lawful guardian or guardians of such child, or be accessory thereto, or whoever shall knowingly secrete or harbor such child, or be accessory thereto, with the intent to deprive such parent or parents, guardian or guardians, or any person who may be in lawful possession of such child, of the custody, care and control of such child, shall be guilty of a misdemeanor, and, upon conviction thereof, shall suffer imprisonment for a term not exceeding ten years, or shall pay a fine not exceeding five hundred dollars, or both, in the discretion of the Court.
Code 1915, 2229.

2554. Sec. 56. Kidnapping of Child Under Fifteen Years of Age; Felony; Penalty; Accessories; Penalty; Trial; In What County:—Whoever.—All knowingly, forcibly or fraudulently lead, take or carry away, or decoy, or entice away any child under the age of fifteen, with intent to detain and conceal such child from its parents, guardian or other persons having the lawful charge of such child, shall be deemed guilty of a felony, and upon conviction shall suffer death, or be imprisoned for life, at the discretion of the court; provided always, that the provisions of this Section shall not apply where parents abduct their own children.
Whoever shall, upon conviction, be found to be an accessory, before or after the fact of the crime set forth in this Section, shall be subject to the same penalties.
An indictment for and trial of the crime set forth in this section may be found and had either in the County where such crime commenced, or in any County of this State through which such child may be carried, taken or decayed as aforesaid.
Code 1915, 2230.

2555. Sec. 57. Publication, Distribution &c. of Obscene &c. Book &c. Tending to Corrupt Morals of Youth Misdemeanor; Penalty:—Whoever prints, publishes, sells, or distributes, a book, pamphlet, ballad, paper, or any other thing containing any obscene or indecent picture of any description tending to the corruption of morals of youth, shall be deemed guilty of a misdemeanor and upon conviction thereof by any court of record, shall be fined not exceeding one hundred dollars.
Code 1915, 2231.

REFORMATORY AND CHARITABLE INSTITUTIONS—Article 5

The Delaware Society For The Prevention Of Cruelty To Animals

2556. Sec. 58. Incorporation; Powers:—The Delaware Society for the Prevention to Animals is incorporated and made a body politic and corporate in law, and by that name shall be able and capable, in law, to sue and be sued, plead and be impleaded, in any court of law or equity in this State and elsewhere, in all manner of actions, suits, causes and proceedings, to do all things necessary in the prosecution of the purposes of this Society, and to receive legacies and donations, and to hold real estate not exceeding in value of one hundred thousand dollars, and by the title aforesaid shall have perpetual continuance and succession.
Code 1915, 2232.

2557. Sec. 59. Objects:—The objects of said Society are to provide effective means for the prevention of cruelty to animals throughout the State of Delaware, and for the enforcement of all laws enacted for the protection of dumb animals; and to purchase, print, publish and circulate such tracts and books as are fitted to promote the objects of the Society, and to appoint or employ such agents as the Board of Managers may from time to time deem necessary.
Code 1915, 2233.

2558. Sec. 60. Officers:—The officers of the corporation shall be a President, fifteen Vice-Presidents, a Secretary, a Treasurer, and twenty persons who shall constitute a Board of Managers, in whom shall be vested the control and management of the affairs of the said corporation. The Board of Managers may appoint such other officers as may be necessary for the transaction of the business of the Society.
Code 1915, 2234.

2559. Sec. 61. Annual Election; When Held; Notice of; Terms of Office; Qualification of Electors:—In the month of January in every year, an election for officers and managers of the said Society shall be held in the City of Wilmington at such time and place and after such notice as the Managers for the time being may deem proper, and the said managers and officers shall continue in office until their successors shall have been duly elected. At all such elections every person who shall have been elected by the Board of Managers a member of the Society, and who shall within one year have paid the annual dues as pro-
Chapter 100

GENERAL PROVISIONS RESPECTING THE POLICE

The City of Wilmington shall have original jurisdiction of all cases arising under the provisions of this Section.

Del. Laws, Ch. 247, 2.

GENERAL PROVISIONS RESPECTING THE POLICE—Article 45

Camp Meetings

4110. Sec. 215. Must Obtain Permit For Camp Meeting &c.—It shall be unlawful for any person, association of persons, church or religious corporation, to hold or conduct a camp meeting or outdoor religious meeting without first obtaining a permit authorizing the holding of such meeting.

Del. Laws, Ch. 263, 1.

4111. Sec. 216. Commission To Issue.—The Sheriff, the President of the Levy Court, and the Clerk of the Peace, of each County, be and they are hereby constituted a Commission for the respective Counties for the issuance of the permits required in the preceding section.

Del. Laws, Ch. 263, 2.

4112. Sec. 217. Commission To Investigate: Permit To Specify; Cost Of.—Whenever application is made to the Commission of any County for permission to hold camp meeting, or outdoor religious meeting, it shall be the duty of the Commission to investigate, and to ascertain whether or not the granting of such permit would be detrimental to the peace and good order of the community in which it is desired to hold such meeting, and in making such investigation due regard shall be had to petitions or remonstrances of the citizens of such community.

If, after such investigation, the Commission is satisfied that it is proper to do so, a permit may be issued authorizing the holding of such camp meeting, or outdoor religious meeting; otherwise, such permit shall be refused. Each permit so issued shall specify clearly the place and time for holding such meeting. The Commissions herein provided are hereby authorized to make such reasonable rules and regulations in relation to the holding of camp meetings, or outdoor religious meetings as they shall deem wise and proper, and may at any time for cause revoke any permit issued. The cost of issuing a permit shall be one dollar, which sum shall be paid by the applicant on the issuance of such permit, and the fee shall be turned into the Commission into the funds of the County in which such permit is issued.

