

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO CRIMINAL OFFENSES -- CHILDREN -- OBSCENE MATERIAL

Introduced By: Senators de la Cruz, and E Morgan

Date Introduced: March 01, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by
2 adding thereto the following section:

3 **11-9-1.7. Prohibition of obscene material.**

4 (a) Definitions. As used in this section:

5 (1) "Minor" means any person not having reached eighteen (18) years of age.

6 (2) "Sexually explicit conduct" means graphic sexual intercourse, including genital-genital,
7 oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or
8 lascivious simulated sexual intercourse where the genitals, female breast, or pubic area of any
9 person is exhibited; masturbation; or graphic or simulated lascivious exhibition of the anus,
10 genitals, or pubic area of any person.

11 (3) "Visual depiction" includes, but is not limited to, any undeveloped film or videotape,
12 any data stored on a computer disk or by electronic means, which is capable of conversion into a
13 visual image, any drawing, cartoon, sculpture, photograph, film, video, picture, or computer or
14 computer-generated image or picture, whether made or produced by electronic, mechanical, or
15 other means.

16 (b) Violations. It is a violation of this section for any person who:

17 (1) Knowingly produces, distributes, receives, or possesses with intent to distribute, a
18 visual depiction of any kind, including a drawing, cartoon, sculpture, photograph, film, video,
19 picture, or computer or computer-generated image or picture, whether made or produced by

1 electronic, mechanical, or other means, that depicts a minor engaging in sexually explicit conduct
2 and is obscene and lacks serious literary, artistic, political, or scientific value; or attempts or
3 conspires to do so;

4 (2) Knowingly possesses a visual depiction of any kind, including a drawing, cartoon,
5 sculpture, photograph, film, video, picture, or computer or computer-generated image or picture,
6 whether made or produced by electronic, mechanical, or other means that depicts a minor engaging
7 in sexually explicit conduct and is obscene and lacks serious literary, artistic, political, or scientific
8 value; or

9 (3) Knowingly makes available to or distributes to a minor, any obscene, lewd, lascivious,
10 or sexually explicit conduct book, pamphlet, picture, film, paper, letter, writing, print, drawing,
11 figure, image or other cartoon, sculpture, photograph, video or computer or computer-generated
12 image or picture, whether made or produced by electronic, mechanical, or other means and lacks
13 serious literary, artistic, political, or scientific value.

14 (c) Affirmative defenses.

15 It shall be an affirmative defense to a charge of violating subsection (a)(2) of this section
16 that the defendant:

17 (1) Possessed less than three (3) such visual depictions; and

18 (2) Promptly and in good faith and without retaining or allowing any person, other than a
19 law enforcement agency, to access any image or copy of it:

20 (i) Took reasonable steps to destroy each such visual depiction; or

21 (ii) Reported the matter to a law enforcement agency and afforded that agency access to
22 each such visual depiction.

23 (d) Penalties.

24 (1) Whoever violates or attempts or conspires to violate subsection (b)(1) of this section
25 shall be subject to a fine of not more than five thousand dollars (\$5,000), or imprisoned for not
26 more than fifteen (15) years, or both.

27 (2) Whoever violates or attempts or conspires to violate subsection (b)(2) of this section
28 shall be subject to a fine of not more than five thousand dollars (\$5,000), or imprisoned for not
29 more than five (5) years, or both.

30 (3) Whoever violates or attempts or conspires to violate subsection (b)(3) of this section
31 shall be subject to a fine of not more than one thousand dollars (\$1,000), or imprisoned for not
32 more than two (2) years, or both.

33 (4) It is not a required element of any offense under this section that the minor depicted
34 actually exists.

1 (e) Severability. If any provision or provisions of this section, or the application of this
2 section to any person or circumstance is held invalid by a court of competent authority, that
3 invalidity does not affect other provisions or applications of this section which can be given effect
4 without that invalid provision or provisions or application of the provision or provisions, and to
5 this end the provisions of this section are declared to be separable and severable.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would prohibit the distribution, transfer, or possession of any material that depicts
2 a minor engaging in sexually explicit conduct, is obscene and lacks serious literary, artistic,
3 political, or scientific value with violators subject to imprisonment and fines ranging from two (2)
4 to fifteen (15) years and fines from one thousand dollars (\$1,000) to five thousand dollars (\$5,000).

5 This act would take effect upon passage.

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