

## CHAPTER 617

## ABORTION; OBSCENITY; HOUSES OF ILL-FAME

617.22 Concealing birth.  
 617.241 Obscene materials; distribution prohibited; penalty.  
 617.243 Indecent literature, distribution.  
 617.246 Use of minors in sexual performance prohibited.

617.247 Possession of pictorial representations of minors.  
 617.27 Search warrant; destruction of property.  
 617.298 Obscene motion pictures at drive-in theatres; definitions.

## 617.22 CONCEALING BIRTH.

Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor. Every person who, having been convicted of endeavoring to conceal the still-birth of any issue, or the death of any issue under the age of two years, shall, subsequent to that conviction, endeavor to conceal any subsequent birth or death, shall be punished by imprisonment for not more than five years.

**History:** 1983 c 7 s 16

## 617.241 OBSCENE MATERIALS; DISTRIBUTION PROHIBITED; PENALTY.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given them:

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex of the average person, which portrays patently offensive sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex of the average person;

(ii) that the work depicts patently offensive sexual conduct specifically defined by clause (b); and

(iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Patently offensive sexual conduct" includes any of the following depicted sexual conduct:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the

female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a civil proceeding are chosen.

Subd. 2. **Crime.** It is unlawful for any person knowingly to exhibit, sell, print, offer to sell, give away, circulate, publish, distribute, or attempt to distribute any obscene book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, play, image, instrument, statue, drawing, or other article which is obscene.

Subd. 3. **Penalty.** Any person violating any provision of this section shall be fined up to \$5,000 for the first offense and up to \$10,000 for the second or a subsequent offense.

**History:** 1983 c 204 s 9

### 617.243 INDECENT LITERATURE, DISTRIBUTION.

Subdivision 1. **Prohibited activity.** No person, copartnership or corporation shall, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

Subd. 2. **Penalty.** A violation of subdivision 1 is a gross misdemeanor.

**History:** 1983 c 204 s 10

### 617.246 USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED.

Subdivision 1. **Definitions.** (a) For the purpose of this section, the terms defined in this subdivision have the meanings given them.

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

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction which depicts sexual conduct as defined by clause (e).

(e) "Sexual conduct" means any of the following if the depiction involves a minor:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadoomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals.

(iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) "Work" means an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing.

Subd. 2. **Use of minor.** It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage in posing or modeling alone or with others in any sexual performance if the person knows or has reason to know that the conduct intended is a sexual performance.

Any person who violates this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$5,000 for the first offense and \$10,000 for a second or subsequent offense, or both.

Subd. 3. **Operation or ownership of business.** A person who owns or operates a business in which a work depicting a minor in a sexual performance, as defined in this section, is disseminated, and who knows the content and character of the work disseminated, is guilty of a felony and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$5,000 for the first offense and \$10,000 for a second or subsequent offense, or both.

Subd. 4. **Dissemination.** A person who, knowing or with reason to know its content and character, disseminates for profit a work depicting a minor in sexual performance, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$5,000 for the first offense and \$10,000 for a second or subsequent offense, or both.

Subd. 5. **Consent; mistake.** Neither consent to sexual performance by a minor or his parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

**History:** 1983 c 204 s 11

## **617.247 POSSESSION OF PICTORIAL REPRESENTATIONS OF MINORS.**

Subdivision 1. **Policy; purpose.** It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in photographic representations of sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of photographic representations of sexual conduct which involve minors in order to protect the identity of minors who are victimized by involvement in the photographic representations, and to protect minors from future involvement in photographic representations of sexual conduct.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given them:

(a) "Photographic representation" means an original or reproduction of a film, videotape, videodisc, photograph, negative, or slide.

(b) "Sexual conduct" has the meaning given to it in section 617.246.

Subd. 3. **Dissemination prohibited.** A person who disseminates a photographic representation of sexual conduct which involves a minor, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 4. **Possession prohibited.** A person who has in possession a photographic representation of sexual conduct which involves a minor, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 5. **Exception.** This section does not apply to the performance of official duties by peace officers, court personnel, or attorneys, nor to licensed physicians, psychologists, or social workers or persons acting at the direction of a

licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Subd. 6. **Consent.** Consent to sexual performance by a minor or his parent, guardian, or custodian is not a defense to a charge of violation of this section.

Subd. 7. **Second offense.** If a person is convicted of a second or subsequent violation of this section within 15 years of the prior conviction, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

**History:** 1983 c 204 s 12

#### **617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY.**

A county or municipal court, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in sections 617.241 to 617.26, shall issue a warrant directed to the sheriff or any constable of the county, directing him to search for, seize, and take possession of the obscene matter. Upon conviction of the person in whose possession the obscene matter was found, the judge shall cause it to be destroyed, and the fact to be entered upon the records of the court.

**History:** 1983 c 359 s 92

#### **617.298 OBSCENE MOTION PICTURES AT DRIVE-IN THEATRES; DEFINITIONS.**

Subdivision 1. **Definitions.** For the purposes of this section and section 617.299, the terms defined in this section have the meanings given them.

Subd. 2. **Obscene.** "Obscene" has the meaning given to it in section 617.241.

Subd. 3. **Nudity.** "Nudity" means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple, or the breast with the nipple and immediately adjacent area only covered.

Subd. 4. [Repealed, 1983 c 204 s 14]

**History:** 1983 c 204 s 13