Del. Laws, Ch. 263, 3.

4113. Sec. 218. Violation Of; Fine.—Any person, persons, or parties or agents of any corporation, who shall hold or conduct a camp meeting or other outdoor religious meeting, without obtaining the permit required in Section 215, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined by a fine or imprisonment, or both, at the discretion of the Court. Provided, however, in that no permit shall be required in order to hold a camp meeting or outdoor religious meeting within any incorporated town, or within one mile of the corporate limits of any incorporated town.

Del. Laws, Ch. 263, 4.

GENERAL PROVISIONS RESPECTING THE POLICE—Article 46

Contraceptives

4114. Sec. 219. Unlawful To Sell, Or &c.; Exception.—It shall be unlawful for any person, copartnership, corporation, enterprise or association of any character (except as provided in Section 221 hereof) to sell, give away, or otherwise distribute to the public, in stores, on the streets, by vending machine, by peddling from house to house, or in any public place or office building, or in any manner whatsoever, any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception and/or venereal disease.

Del. Laws, Ch. 263, 1.

4115. Sec. 220. Unlawful To Display, Expose Or Advertise The Sale Of.—It shall be unlawful for any person, copartnership, corporation, enterprise or association of any character to exhibit, display or expose for sale any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception and/or venereal disease, or to exhibit, display or expose any container, or package therefor descriptive or suggestive of the contents, or to advertise the sale of the same by any placards, billboards, hand-bills, newspapers, periodicals, signs, or by any means of publication either visual or auditory, and either individually or by broadcast.

Del. Laws, Ch. 263, 2.

4116. Sec. 221. Provisions Not To Apply In Certain Cases.—The prohibition expressed in Section 219 of this Article shall not apply to wholesale druggists specifically licensed by the State of Delaware, to the extent that such druggists are permitted to sell or distribute appliances, drugs and medicinal preparations of the character specified in Section 219 hereof only to regularly licensed drug stores, and only such appliances, drugs and medicinal preparations of the character specified in Section 219 hereof as conspicuously bear the identification of the manufacturer thereon or on the retail container thereof; nor shall the prohibition specified in Section 219 of this Article apply to the sale or distribution of such appliances, drugs or medicinal preparations by regularly licensed physicians in the normal and usual course of the practice of their profession; nor shall the prohibition specified in Section 219 of this Article apply to the sale or distribution of such appliances, drugs or medicinal preparations at retail by drug stores or pharmacies, provided such sales are made from the prescription counters of such drug stores or pharmacies and by a registered pharmacist there employed, and only to persons eighteen years of age and upwards.

Del. Laws, Ch. 263, 4.

4117. Sec. 222. Violation A Misdemeanor; Penalty; Jurisdiction Of Offenses.—Any person, copartnership, corporation, enterprise, or
CHAPTER 98

STATE BOARD OF HEALTH, CONTRACEPTIVES

AN ACT MAKING IT LAWFUL TO GIVE INFORMATION RELATING TO CONTRACEPTION, AND TO PRESCRIBE CONTRACEPTIVES UNDER CERTAIN CONDITIONS.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. It shall be unlawful for any person, copartnership, corporation, enterprise or association of any character (except as provided in Section 3 hereof) to sell, give away, or otherwise distribute to the public, in stores, on the streets, by vending machine, by peddling from house to house, or in any public place or office building, or in any manner whatsoever, any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception and/or venereal disease.

Section 2. It shall be unlawful for any person, copartnership, corporation, enterprise or association of any character to exhibit, display or expose for sale any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception and/or venereal disease, or to exhibit, display or expose any container, or package therefor descriptive or suggestive of the contents, or to advertise the sale of the same by any placards, billboards, hand-bills, newspapers, periodicals, signs, or by any means of publication either visual or auditory, and either individually or by broadcast.

Section 3. The prohibition expressed in Section 1 of this Act shall not apply to wholesale druggists specifically licensed by the State of Delaware, to the extent that such druggists are permitted to sell or distribute appliances, drugs and medicinal preparations of the character specified in Section 1 hereof only to regularly licensed drug stores, and only such appliances, drugs and medicinal preparations of the character specified in Section 1 hereof as conspicuously bear the identification of the manufacturer thereon or on the
STATE BOARD OF HEALTH, CONTRACEPTIVES

retail container thereof; nor shall the prohibition specified in Section 1 of this Act apply to the sale or distribution of such appliances, drugs or medicinal preparations by regularly licensed physicians in the normal and usual course of the practice of their profession; nor shall the prohibition specified in Section 1 of this Act apply to the sale or distribution of such appliances, drugs or medicinal preparations at retail by drug stores or pharmacies provided such sales are made from the prescription counters of such drug stores or pharmacies and by a registered pharmacist there employed, and only to persons eighteen years of age and upwards.

Section 4. Any person, copartnership, corporation, enterprise, or association violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and if a corporation, any officer thereof who knowingly participates in such violation shall be deemed guilty in like manner, and on conviction thereof shall be fined not less than Twenty-five dollars ($25.00) nor more than One Hundred Dollars ($100.00) and each day any violation of any section of this Act shall continue shall constitute a separate and distinct offense. Jurisdiction of any offense for the violation of any of the provisions of this Act and the right of appeal shall be as provided in Chapter 71, Volume 34, Laws of Delaware.

