

No. 10-1293

**In The
Supreme Court of the United States**

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,

Petitioners,

v.

FOX TELEVISION STATIONS, INC., ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

**AMICUS BRIEF OF THE AMERICAN
CENTER FOR LAW AND JUSTICE
IN SUPPORT OF NEITHER PARTY**

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INTEREST OF AMICUS¹

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law.

The ACLJ often appears before this Court on the side of First Amendment free speech claims. *E.g.*, *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1999); *Hill v. Colorado*, 530 U.S. 703 (2000); *McConnell v. FEC*, 540 U.S. 93 (2003). It has also appeared before this Court resisting specious free speech claims. *E.g.*, *City of Pleasant Grove v. Sumnum*, 555 U.S. 460 (2009).

The ACLJ stands firmly in support of the protection of children against public indecency. The ACLJ files this brief in support of neither party in an effort to alert this Court to the potential unintended consequences of its ruling in this case upon the traditional governmental power to proscribe public indecency.

¹The parties in this case have given blanket consents to the filing of amicus briefs in support of either party or neither party. Consent letters are on file with the Court. No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The police power of the state² includes the ability to outlaw public indecency, especially where such indecency threatens to reach minors. Prohibitions on public indecency are a constitutionally permissible means of furthering a compelling government interest in protecting children, among other interests.

Broadcast indecency, by virtue of its pervasiveness and accessibility to children, endangers the same interests and is therefore subject to the same prohibition. This conclusion is independent of the question whether broadcast media receives a lesser degree of free speech protection. Accordingly, the media cannot possess a constitutional right to broadcast indecency that would *a fortiori* jeopardize the universal state laws against public indecency.

ARGUMENT

An indecent television broadcast is essentially an indecent public display. Just as a state could prohibit someone from strutting around naked in public, the

²The present case involves restrictions by the federal government, not a state. The federal government does not possess a general police power. Nevertheless, the existence of a state power to ban public indecency is relevant here. Assuming the right to free speech has identical meaning vis-a-vis both federal and state limitations, the existence of a state power to restrict broadcast indecency, consistent with the First Amendment, necessarily implies that such restrictions -- regardless of their governmental source -- do not violate the broadcaster's constitutional right to free speech. This amicus brief does not address the separate question of the federal government's authority to act in this area.

state could forbid someone from strutting around carrying a display -- still or video -- of someone naked. Likewise, a state may forbid companies from broadcasting into people's homes programs depicting someone strutting around naked. Thus, an indecent broadcast is properly subject to government prohibition. This rule is *not* dependent upon any lower standard of review for broadcast media but instead reflects this Court's consistent recognition of the government authority to outlaw public indecency.

I. BANS ON PUBLIC INDECENCY ARE CONSTITUTIONAL.

This Court has long recognized that "public nudity" is "traditionally subject to indecent exposure laws." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 211 n.7 (1975). *See also Roth v. United States*, 354 U.S. 476, 512 (1957) (Douglas, J., dissenting) ("No one would suggest that the First Amendment permits nudity in public places"). Currently all fifty states and the District of Columbia have laws against public indecency/indecent exposure. *See Appendix.*

This Court has declared that there is a compelling government interest in protecting minors from indecency. *Denver Area Educ. Telecomms. Consortium v. FCC ["DAETC"]*, 518 U.S. 727, 755 (1996) (opinion of Court per Breyer, J., joined by Stevens, O'Connor, Kennedy, Souter, & Ginsburg, JJ.) ("We agree with the Government that protection of children [from indecency] is a 'compelling interest'"); *id.* at 773 (Stevens, J., concurring) ("the Government may have a compelling interest in protecting children from indecent speech on such a pervasive medium [as cable TV]"); *id.* at 779 (O'Connor, J., concurring) (recognizing

a “well-established compelling interest of protecting children from exposure to indecent material”); *id.* at 804 (Kennedy, J., joined by Ginsburg, J.) (acknowledging the “weighty” concern that “[t]he householder should not have to risk that offensive material come into the hands of his children before it can be stopped”) (internal editing and quotation marks omitted); *id.* at 806 (“Congress does have . . . a compelling interest in protecting children from indecent speech”); *id.* at 832 (Thomas, J., joined by Rehnquist, C.J., & Scalia, J.) (recognizing “well-established compelling interest” in protecting minors from indecency).

