

## ***CHILDREN'S SCHOOL AND LIBRARY PROTECTION ACT***

**SEC. 1. TITLE.** This chapter shall be known and may be cited as the "Children's School and Library Protection Act."

**SEC. 2. DEFINITIONS.** The following definitions are applicable in this act:

- (1) "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 full opaque covering of any portion there of below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (2) "Sexual conduct" means any act of masturbation, sodomy, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such person be a female, the breast.
- (3) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (4) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.
- (5) "Harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when:
  - i. Taken as a whole, it appeals to a prurient, shameful, or morbid interest of minors, according to the average person applying contemporary community standards;

- ii. It depicts or describes sexual conduct in a patently offensive way, according to prevailing standards in the adult community with respect to what is suitable material or conduct for minors; and
  - iii. Taken as a whole, it lacks serious literary, artistic, political or scientific value for minors.
- (6) "Library" means any library that is established, maintained, and operated by a state, county, city, district, or other political subdivision, that is open to the general public, and provides free access to books, media, and other informational resources.
- (7) "Promote" means to manufacture, issue, sell, give, provide, deliver, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.
- (8) "School" means any public or private school providing instruction for students in kindergarten through grade 12.

**SEC. 3. POLICY.** Notwithstanding any other provision of law, a school or library, or an agent thereof, shall not promote, give, or make available to a minor any material harmful to minors.

**SEC. 4. PRIVATE CAUSE OF ACTION.** (1) Any minor who obtains material harmful to minors, or parent or legal guardian whose child obtained material harmful to minors from a school or library shall have a cause of action against such institution if the institution:

- (a) Promoted, gave, or made available material harmful to minors; or
- (b) Failed to take reasonable steps to restrict access by minors to material harmful to minors.

(2) Any minor, parent, or legal guardian who prevails in an action brought under this section may recover ten thousand dollars (\$10,000) in statutory damages as well as

actual damages and any other relief available by law, including but not limited to injunctive relief sufficient to prevent the defendant school or library from violating the requirements of this section.

(3) Any minor who prevails in an action brought pursuant to this section is entitled to recover reasonable attorney's fees and costs from the defendant.

(4) It shall be an affirmative defense to civil liability under this section that the defendant:

- (a) Had reasonable cause to believe that the minor involved was eighteen (18) years of age or older or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or
- (b) Verified the minor involved was accompanied, at the time of the act, by his parent or legal guardian, or by another adult and the adult represented that he was the minor's parent or legal guardian and signed a written statement to that effect.

# **PROTECTING CHILDREN FROM INDECENT SEXUAL EXHIBITIONS ACT**

**SEC. 1. TITLE.** This chapter shall be known and may be cited as the "Protecting Children from Indecent Sexual Exhibitions Act."

**SEC. 2. LEGISLATIVE FINDINGS.** The legislature finds and declares that:

(1) The free speech clause of the First Amendment to the Constitution of the United States provides that "Congress shall make no law... abridging the freedom of speech," and the Supreme Court of the United States has applied the same to state governments through the Fourteenth Amendment.

(2) In early American free speech jurisprudence, the scope of free speech protections was limited only to the right of every individual to "freely speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that right," as explained by early American legal theorist James Kent in his Commentaries on American Law.

(3) Consistent with this natural right of every man to speak freely, Section 9, Article I of the Constitution of the State of Idaho guarantees that "every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty." **[NOTE: Replace with reference to similar provision in state constitution]**

(4) Early American free speech jurisprudence also recognized, as Associate Justice Joseph Story explained in his Commentaries on the Constitution of the United States, that "an absolute right to speak, or write, or print, whatever he might please, without any responsibility... is a supposition too wild to be indulged by any rational man."

(5) In landmark cases like *Stromberg v. People of State of California* (1931) and *U.S. v. O'Brien* (1968), the Supreme Court of the United States later expanded the scope of free speech protections to include conduct that is intended to express a message.

(6) The Supreme Court of the United States explained in *Young v. American Mini Theatres, Inc.* (1976) that "broad statements of principle, no matter how correct in the context in which they are made, are sometimes qualified by contrary decisions before the absolute limit of the stated principle is reached."

(7) The Supreme Court of the United States affirmed in *Rumsfeld v. Foundation for Academic and Institutional Rights, Inc.* (2006) that First Amendment protection for conduct extends "only to conduct that is inherently expressive."

(8) The Supreme Court of the United States affirmed in *City of Dallas v. Stanglin* (1989) that "it is possible to find some kernel of expression in almost every activity a person undertakes... but such a kernel is not sufficient to bring the activity within the protection of the First Amendment."

(9) Sexualized conduct per se is not entitled to First Amendment protection, as provided in *Edge v. City of Everett*, 929 F.3d 657 (9th Cir. 2019).

(10) The Supreme Court of the United States explained in *Texas v. Johnson* (1989) that although expressive conduct may deserve some free speech protection, "the government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word."

(11) Even when sexualized conduct is inherently expressive, the Supreme Court of the United States has repeatedly found that sexualized expressive conduct is more regulable under the First Amendment to the Constitution of the United States than other speech, especially when such a restriction creates only a de minimis intrusion on expression, as provided in *City of Erie v. Pap's A.M.*, 529 U.S. 277, 279 (2000).

(12) Because there is a substantial and compelling government interest in protecting the physical and psychological well-being of minors, sexualized expressive conduct is even more regulable when there is a reasonable risk that children will be in the audience, as the Supreme Court of the United States has repeatedly recognized.