Approved May 1, 1935.
DELAWARE CODE ANNOTATED

Prepared Under Legislative Authority by the Revised Code Commission of the State of Delaware

Completely Annotated by the Publishers Under the Supervision of the Revised Code Commission

Volume 9
TITLES 15 to 17
15. ELECTIONS
16. HEALTH AND SAFETY
17. HIGHWAYS

Brooklyn, N. Y.
Edward Thompson Co.

St. Paul, Minn.
West Publishing Co.
§ 2303. Approval and registration of brands and labels

(a) The State Board of Health may approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to it for that purpose and as may in its judgment conform to the requirements of this chapter.

(b) In any prosecution under this chapter the fact that any brand or label involved in the prosecution has not been submitted to the State Board for approval, or, if submitted, has not been approved by it, shall be immaterial.

History and Source of Law

Derivation:
35 Del.Laws, Ch. 54, § 2.

§ 2304. Violations and penalties

Whoever violates the provisions of this chapter shall be fined not more than $200, or imprisoned not more than 90 days, or both.

History and Source of Law

Derivation:
Code 1935, § 855.
35 Del.Laws, Ch. 54, § 3.

Revision Note:
The phrase "upon conviction thereof" was omitted as surplusage.

Words stating that the amount of the fine or term of imprisonment are "in the discretion of the Court" were omitted as surplusage since in fixing the amount of fine or length of term of imprisonment within specified limits the court is exercising discretion.

CHAPTER 25. CONTRACEPTIVES

Sec.
2501. Selling or distributing contraceptives.
2502. Displaying or advertising sale of contraceptives.
2503. Exceptions.
2504. Violations and penalties; appeals.

§ 2501. Selling or distributing contraceptives

No person, except as provided in section 2503 of this title, shall sell, give away, or otherwise distribute to the public, in stores, on the streets, by vending machine, by peddling from house to house, or in any public place or office building, or in any manner whatsoever, any
§ 2501. Displaying or advertising sale of contraceptives

No person shall exhibit, display or expose for sale any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception or venereal disease, or exhibit, display or expose any container, or package therefor descriptive or suggestive of the contents, or advertise the sale of the same by any placards, billboards, hand-bills, newspapers, periodicals, signs, or by any means of publication either visual or auditory, and either individually or by broadcast.

History and Source of Law

Derivation:
Code 1935, § 4114.
40 Del. Laws, Ch. 98, § 1.

Revision Note:
The words "No person shall" were substituted for "It shall be unlawful for any person, copartnership, corporation, enterprise or association of any character", in order to convey a similar meaning in brief form. The term "person", as defined in section 302 of Title 1, General Provisions, includes partnership, corporation, etc.

§ 2503. Exceptions

The prohibition expressed in section 2501 of this title shall not apply to wholesale druggists specifically licensed by this State, to the extent that such druggists are permitted to sell or distribute appliances, drugs and medicinal preparations of the character specified in such section only to regularly licensed drug stores, and only such appliances, drugs and medicinal preparations of the character specified in such section as conspicuously bear the identification of the manufacturer thereon or on the retail container thereof; nor shall the prohibition specified in such section apply to the sale or distribution of such appliances, drugs or medicinal preparations by regularly licensed physicians in the normal and usual course of the practice of their profession; nor shall the prohibition specified in such section apply to the sale or distribution of such appliances, drugs or medicinal preparations at retail by drug stores or pharmacies, provided such sales are made from the prescription counters of such drug stores or pharmacies and by a
§ 2504. Violations and penalties; appeals

(a) Whoever violates any of the provisions of this chapter shall be fined not less than $25 nor more than $100. Each day any violation of any section of this chapter continues shall constitute a separate and distinct offense.

(b) Any person convicted of an offense under this section, before a justice of the peace or in any court other than the Superior Court, may appeal the judgment of conviction to the Superior Court of the county upon giving bond in the sum of $200, with surety satisfactory to the justice of the peace or judge of the court by whom he was convicted. Such appeal shall be taken and bond given within three days from the date of conviction.

History and Source of Law

Revision Note:
The word “Whoever” was substituted for enumeration of “any person, corporation, etc.” and for reference to corporate officers participating in violation, since “whoever”, as defined in section 922 of Title 1, General Provisions, includes person, partnership, corporation, etc., and individual officers of a corporation participating in corporate activities.

Reference to any offense under such section 4117 of Code 1935 as a misdemeanor was omitted as covered by the general classification of crimes in section 101 of Title 11, Crimes and Criminal Procedure.

The phrase “on conviction thereof” was omitted as surplusage.

The provision vesting jurisdiction of offenses in the justices of the peace, and the Municipal Court for the City of Wilmington, was omitted as covered by section 114 of this title, and by section 2701 of Title 11, Crimes and Criminal Procedure.

See, also, Revision Note under such section 114.