Not surprisingly, then, this Court has upheld the constitutionality of bans on public indecency, even as applied to allegedly expressive nudity. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000). Such laws rest not just upon “moral disapproval of people appearing in the nude among strangers in public places,” *Barnes*, 501 U.S. at 568 (plurality opinion of Rehnquist, C.J., joined by O’Connor & Kennedy, JJ.), but also upon the grave risk of indecent exposure to children -- imperilling the compelling interest noted above. Moreover, even as to adults, the sensory shock of unexpected exposure to another person’s private parts, whether in person or by visual display, is like “the first blow” that cannot be cured by then “run[ning] away,” *FCC v. Pacifica Found.*, 438 U.S. 726, 749 (1978).

II. BANS ON BROADCAST INDECENCY ARE ALSO CONSTITUTIONAL.

Broadcast indecency implicates these same concerns. By definition, “broadcast” media have “a uniquely pervasive presence in the lives of all Americans,” *DAETC*, 518 U.S. at 745 (plurality) (quoting *Pacifica*, 438 U.S. at 748). Broadcast media can contain elements that “intrude on the privacy of the home without prior warning,” *Sable Communications v. FCC*, 492 U.S. 115, 127 (1989), especially for the viewer who is just tuning in or switching channels. Moreover, broadcast media are “uniquely accessible to children,” *id.* (internal quotation marks and citation omitted), who need navigate no passcodes or lockboxes to turn on a TV set.

Indecent broadcasts are thus subject to governmental restriction just like other forms of indecent exposure. Indeed, the instantaneous dispersal of a “wardrobe malfunction” on prime-time TV imposes upon an audience that is orders of magnitude greater than the limited audience of an intoxicated flasher or wandering naturist. Such high-tech broadcasts of indecent exposure are far more likely to reach children and ambush unwilling adults (not to mention contribute to the general degradation of public culture).

In short, the government can disallow public indecency on broadcast TV as well as on city streets. Importantly, this conclusion in no way rests upon any difference in the level of scrutiny between speech in public places and licensed broadcast media. Even if a TV broadcast were to be afforded the same protection as a soapbox orator in a park, laws against indecent exposure would still be constitutional. The orator has

no right to expose himself or herself, even as part of some message about nudity. *Supra* § I. Nor does Fox TV have the right to pipe such an exposure willy-nilly into homes across America.

CONCLUSION

This Court should decide this case in a way that reaffirms, rather than inadvertently undercuts, either directly or by logical implication, the constitutionality of the laws of all fifty states and the District of Columbia (set forth in the Appendix) forbidding indecent exposure.

Respectfully submitted,

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APPENDIX

APPENDIX
Public Indecency Laws in the Fifty States and
Washington D.C.

ALABAMA

Title 13A, Chapter 12, Article 4: Obscenity and
Related Offenses

§ 13A-12-130 (Public lewdness)

(a) A person commits the crime of public lewdness if:

(1) He exposes his anus or genitals in a public place
and is reckless about whether another may be
present who will be offended or alarmed by his act;
or

(2) He does any lewd act in a public place which he
knows is likely to be observed by others who would
be affronted or alarmed.

(b) Public lewdness is a Class C misdemeanor

§ 13A-12-131 (Public display of obscene bumper
sticker, sign or writing)

It shall be unlawful for any person to display in
public any bumper sticker, sign or writing which
depicts obscene language descriptive of sexual or
excretory activities. Any person convicted of a
violation of this section shall be guilty of a Class C
misdemeanor and shall be punished as prescribed by
law.

ALASKA

Title 11, Chapter 41, Article 4: Sexual Offenses
Sec. 11.41.460. Indecent exposure in the second
degree

(a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor.

Title 11, Chapter 61, Article 1: Riot, Disorderly Conduct, and Related Offenses

§ 11.61.120 (Harassment in the second degree)

(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

...

(6) publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act.

(b) Harassment in the second degree is a class B misdemeanor.

ARIZONA

Title 13, Chapter 14: Sexual Offenses

§ 13-1402. Indecent exposure; exception; classification
A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is

reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure does not include an act of breast-feeding by a mother.

C. Indecent exposure to a person who is fifteen or more years of age is a class 1 misdemeanor. Indecent exposure to a person who is under fifteen years of age is a class 6 felony.

