

**76-10-1201 Definitions.**

For the purpose of this part:

- (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.
- (2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.
- (3) "Distribute" means to transfer possession of materials whether with or without consideration.
- (4) "Exhibit" means to show.
- (5)
  - (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:
    - (i) taken as a whole, appeals to the prurient interest in sex of minors;
    - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
    - (iii) taken as a whole, does not have serious value for minors.
  - (b) Serious value includes only serious literary, artistic, political or scientific value for minors.
- (6)
  - (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.
  - (b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.
- (7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.
- (8) "Minor" means any person less than 18 years of age.
- (9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.
- (10) "Nudity" means:
  - (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;
  - (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
  - (c) the depiction of covered male genitals in a discernibly turgid state.
- (11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.
- (12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.
- (13) "Sadomasochistic abuse" means:
  - (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
  - (b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

- (14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.
- (15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Amended by Chapter 278, 2013 General Session