The provisions with respect to appeals were taken from section 955 of Code 1935 to which section 4117 of such code referred. Because of their insertion in this revised section, it was not necessary to retain the reference to such section 955. The latter section was incorporated elsewhere in this revised code (See Distribution Table). The appeal provision, however, as set out in this section, is rewritten by inserting, particularly, the reference to “any court other than the Superior Court”, since, in view of section 101 of Title 11, Crimes and Criminal Procedure, defining crimes, any offense under this section would be a misdemeanor, and, in view of section 2701 of that title, prosecutions for any such offenses may be brought, not only before justices of the peace as provided in section 114 of this title, but also in the Municipal Court for the City of Wilmington, the Court of Common Pleas, and the Superior Court itself. Insofar as conviction, of an offense under this section, before a justice of the peace is concerned, the right of appeal is also conferred by section 115 of this title.
THE

COMPILED LAWS 1914

OF THE

STATE OF FLORIDA

(ANNOTATED)

EMBRACING THE SUBSISTING PROVISIONS OF THE CONSTITUTION AND STATUTES AS CONTAINED IN THE GENERAL STATUTES OF 1905

INCORPORATING

THE CONSTITUTIONAL AMENDMENTS ADOPTED SUBSEQUENT TO THE REVISED STATUTES OF 1902 AND THE LAWS OF A GENERAL NATURE PASSED AT THE LEGISLATIVE SESSIONS OF 1905, 1907, 1908, 1911, 1919, 1913

COMPILED AND ANNOTATED BY THE EDITORIAL STAFF OF THE WEST PUBLISHING COMPANY

IN THREE VOLUMES

VOLUME 2

ST. PAUL

WEST PUBLISHING COMPANY

1915

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ARTICLE 9
OBScene PRINTS AND LITERATURE

§ 3540. (2620.) Punishment for publishing and distributing.—Whoever imports, prints, publishes, sells or distributes any book, pamphlet, ballad, printed paper or other thing containing obscene language, or any obscene prints, figures, pictures or descriptions manifestly tending to the corruption of the morals of youth, or introduces into any family, school or place of education, or buys, procures, receives or has in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan or circulation, or with the intent to introduce the same into any family, school or place of education, shall be punished by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one hundred dollars. (Ch. 1637, subch. 8, Acts 1868, § 15.)

Indictment.—See notes under §§ 3509-3508.

An indictment under this section for publishing a paper containing an obscene figure or picture, is defective if it fails to set out such paper in haec verba, or to give a description of the same. Reaves v. State, 34 Fla. 151, 15 So. 375.

The defect in an indictment, under this section for publishing a paper containing an obscene picture, in failing to set out the picture or describe the same so as to inform defendant of the nature of the charge, is not cured by a verdict of guilty. Id.

§ 3541. (2621.) Obscenity on school buildings, etc.—Whoever wilfully cuts, paints, pastes or defaces, by writing or in any other manner, any school building, furniture, apparatus, appliance, outbuilding, ground, fence, tree, post or other school property with obscene word, image or device shall be punished by imprisonment not exceeding fifteen days, or by fine not exceeding one hundred dollars. This section shall not apply to any pupil in and subject to the discipline of the school. (Ch. 3872, Acts 1889, § 41.)

ARTICLE 10
PROFANE, ABUSIVE AND OBSCENE LANGUAGE

§ 3542. (2622.) Open profanity.—Whoever, having arrived at the age of discretion, or uses profane, vulgar and indecent language, in any public place; or upon the private premises of another, or so near thereto as to be heard by another, shall be punished by fine not exceeding twenty-five dollars, or by imprisonment not exceeding sixty days, but no prosecution for any such offense shall be commenced after twenty days from the commission thereof. (Ch. 1637, subch. 8, Acts 1868, § 18; ch. 5921, June 7, 1909, § 1, amending § 3542, Gen. St.)

§ 3543. (2623.) Insulting teachers in pupils' presence.—Whoever, within the school house or grounds, upbraids or insults any teacher in the presence of the pupils shall be punished by imprisonment not exceeding fifteen days, or by fine not exceeding twenty-five dollars. This section shall not apply to any pupil in and subject to the discipline of the school. (Ch. 3872, Acts 1889, § 42.)

§ 3544. (2624.) Using indecent or obscene language.—Any person who shall publicly use or utter any indecent or obscene language shall be punished by imprisonment not exceeding thirty days, or by fine not exceeding twenty-five dollars. (Ch. 3284, Acts 1881, § 1.)
THE
REVISED
GENERAL STATUTES
OF
FLORIDA

Prepared Under Authority of Chapter 6930, Acts 1915,
Chapter 7347, Acts 1917, and Chapter 7838,

Adopted by the Legislature of the State of Florida,
June 9, 1919.

IN THREE VOLUMES.
Volume 2.

JAMES E. CALKINS, Commissioner,
Fernandina, Fla.

DE LAND, FLA.
THE E. O. PAINTER PRINTING CO.
1920
unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the State prison not exceeding seven years, or by fine not exceeding one thousand dollars.

Whether woman was actuallyenceinte is immaterial. Eggart v. State. 40 Ill. 527, 26 So. 144.

Indictment following language of statute sufficient. Ibid.

5437. (3539.) Advertising drugs, etc., for abortion.—Ibid. Sec. 10.
Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment in the State prison not exceeding one year, or by fine not exceeding one thousand dollars.

ARTICLE 10.

5438. (3540.) Punishment for publishing and distributing.—Whoever imports, prints, publishes, exhibits, displays, sells or distributes any book, pamphlet, ballad, printed paper, stereopticon, moving picture, slide or film, or other thing, containing obscene language or any obscene prints, figures, pictures or descriptions manifestly tending to the corruption of the morals of youth, or introduce into any family, school or place of education, or buys, procures, receives or has in his possession any book, pamphlet, ballad, printed paper, stereopticon slide or moving picture film, or other thing, either for the purpose of sale, exhibition, loan or circulation, or with the intent to introduce the same into any family, school, or place of education, shall be punished by imprisonment in
§ 5439

PROFANITY, ETC.

the State prison, not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one hundred dollars.

Indictment must set out paper in hæse verba, or give a description of the same. 
Reyes v. State. 34 Fla. 181, 15 So. 875.