D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or section 13-1403 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age shall be sentenced to a term of imprisonment as follows:

Mitigated	Minimum	Presumptive	Maximum
Aggravated	6 years	8 years	10 years
			12 years
			15 years

E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

Title 13, Chapter 35: Obscenity

§ 13-3507 (Public display of explicit sexual materials; classification; definitions)

A. It is unlawful for any person knowingly to place explicit sexual material upon public display, or knowingly to fail to take prompt action to remove such a display from property in his possession or under his control after learning of its existence.

B. A person who violates any provision of this section is guilty of a class 6 felony.

C. For the purposes of this section:

1. "Explicit sexual material" means any drawing, photograph, film negative, motion picture, figure, object, novelty device, recording, transcription or any book, leaflet, pamphlet, magazine, booklet or other item, the cover or contents of which depicts human genitalia or depicts or verbally describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is harmful to minors. Explicit sexual material does not include any depiction or description which, taken in context, possesses serious educational value for minors or which possesses serious literary, artistic, political or scientific value.

2. "Public display" means the placing of material on or in a billboard, viewing screen, theater marquee, newsstand, display rack, vending machine, window, showcase, display case or similar place so that material within the definition of paragraph 1 of this subsection is easily visible or readily accessible from a public thoroughfare, from the property of others, or in any place where minors are invited as part of the general public.

ARKANSAS

Title 5, Subtitle 2, Chapter 14: Sexual Offenses

§ 5-14-112 (Indecent exposure)

(a) A person commits indecent exposure if, with the purpose to arouse or gratify a sexual desire of himself or herself or of any other person, the person exposes his or her sex organs:

- (1) In a public place or in public view; or
- (2) Under circumstances in which the person knows the conduct is likely to cause affront or alarm.

- (b) (1) Except as provided in subdivisions (b)(2) and (b)(3) of this section, indecent exposure is a Class A misdemeanor.
- (2) For a fourth or fifth conviction within ten (10) years of a previous conviction, indecent exposure is a Class D felony.
- (3) For a sixth conviction and each successive conviction within ten (10) years of a previous conviction, indecent exposure is a Class C felony.
- (c) A woman is not in violation of this section for breastfeeding a child in a public place or any place where other individuals are present.

Title 5, Subtitle 6, Chapter 68: Obscenity

§ 5-68-201 (Exhibition of obscene figures)

- (a) Any person publicly exhibiting any obscene figure is guilty of a violation.
- (b) Any person convicted under a provision of this section shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

§ 5-68-204 (Nudism)

- (a) As used in this section, "nudism" means the act or acts of a person or persons congregating or gathering with his, her, or their private parts exposed in the presence of one (1) or more persons of the opposite sex as a form of social practice.
- (b) The provisions of this section do not apply to the enumerated acts if:
 - (1) The purpose of the person committing the act or acts is to render medical or surgical treatment or to determine the need for medical or surgical treatment or to cleanse such sexual part, and the person committing the act:

- (A) Is a licensed physician, as defined by § 17-80-101, or any such physician of a sister state making a professional call into Arkansas;
 - (B) Committed the act under the professional direction of any physician described in subdivision (b)(1)(A) of this section; or
 - (C) Is a nurse duly registered or licensed by the Arkansas State Board of Nursing; or
- (2) The persons are married legally one to another.
- (c) It is unlawful for any:
- (1) Person, club, camp, corporation, partnership, association, or organization to advocate, demonstrate, or promote nudism; or
 - (2) Person to rent, lease, or otherwise permit his or her land, premises, or buildings to be used for the purpose of advocating, demonstrating, or promoting nudism.
- (d) Any person, club, camp, corporation, partnership, association, or organization violating any provision of this section is guilty of a Class A misdemeanor for each offense.
- (e) This section does not repeal any existing laws of the State of Arkansas except those in direct conflict with this section but this section is cumulative to the existing laws of the State of Arkansas.

§ 5-68-205 (Public display of obscenity)

- (a) (1) As used in this subsection:
 - (A) "Obscene" means the same as "obscene material" defined by § 5-68-302; and
 - (B) "Obscenity" means an obscene sticker, painting, decal, emblem, or other device that is or contains an obscene writing, description, photograph, or depiction.
- (2) A person commits the offense of publicly displaying an obscenity if the person knowingly

causes an obscenity to be displayed in a manner that is readily visible to the public and the obscenity's content or character is distinguishable by normal vision.

(3) Publicly displaying an obscenity is a Class B misdemeanor.

