

AZ ST § 13-3506.01

§ 13-3506.01. Furnishing harmful items to minors; internet activity; classification

A. It is unlawful for any person, with knowledge of the character of the item involved, to intentionally or knowingly transmit or send over the internet an item to a minor that is harmful to minors when the person has knowledge or reason to know at the time of the transmission that a minor in this state will receive the item.

B. It is unlawful for any person in this state, with knowledge of the character of the item involved, to intentionally or knowingly transmit or send over the internet an item to a minor that is harmful to minors when the person has knowledge or reason to know at the time of the transmission that a minor will receive the item.

C. Posting material on an internet web site does not constitute the act of transmitting or sending an item over the internet.

D. In an action for a violation of this section, proof of any of the following may give rise to an inference that the person knew or should have known that the recipient of a transmission was a minor:

1. The name, account, profile, web page or address of the recipient contained indicia that the recipient is a minor.
2. The recipient or another person previously notified the person by any reasonable means that the recipient is a minor.
3. The recipient's electronic mail or web page contains indicia that the address or domain name is the property of, or that the visual depiction ultimately will be stored at, a school as defined in section 13-609.

E. It is not a defense to a prosecution for a violation of this section that the recipient of the transmission was a peace officer posing as a minor.

F. A violation of this section is a class 4 felony.

ARIZONA 2001 LEGISLATIVE SERVICE
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CHAPTER 94
H.B. 2289
OBSCENITY

AN ACT AMENDING SECTIONS 13-3501 AND 13-3506, ARIZONA REVISED
STATUTES; AMENDING TITLE 13, CHAPTER 35, ARIZONA REVISED
STATUTES, BY ADDING SECTION 13-3506.01; RELATING TO OBSCENITY.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3501, Arizona Revised Statutes, is amended to read:

<< AZ ST S 13-3501 >>

§ 13-3501. Definitions

In this chapter, unless the context otherwise requires:

1. “Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

(a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:

(i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.

(ii) Portrays the description or representation in a patently offensive way.

(b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

2. “Item” means any material or performance which depicts or describes sexual activity and includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, live or recorded telephone message or other similar items whether tangible or intangible and including any performance, exhibition, transmission or dissemination of any of the above. An item also includes a live performance or exhibition which depicts sexual activity to the public or an audience of one or more persons. An item is obscene within the meaning of this chapter when all of the following apply:

(a) The average person, applying contemporary state standards, would find that the item, taken as a whole, appeals to the prurient interest. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.

(b) The average person, applying contemporary state standards, would find that the item depicts or describes, in a patently offensive way, sexual activity as that term is described in this section.

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

3. “Knowledge of the character” means having general knowledge or awareness, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of that which is reasonably susceptible to examination by the defendant both:

(a) That the item contains, depicts or describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse, whichever is applicable, whether or not there is actual knowledge of the specific contents thereof. This knowledge can be proven by direct or circumstantial evidence, or both.

(b) If relevant to a prosecution for violating section 13-3506<<+, 13- 3506.01+>> or 13-3507, the age of the minor, provided that an honest mistake shall constitute

an excuse from liability under this chapter if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

4. “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 discernibly turgid state.

5. “Sadomasochistic 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, for the purpose or in the context of sexual gratification or abuse.

6. “Sexual activity” means:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

7. “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 is a female, breast.

8. “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

9. “Ultimate sexual acts” means sexual intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy. A sexual act is simulated when it depicts explicit sexual activity which gives the appearance of consummation of ultimate sexual acts.