Ch. 7339, Acts 1917, Sec. 2.

5439. Confiscation of obscene books, etc.—Whenever anyone is convicted under the preceding Section, the court in awarding sentence shall make an order confiscating said book, pamphlet, ballad, printed paper, picture, slide, film, or other thing and authorize the executive officer of the court to destroy the same.

Ch. 5872, Sec. 41, Acts 1889.

5440. Officer to seize books, etc.—Whenever any officer arrests any person charged with any offense under Section 5438 it shall be his duty to seize said book, pamphlet, ballad, printed paper, picture, slide, or film, or other thing, and take the same into his custody to await the sentence of the court upon the trial of the offender.

5441. (3541.) Obscenity on school buildings, etc.—Whoever wilfully cuts, paints, pastes or defaces, by writing or in any other manner, any school building, furniture, apparatus, appliance, outbuilding, ground, fence, tree, post or other school property with obscene word, image or device shall be punished by imprisonment not exceeding fifteen days, or by fine not exceeding one hundred dollars. This Section shall not apply to any pupil in and subject to the discipline of the school.

ARTICLE II.

PROFANE, ABUSIVE AND OBSCENE LANGUAGE.

Ch. 1647, Sub-Ch. 8, Acts 1868, Sec. 18; Ch. 5921, June 7, 1909, Sec. 1.

5442. (3542.) Open profanity.—Whoever, having arrived at the age of discretion, uses profane, vulgar and indecent language, in any public place; or upon the private premises of another, or so near thereto as to be heard by another, shall be punished by fine not exceeding twenty-five dollars, or by imprisonment not exceeding sixty days; but no prosecution for any such offense shall be commenced after twenty days from the commission thereof.
CHAPTER 847
OBSCENE LITERATURE; PROFANITY

Section
847.001. Definitions.
847.01. Repealed.
847.011. Prohibition of certain acts in connection with obscene, lewd, etc., material; penalty.
847.012. Prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.
847.0125. Retail display of materials harmful to minors prohibited.
847.013. Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations; penalty.
847.0133. Protection of minors; prohibition of certain acts in connection with obscenity; penalty.
847.0135. Computer pornography; penalties.
847.014. Repealed.
847.0145. Selling or buying of minors; penalties.
847.0147. Obscene telephone service prohibited; penalty.
847.02. Confiscation of obscene material.
847.03. Officer to seize obscene material.
847.04. Repealed.
847.05. Repealed.
847.06. Obscene matter; transportation into state prohibited; penalty.
847.07. Wholesale promotion of obscene materials; penalties.
847.08. Hearings for determination of probable cause.
847.09. Legislative intent.
847.201. Obscene programming on cable television during promotional period unlawful; penalty; applicability.

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Cross References
Indecent exposure, see § 800.03.
School buildings, defacement, see § 235.09.
Search warrants, see § 933.02.
847.001. Definitions

When used in this chapter:

(1) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term also includes: any on-line service, Internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

(2) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(3) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(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) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

(4) "Minor" means any person under the age of 18 years.

(5) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully 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 discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

(6) "Person" includes individuals, firms, associations, corporations, and all other groups and combinations.

(7) "Obscene" means the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
§ 847.001

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother's breastfeeding of her baby is not under any circumstance "obscene.

(8) "Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(9) "Sexual battery" means oral, anal, or vaginal penetration by, or upon, with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(10) "Sexual bestiality" means any sexual act between a person and animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(11) "Sexual conduct" means actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's dressed or undressed genitals, pubic area, buttocks, or, if such person is female, breast; or any act or conduct which constitutes sexual battery and simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

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

(13) "Simulated" means the explicit depiction of conduct described in subsection (11) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.


Historical and Statutory Notes

Derivation:
Laws 1986, c. 96-238, § 1.
Laws 1993, c. 93-4, § 6, eff. March 9, 1993, inserted provisions relating to a mother's breastfeeding of her baby.
Laws 1986, c. 96-388, § 70, eff. Oct. 1, 1996, added the last sentence, relating to on-line and internet services, local bulletin boards, etc.

Cross References
Breast feeding in public authorized, see § 383.015.

American Law Reports
Musical sound recording as punishable obscenity, 30 A.L.R.5th 718.
§ 847.011  Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty

(1)(a) Any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmit, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, materi,
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article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, an advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any of what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of said paragraph.

(2) A person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene description, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmitted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consign, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live performance before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
OBSCENE LITERATURE: PROFANITY

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Convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in the defendant had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8)(a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality. It may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days of the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application has been given to the party restrained of the time when and place where the application for such restraining order is to be made; however, such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.
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(c) The person sought to be enjoined shall be entitled to a trial of the issue within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b) and there shall be no liability on the part of the state or the state attorney or a municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion picture film permitted by s. 847.013.


Historical and Statutory Notes

Derivation:
Laws 1991, c. 91-224, § 211.
Laws 1989, c. 89-44, § 1.
Laws 1988, c. 88-381, § 68.
Laws 1986, c. 86-238, § 2.
Laws 1973, c. 73-334, § 34.
Laws 1971, c. 71-335, § 171.
Laws 1971, c. 71-136, § 1053.
Laws 1969, c. 69-7, §§ 1 to 11.
Prior to the 1971 amendments, this section, as it appears in Fla. St. 1969, provided:
"(1) (a) A person who knowingly sells, lends, gives away, distributes, transmits, shows or transmutes, or offers to sell, lend, give away, distribute, transmit, show or transmute, or has in his possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose; or who knowingly designs, draws, photographs, makes for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind giving information, directly or indirectly, relating, or purporting to state, where, how, or by whom, or by what means any, or what purpose to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person to do or assist in doing, either knowingly or innocently, any act or thing mentioned above, or by such conduct aids or aids in the commission of any such character and shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding $1,000.00, or both. Any person who, after having been convicted of a violation of this section, thereby violates any of its provisions, is guilty of a felony and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year or by fine not exceeding $10,000.00, or by both such fine and imprisonment.