(b) (1) It is unlawful to publicly display obscene material as defined by § 5-68-302 on any motor vehicle or wearing apparel.

(2) A violation of this subsection is a Class C misdemeanor.

CALIFORNIA

Title 9, Chapter 8: Indecent Exposure, Obscene Exhibitions, and Bawdy and Other Disorderly Houses

§ 314 (Indecent exposure)

Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Every person who violates subdivision 1 of this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is punishable by

imprisonment in the state prison, or in the county jail not exceeding one year.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in state prison.

COLORADO

Title 18, Article 7, Part 3: Public Indecency

§ 18-7-301 (Public indecency)

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (a) An act of sexual intercourse; or
- (b) (Deleted by amendment, L. 2010, (HB 10-1334), ch. 359, p. 1707, § 1, effective August 11, 2010.)
- (c) A lewd exposure of an intimate part as defined by section 18-3-401 (2) of the body, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or
- (d) A lewd fondling or caress of the body of another person; or
- (e) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), public indecency is a class 1 petty offense.

(b) Public indecency as described in paragraph (e) of subsection (1) of this section is a class 1

misdemeanor if the violation is committed subsequent to a conviction for a violation of paragraph (e) of subsection (1) of this section or for a violation of a comparable offense in any other state or in the United States, or for a violation of a comparable municipal ordinance.

(3) (Deleted by amendment, L. 2010, (HB 10-1334), ch. 359, p. 1707, § 1, effective August 11, 2010.)

§ 18-7-302 (Indecent exposure)

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;

(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) (Deleted by amendment, L. 2003, p. 1435, § 31, effective July 1, 2003.)

(b) Indecent exposure is a class 1 misdemeanor.

(3) (Deleted by amendment, L. 2002, p. 1587, § 21, effective July 1, 2002.)

(4) Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.

(5) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or

arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

CONNECTICUT

Title 53a, Chapter 952, Part XVI: Loitering In or About School Grounds, Public Indecency

§ 53a-186 (Public indecency: Class B misdemeanor)

(a) A person is guilty of public indecency when he performs any of the following acts in a public place:

- (1) An act of sexual intercourse as defined in subdivision (2) of section 53a-65; or
 - (2) a lewd exposure of the body with intent to arouse or to satisfy the sexual desire of the person; or
 - (3) a lewd fondling or caress of the body of another person. For the purposes of this section, "public place" means any place where the conduct may reasonably be expected to be viewed by others.
- (b) Public indecency is a class B misdemeanor.

DELAWARE

Title 11, Part 1, Chapter 5, Subchapter VII, Subpart B: Offenses Involving Public Indecency

§ 1341 (Lewdness; class B misdemeanor)

A person is guilty of lewdness when the person does any lewd act in any public place or any lewd act which the person knows is likely to be observed by others who would be affronted or alarmed.

Lewdness is a class B misdemeanor.

Title 11, Part 1, Chapter 5, Subchapter VII, Subpart C: Obscenity

§ 1366 (Outdoor motion picture theaters)

(a) Whoever being the owner or operator of an outdoor motion picture theater exhibits or permits to be exhibited any film not suitable for minors or harmful to minors and which film can be viewed by such minors not in attendance at the said outdoor motion picture theater shall be guilty of a class A misdemeanor.

(b) Definitions as used in this section:

(1) "Code and Rating Administration of the Motion Picture Association of America" ratings are:

"G" -- All ages admitted. General audiences;

"PG" -- All ages admitted. Parental guidance suggested;

"R" -- Restricted. Under 17 requires accompanying parent or adult guardian;

"X" -- No one under 17 admitted.

(2) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(3) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and taken as a whole the work lacks serious literary, artistical, political or scientific value for minors.

(4) "Minor" means any person under the age of 17 years.

(5) "Not suitable for minors" means any film, reel or view which has a rating of "R" or "X" according to the

Code and Rating Administration of the Motion Picture Association of America.

(6) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(9) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(10) "Suitable for minors" means any film, reel or view which has a rating of "G" or "PG" according to the Code and Rating Administration of the Motion Picture Association of America.

FLORIDA

Title 46, Chapter 800: Lewdness and Indecent Exposure

§ 800.03 (Exposure of sexual organs)

It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or

to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A mother's breastfeeding of her baby does not under any circumstance violate this section.

§ 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)

...

(7) Lewd or lascivious exhibition.

