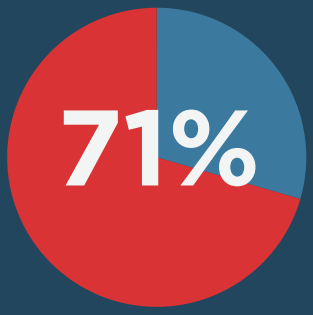
# PROTECT CHILDREN FROM INDECENT SEXUAL EXHIBITIONS

*Creates a duty of care for organizers and performers of indecent sexual exhibitions to take reasonable steps to restrict the access of children*

## QUICK FACTS:

- Applies equally to all indecent sexual exhibitions—including drag shows, burlesque performances, erotic dancing, etc.
- Does not ban sexual exhibitions for adult audiences—it simply requires organizers to check IDs at the door
- Carefully crafted to avoid implicating run-of-the-mill cheerleading, dancing, pageants, or theatrical cross-dressing
- Functions as a constitutionally permissible time, place, and manner regulation
- Contains no criminal penalties—instead, violations could result in civil liability that gives legal recourse to children and their families

This legislation uses the same **INDECENCY STANDARD** utilized by the federal government to determine whether content is appropriate for daytime broadcast television




**of likely Idaho voters support banning drag shows in public places where children are present**

*Among those who expressed support or opposition*
*401 likely Idaho voters | Margin of error +/- 4.9% | Conducted January 8-10, 2025*

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# PROTECT CHILDREN FROM INDECENT SEXUAL EXHIBITIONS — FAQ's

### 1. WHAT IS THE INDECENCY STANDARD UTILIZED BY THIS LEGISLATION?

The Federal Communications Commission uses an indecency standard to regulate sexually explicit content during daytime television broadcasts when there is a reasonable risk that children may be in the audience. This legislation uses a similar indecency standard, meaning that if content is appropriate for daytime broadcast television, it's likely allowed by this legislation.

### 2. WOULD THIS LEGISLATION VIOLATE FREE SPEECH PROTECTED BY THE FIRST AMENDMENT?

No. According to the U.S. Supreme Court in F.C.C. v. Pacifica (1978), indecent content which is "patently offensive" or "vulgar, offensive, and shocking . . . is not entitled to absolute constitutional protection under all circumstances."

Indecent content may be regulated when there is a reasonable risk that children may be present—so long as the regulation still leaves adults with alternative avenues of communication. For this reason, the U.S. Supreme Court has upheld indecency regulations as a form of time, place, and manner restriction.

In Sable v. F.C.C. (1989), the U.S. Supreme Court gave additional examples of instances when indecency regulations may be constitutionally permissible, such as broadcasts, public displays, and unsolicited mailings which the observing child has no meaningful opportunity to avoid.

### 3. WHAT STANDARD DEFINES "REASONABLE STEPS TO RESTRICT THE ACCESS OF MINORS?"

The reasonableness standard is not subjective; in fact, the courts consider this reasonableness test "an objective standard." The duty of reasonable care – where an actor owes a duty to act as a reasonably prudent person would act under similar circumstances – is a common fixture of tort law.

Under this legislation, reasonable steps to restrict children's access may include checking IDs at the door and holding the performances in an enclosed venue space. Note that "reasonable steps" would not require precautions that are unnecessarily burdensome in light of the risk.

### 4. WHAT IS THE DIFFERENCE BETWEEN OBSCENITY AND INDECENCY? WHY DOES THIS LEGISLATION NOT USE THE MILLER TEST?

This legislation regulates indecent sexual exhibitions, not obscene sexual exhibitions, which are already illegal under Idaho law.

Notably, the U.S. Supreme Court treats indecency differently from obscenity. According to the U.S. Supreme Court, obscene content is not entitled to First Amendment protections. In contrast, indecent content is entitled to First Amendment protections but may be regulated for the purpose protecting children.

Although the Miller test is used to determine whether material is obscene, it is not used to determine whether material is indecent. Instead, the test for indecency considers whether the content is 'patently offensive' as measured by contemporary community standards for what is appropriate for minor children.

### 5. WOULD THIS LEGISLATION BAN INDECENT SEXUAL EXHIBITIONS IN PUBLIC PARKS AND PUBLIC FACILITIES?

Although this legislation does not explicitly ban indecent sexual exhibitions from taking place on public property, it would apply to many public facilities. This is because minors are commonly present in public parks, public schools, public libraries, and other public spaces.

### 6. WHY DOES THIS LEGISLATION CREATE A CIVIL CAUSE OF ACTION? WOULD THIS CREATE THE POTENTIAL FOR FRIVOLOUS LAWSUITS?

This legislation leverages the principles of tort law to ensure that minors and their families have access to legal recourse and are compensated for the harm caused by unjust exposure to sexual exhibitions. Unlike criminal cases, which do not provide restitution to the harmed minor, civil lawsuits empower victims to seek direct redress for their injuries.

In civil proceedings, the plaintiff bears the burden of proving every element of the alleged misconduct by a preponderance of the evidence. Additionally, under Idaho state law and judicial procedures, courts may award attorney's fees and court costs to the defendant if the lawsuit is initiated or pursued in bad faith.