(4) Every act, whether so designated or not, which shall be deemed to be an act of obscenity or of indecency, shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding $1,000.00, or both. Any person who, after having been convicted of a violation of this section, thereby violates any of its provisions, is guilty of a felony and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year or by fine not exceeding $10,000.00, or by both such fine and imprisonment.

(5) Proof that a defendant has committed a violation of the provisions of this section is a sufficient defense against a prosecution under this section and shall be considered and the defendant shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding $1,000.00, or both.
The knowing possession by any person of obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or tape or other recording, or any other object, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any object or instrument of obscene or immoral use, or purporting to be for obscene or immoral use, or purpose, without intent to sell, lend, give away, distribute, transmit, or advertise the same, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding $500.00, or both. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, lease, conveyance, delivery, or resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this section is guilty of a felony and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail for not exceeding two years or by fine not exceeding $10,000.00, or both such fine and imprisonment.

(4) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(5) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or such conduct engaged in, the defendant had knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, or by showing facts and circumstances from which it may fairly be inferred that he had such knowledge, or by showing that he had knowledge, of such facts and circumstances as would put a man of ordinary intelligence and caution on inquiry as to such contents or character.

(6) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section, and upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be delivered to and held by the clerk of the court having jurisdiction to try such violation. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same, and after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if he shows to the court that he is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(7)(a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney, county solicitor, or county prosecuting attorney in the name of the state upon the relation of such state attorney, county solicitor, or county prosecuting attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney, county solicitor or county prosecuting attorney shall request a judge for said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within three days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made; provided, however, that such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.
§ 847.011

“(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

“(e) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the state attorney or county solicitor or county prosecuting attorney before the issuance of a restraining order provided for by paragraph (b) of this subsection, and there shall be no liability on the part of the state or the state attorney or the county solicitor or the county prosecuting attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

“(f) Every person who has possession, custody, or control of, or otherwise deals with any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

“(g) The several sheriffs, constables, state attorneys, county solicitors, and county prosecuting attorneys shall vigorously enforce this section within their respective jurisdictions.

“(h) This section shall not apply to the exhibition of motion picture films permitted by former § 521.02.

“(i) For the purposes of this section, the test of whether or not material is obscene is: Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

“(j) For the purposes of this section, the word person includes individuals, firms, associations, corporations, and all other groups and combinations.

Laws 1973, c. 73-334, a reviser’s bill, amended various sections of the statues to conform terminology to the revision of the judiciary brought about by the adoption of revised sections 5 of the Florida Constitution, effective January 1, 1973.

Laws 1986, c. 86-238, § 2, eff. Oct. 1, which substituted references to obscene material, in lieu of “obscene, lewd, lascivious, filthy, lewd, sadistic, or masochistic” material, “obscene” uses for “indecent” uses, deleted subsec. (8)(d) pertaining to the sheriff’s certificate of compliance if a decree of injunction required seizure and destruction of materials, deleted subsec. (11) providing a test whether material is obscene or not, and added subsec. (12) defining “person”.

Laws 1988, c. 88-381, § 88, eff. Oct. 1, inserted in the first sentence of subsec. (2) sticker, decal, emblem or other device attached to a motor vehicle containing obscene depiction, photographs, or depictions, any.

Laws 1989, c. 89-44, § 1, eff. July 1, 1989, subsec. 7, in the first sentence, substituted “allowing ‘shall be’ deleted ‘delivered to’ and substituted reference to arresting officer for reference to clerk of the court having jurisdiction.

Laws 1991, c. 91-224, a reviser’s bill, modified provisions for punishment of misdeemeanors as contained in this section by deleting reference to punishment pursuant to § 775.084, conform with Laws 1988, c. 88-131 which deleted all references to misdeemeanor in § 775.084.

Laws 1997, c. 97-102, eff. July 1, 1997, removed gender-specific references applicable human beings from volume 4 of the Florida Statutes without substantive changes in the effect.

Similar Provisions:
Laws 1959, c. 59-360, §§ 1, 2.
Laws 1957, c. 57-779, § 1.
Laws 1955, c. 29818, § 1.
Laws 1917, c. 7259, § 1.
Gen.St.1906, § 354.
Rev.St.1892, § 2620.
Laws 1868, c. 1637, subc. 8, § 15.

Cross References

Civil remedies for criminal practices act, criminal activities to which provisions applicable, see § 772.102.
Issuance of search warrant, see § 933.02.
Obscenity on school buildings, see § 235.09.

American Law Reports

Chronological or procedural sequence of former convictions as affecting enhancement of penalty under habitual offender statute.

A.L.R.5th 263.
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Title 46
of revised Article effective January

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Musical sound recording as punishable obscenity,
36 A.L.R.5th 718.

Use of prior military conviction to establish repeat offender status, 11 A.L.R.5th 218.

Law Review and Journal Commentaries


Constitutional law: freedom of speech in motion pictures. 6 U.Fla.L. Rev. 131 (1953).


Injunctions § 102, 134.

Obscenity §§ 5, 15, 18, 22.