(13) As the Supreme Court of the United States acknowledged in *Reno v. American Civil Liberties Union* (1997), "There is a compelling interest in protecting the physical and psychological well-being of minors which extended to shielding them from indecent messages that are not obscene by adult standards."

(14) Sexualized expressive conduct is even more regulable when children are exposed through "broadcasts... public displays, unsolicited mailings and other means of expression" that the observing child "has no meaningful opportunity to avoid," as explained by the Supreme Court of the United States in *Sable v. F.C.C.* (1989).

(15) The Supreme Court of the United States concluded in *F.C.C. v. Pacifica Foundation* (1978) that indecent content that is "patently offensive" or "vulgar, offensive, and shocking... is not entitled to absolute constitutional protection under all circumstances."

(16) The *Pacifica* court found that indecency "has a separate meaning" from obscenity, in that obscenity requires prurient appeal but that "prurient appeal" is not an "essential component of indecent language."

(17) The *Pacifica* court treated Federal Communications Commission regulations prohibiting indecent broadcast monologues "at times of the day when there is a reasonable risk that children may be in the audience" as a constitutionally permissible example of a time, place, and manner regulation.

(18) The *Pacifica* court affirmed that through time, place, and manner regulations, indecent "expression may be withheld from the young without restricting the expression at its source."

(19) Time, place, and manner regulations on indecent live shows, exhibitions, or performances that both involve sexual conduct and are patently offensive to an average person applying contemporary community standards in the adult community as a whole with respect to what is suitable for minors are constitutionally permissible when there is a reasonable risk that children may be in the audience and alternative avenues of communication still exist.

(20) The Supreme Court of the United States concluded in *City of Renton v. Playtime Theatres, Inc.* (1986) that a municipal zoning ordinance restricting the location of adult movie theaters should be "properly analyzed as a form of time, place, and manner regulation."

(21) The *Renton* court concluded that the municipal zoning ordinance, despite its content-based restriction on adult movies, should be treated as content-neutral because it was "aimed not at the content of the films shown at adult motion

picture theatres, but rather at the secondary effects of such theatres on the surrounding community."

(22) The *Renton* court upheld the municipal zoning ordinance as constitutionally permissible because it "serve[d] a substantial governmental interest and allow[ed] for reasonable alternative avenues of communication."

(23) Sexually explicit shows, exhibitions, or performances when children are present, like material harmful to minors, are a "contributing factor to crime, to juvenile crime, and also a basic factor in impairing the ethical and moral development of our youth," as detailed in Section 18-1513, Idaho Code. **[NOTE: Replace with reference to state law]**

(24) Sexually explicit shows, exhibitions, or performances when children are present, like when children are exposed to pornographic materials, are correlated with a number of social problems, including but not limited to juvenile delinquency, sexual violence, sexual deviancy, risky and unsafe sexual behavior, and impaired moral and ethical development.

(25) These negative secondary effects would be combated by a time, place, and manner regulation on live shows, exhibitions, or performances that both involve sexual conduct and are patently offensive to an average person applying contemporary community standards in the adult community as a whole with respect to what is suitable for minors.

**SEC. 3. DEFINITIONS.** The following definitions are applicable in this act:

1. "Host" means to knowingly provide the facilities for a show, exhibition, or performance involving live persons engaged in sexual conduct.
2. "Minor" means any person less than eighteen (18) years of age.
3. "Organize" means to knowingly participate in the planning for a show, exhibition, or performance involving live persons engaged in sexual conduct.
4. (a) "Sexual conduct" means:

- i. Acts, whether actual or simulated, of masturbation, sexual intercourse, or physical contact with a person's unclothed genitals or pubic area;
- ii. Sexually explicit depictions of acts described in subparagraph (i) of this paragraph; or
- iii. Sexually provocative dances or gestures performed with accessories that exaggerate male or female primary or secondary sexual characteristics.

(b) "Sexual conduct" shall not include dances or gestures performed by an athletic, cheer, or dance team maintained or sponsored by a secondary school or an institution of higher education, provided that the dances or gestures are performed in association with or in conjunction with an interscholastic, intercollegiate, intramural, or club athletic event featuring teams that are sponsored by the secondary school or the institution of higher education.

**SEC. 4. POLICY.** (1) Any person or institution that knowingly organizes, hosts, or performs in a show, exhibition, or performance by a live person before a live audience must take reasonable steps to restrict the access of minors if:

- (a) The person or institution has reason to believe that minors are likely to be present;
- (b) The show, exhibition, or performance involves live persons engaged in sexual conduct; and
- (c) The show, exhibition, or performance is patently offensive to an average person applying contemporary community standards in the adult community as a whole with respect to what is suitable for minors.

**SEC. 5. PRIVATE CAUSE OF ACTION.** (1) Any minor who is exposed to sexual conduct as a result of a violation this act shall have a private cause of action against the

person or institution that failed to take reasonable steps to restrict the access of minors.

(2) Any minor who prevails in an action brought pursuant to this section may recover ten thousand dollars (\$10,000) in statutory damages for each violation of this act. The minor may also recover monetary damages from the defendant for all psychological, emotional, economic, and physical harm suffered.

(3) Any minor who prevails in an action brought pursuant to this section is entitled to recover reasonable attorney's fees and costs from the defendant.

(4) It shall be an affirmative defense to an action brought pursuant to the provisions of this section when the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older, or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older.

(5) It shall not be a defense to an action brought pursuant to this section that the minor was accompanied by the minor's parent or legal guardian.