WESTLAW Topical Nos. 212, 281.

C.J.S. Injunctions §§ 12, 15, 158, 159, 161.

C.J.S. Obscenity §§ 13 to 18, 23, 24, 32.

Library References

§ 10: 14 Fla Jur 2d, Criminal Law § 874; 15A

Fla Jur 2d, Criminal Law §§ 3735, 3734, 3736, 3738, 3739, 3745.

Texts and Treatises

Fla Jur 2d, Constitutional Law § 292; 11 Fla

Jur 2d, Consumer and Borrower Protection

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

United States Supreme Court


Determination that mailable matter is obscene, notice to defendant, see McKinnon v. Alabama, 1976, 96 S.Ct. 1189, 424 U.S. 669, 47 L.Ed.2d 387.


Obscenity matter, jury instructions regarding probability and distribution, see Splawn v. California, 1987, 97 S.Ct. 1871, 43 U.S. 239, 52 L.Ed.2d 299.

Obscenity, children as a part of the community, see Pinkus v. United States, 1978, 98 S.Ct. 1808, 436 U.S. 293, 56 L.Ed.2d 293, on remand 579 F.2d 1174, certiorari dismissed 99 S.Ct. 605, 439 U.S. 999, 56 L.Ed.2d 674.

Prior restraints, exhibition of films alleged to be obscene, see Vance v. Universal Amusement Co., Inc., 1980, 100 S.Ct. 1156, 445 U.S. 308, 63 L.Ed.2d 413, rehearing denied 100 S.Ct. 2177, 446 U.S. 947, 64 L.Ed.2d 804.


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PARK'S
ANNOTATED CODE
OF
THE STATE OF GEORGIA
1914

Embracing the Code of 1910 and Amendments and Additions
Thereto Made by the General Assembly in 1910, 1911, 1912,
1913, and 1914, Together with Complete Annotations
from the Judicial Decisions Through Those Contained
in the 139 Georgia Reports, 12 Georgia Appeals
Reports, 212 Federal Reporter, and 230
United States Supreme Court Reports

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Volume VI
PENAL CODE

ATLANTA
THE HARRISON COMPANY
1918

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(Second printing)
ARTICLE 7.

Obscene Pictures, and Abusive and Vulgar Language.

§ 385. (§ 394.) Use of obscene pictures. If any person shall bring, or cause to be brought, into this State for sale or exhibition, or shall sell or offer to sell, or shall give away or offer to give away, or having possession thereof shall knowingly exhibit to another any indecent pictorial newspaper tending to debauch the morals, or any indecent or obscene book, pamphlet, paper, drawing, lithograph, engraving, daguerreotype, photograph, picture, or any model, cast, instrument, or article of indecent and obscene use, or shall advertise any of said articles or things for sale, by any form of notice, printed, written, or verbal, or shall manufacture, draw, or print any of said articles, with intent to sell or expose or to circulate the same, he shall be guilty of a misdemeanor.

Acts 1878-9, p. 163.

Cited. 105/693, 691 (31 S. E. 592); Charge submitting to jury the reading matter and illustration in newspapers given away, proper. 72/691.

§ 386. (§ 395.) Obscene prints, etc. If in a public place, on any fence or wall, or other surface contiguous to the public street, or on the floor or ceiling or on the inner or outer wall of any closet, room, passage, hall, or any part of any hotel, court-house, church, school, station-house, depot for freight or passengers, capitol, or other buildings devoted or open to other or public uses, or on the walls of any outbuilding or other structure pertaining thereto, and frequented by the users thereof, any person shall make or cause to be made any obscene drawing or picture, or obscene writing or print, liable to be seen of others passing or coming near the same, he shall be guilty of a misdemeanor.

Acts 1878-9, p. 163.

Cited. 105/693, 691 (31 S. E. 592); 172 (76 S. E. 1032), 174, 175 (76 S. E. 1038); 12 App. 169.

§ 387. (§ 396.) Using abusive or obscene language. Any person who shall, without provocation, use to or of another, and in his presence, opprobrious words or abusive language, tending to cause a breach of the peace, or who shall, in like manner, use obscene and vulgar or profane language in the presence of a female, or by indecent or disorderly conduct in the presence of females on passenger-cars, street-cars, or other places of like character, shall be guilty of a misdemeanor.

THE
CODE OF GEORGIA
OF
1933
ADOPTED MARCH 24, 1933
EFFECTIVE JANUARY 1, 1935.

PREPARED UNDER THE DIRECTION
OF THE
CODE COMMISSION

BY

ORVILLE A. PARK and HARRY S. STROZIER

HARRY B. SKILLMAN Henry H. COBB

ATLANTA
THE HARRISON COMPANY
1935

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§ 26-6105. Crimes and Punishment.

26-6105. (381 P. C.) Tipping houses, keeping open on Sabbath.—Any person who shall keep open a tipping house on the Sabbath day or Sabbath night shall be guilty of a misdemeanor. (Cobb, 815. Acts 1864, p. 233.)

CHAPTER 26-52. SOLICITING FOR PROSTITUTION.

26-6201. Soliciting and procuring.—Whoever shall solicit another for the purpose of prostitution or shall solicit for a prostitute, or who shall offer to procure a prostitute for another, or shall, with knowledge or good reason to know of the immoral purpose of such directing, taking or transporting, direct or assist in directing, or shall take or transport, assist in taking or transporting, or offer or agree to take or transport, on foot, on by automobile, or by any other means, any person of ill fame, hotel, rooming house, apartment, room, park, field, or woods, or any other place whatsoever, for the purpose of lewdness, assignation, or prostitution, shall be guilty of a misdemeanor. (Acts 1918, p. 267.)

26-6202. Forfeiture of automobile license.—Whenever any person convicted of a violation of section 26-6201 shall be licensed under any law or ordinance to operate an automobile or other conveyance for hire, the said license shall immediately become void, and no license to operate an automobile or other conveyance for hire shall thereafter be granted to such person. (Acts 1918, p. 268.)

Cross-reference.—Licensing of motor vehicles for hire, see Title 68, Motor Vehicles.

CHAPTER 26-63. OBSCENE PICTURES, AND ABUSIVE AND VULGAR LANGUAGE.

26-6301. Sale, etc., of obscene pictures. 26-6303. Using abusive or obscene language.

26-6302. Making obscene drawings, prints, etc. 26-6304. Indictment or presentment.

26-6301. (385 P. C.) Sale, etc., of obscene pictures.—Any person who shall bring, or cause to be brought, into this State for sale or exhibition, or sell or offer to sell, or shall give away or offer to give away, or having possession thereof shall knowingly exhibit to another any indecent pictorial newspaper tending to debauch the morals or any indecent or obscene book, pamphlet, paper, drawing, lithograph, engraving, daguerreotype, photograph, picture, or any model, cast, instrument, article of indecent and obscene use, or shall advertise any of said articles or things for sale, by any form of notice, printed, written, or verbal, or shall manufacture, draw, or print any of said articles, with intent to sell or expose or to circulate the same, shall be guilty of a misdemeanor. (Acts 1878-9, p. 163.)

26-6302. (386 P. C.) Making obscene drawings, prints, etc.—If in a public place, on any fence or wall, or other surface contiguous to be...
OFFICIAL CODE OF GEORGIA
ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by
The Code Revision Commission
The Office of Legislative Counsel
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1999 Edition
Title 16. Crimes and Offenses


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1999
16-12-80  CRIMES AND OFFENSES


For comment discussing the constitutional standard for judging obscenity, light of Miller v. California, 413 U.S. 150, 93 S. Ct. 2607, 37 L. Ed. 2d 442 (1973), see 9 S. Ct. 327 (1979).

JUDICIAL DECISIONS


RESEARCH REFERENCES

A.L.R. — Publications of a scientific, educational or instructive character regarding sex relations as within statutes relating to obscene or immoral publications, 76 A.L.R. 1099.

Power of municipality in respect of inspection and censorship of motion picture films, 126 A.L.R. 1483.

Enforcement to commit offense against obscenity laws, 77 A.L.R. 792.

Modern concept of obscenity, 5 A.L.R. 1158.

Validity of procedures designed to protect the public against obscenity, 5 A.L.R. 2114.

95 A.L.R. 297.

Exhibition of obscene motion pictures as nuisance, 95 A.L.R. 969.

What constitutes such discrimination prosecution or enforcement of laws as a valid defense in state criminal procedure, 95 A.L.R. 280.

In individual or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, producer, publisher, distributor, etc., acts were performed outside the state, 131 A.L.R. 1318.

Processor's right to refuse to process film or video tape of obscene subject, 18 A.L.R. 1922.

Validity and application of same evidence nonmanagerial, nonfinancially supervised employees from obscene production, 35 A.L.R. 1297.

PART I

GENERAL PROVISIONS

16-12-80. Distributing obscene material; obscene material defined; penalty.

(a) A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses material with the intent to do so, provided that the word "knowing," as used in this Code section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter, and a person
constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the sexual nature of the material; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if commercial dissemination of obscene material is involved, the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(b) Material is obscene if:

(1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;

(2) The material, taken as a whole, lacks serious literary, artistic, political, or scientific value; and

(3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:

(A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(B) Acts of masturbation;

(C) Acts involving excretory functions or lewd exhibition of the genitals;

(D) Acts of bestiality or the fondling of sex organs of animals; or

(E) Sexual acts of flagellation, torture, or other violence indicating sadomasochistic sexual relationship.

Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.

(d) Material not otherwise obscene may be obscene under this Code section if the distribution thereof, the offer to do so, or the possession with intent to do so, is a commercial exploitation of erotica solely for the sake of prurient appeal.

It is an affirmative defense under this Code section that dissemination of the material was restricted to:

(A) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing courses of study related to such material; or

(B) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.
CRIMES AND OFFENSES


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ANALYSIS

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APPLICATION

1. GENERAL

2. CONSIDERATIONS IN DETERMINING OBSCENITY

3. DETERMINATION OF NUMBER OF OFFENSES COMMITTED

General Consideration

States have power to determine that public exhibition of obscene materials is harmful. — States have power to make morally neutral judgment that public exhibition of obscene material, or commerce in such material, has tendency to injure community as a whole, to endanger public safety, or to jeopardize states' right to maintain a decent society. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973), cert. denied, 418 U.S. 939, 94 S. Ct. 3227, 41 L. Ed. 2d 1173 (1974).


Section was designed to reach only "hardcore pornography," outside of protection of U.S. Const., Amend. I. Staton v. Paris Adult Theatre I, 231 Ga. 312, 201 S.E.2d 40 (1973).

Section is aimed at patently offensive "hard core" sexual conduct. — No one will be subject to prosecution for the simple exposure of obscene materials unless they materials depict or describe patently offensive "hard core" sexual conduct. Jenkins v. Georgia, 418 U.S. 1, 94 S. Ct. 3000, 41 L. Ed. 2d 442 (1974).