(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Exception. --A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

GEORGIA

Title 16, Chapter 6: Sexual Offenses

§ 16-6-8 (Public indecency)

(a) A person commits the offense of public indecency when he or she performs any of the following acts in a public place:

- (1) An act of sexual intercourse;
- (2) A lewd exposure of the sexual organs;
- (3) A lewd appearance in a state of partial or complete nudity; or
- (4) A lewd caress or indecent fondling of the body of another person.

(b) A person convicted of the offense of public indecency as provided in subsection (a) of this Code section shall be punished as for a misdemeanor except as provided in subsection (c) of this Code section.

(c) Upon a third or subsequent conviction for public indecency for the violation of paragraph (2), (3), or (4) of subsection (a) of this Code section, a person shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

(d) For the purposes of this Code section only, "public place" shall include jails and penal and correctional institutions of the state and its political subdivisions.

(e) This Code section shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules, and regulations of state and local authorities or agencies and local ordinances prohibiting such activities which are more restrictive than this Code section.

HAWAII

Division 5, Title 37, Chapter 712, Part II: Offenses Related to Obscenity

§ 712-1211 (Displaying indecent matter)

(1) A person commits the offense of displaying indecent matter if the person knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk, a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse; and

(b) Which is presented in such a manner as to exploit lust; and

(c) Which lacks serious literary, artistic, political, or scientific value.

(2) Displaying indecent material is a petty misdemeanor.

§ 712-1217 (Open lewdness)

(1) A person commits the offense of open lewdness if in a public place the person does any lewd act which is likely to be observed by others who would be affronted or alarmed.

(2) Open lewdness is a petty misdemeanor.

IDAHO

Title 18, Chapter 41: Indecency and Obscenity

§ 18-4116 (Indecent exposure)

Every person who willfully and lewdly, either:

(1) Exposes his or her genitals, in any public place, or in any place where there is present another person or persons who are offended or annoyed thereby; or,

(2) Procures, counsels, or assists any person so to expose his or her genitals, where there is present another person or persons who are offended or annoyed thereby is guilty of a misdemeanor.

Any person who pleads guilty to or is found guilty of a violation of subsection (1) or (2) of this section or a similar statute in another state or any local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed ten (10) years.

ILLINOIS

Chapter 720, Title B, Part III, Article 10A,
Subdivision 25: Other Offenses

§ 720 ILCS 5/11-30 (As renumbered and amended by P.A. 96-1551, effective July 1, 2011) (Public indecency)

(a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

(1) An act of sexual penetration or sexual conduct; or
(2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person.

Breast-feeding of infants is not an act of public indecency.

(b) "Public place" for purposes of this Section means

any place where the conduct may reasonably be expected to be viewed by others.

(c) Sentence. Public indecency is a Class A misdemeanor. A person convicted of a third or subsequent violation for public indecency is guilty of a Class 4 felony. Public indecency is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.

INDIANA

Title 35, Article 45: Offenses Against Public Health, Order and Decency

§ 35-45-4-1 (Public indecency -- Indecent exposure)

(a) A person who knowingly or intentionally, in a public place:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct;
- (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or
- (4) fondles the person's genitals or the genitals of another person; commits public indecency, a Class A misdemeanor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior unrelated conviction:

- (1) under subsection (a) or (b); or

(2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct;

(3) fondles the person's genitals or the genitals of another person; or

(4) appears in a state of nudity; where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

IOWA

Title XVI, Subtitle 1, Chapter 709: Sexual Abuse

709.9 Indecent exposure

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and

2. The person knows or reasonably should know that the act is offensive to the viewer.

Title XVI, Subtitle 1, Chapter 728: Obscenity

§ 728.5 (Public indecent exposure in certain establishments)

1. An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:
 - a. If such person allows or permits the actual or simulated public performance of any sex act upon or in such place of business.
 - b. If such person allows or permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.
 - c. If such person allows or permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.
 - d. If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.
 - e. If such person advertises that any activity prohibited by this section is allowed or permitted in such place of business.
 - f. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.
2. However, if such person allows or permits a minor to participate in any act included in subsection 1, paragraphs "a" through "d", the person shall be guilty of an aggravated misdemeanor.

3. Except for subsection 1, paragraph "f", the provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

KANSAS

Chapter 21, Article 35: Sex Offenses

21-3508 Lewd and lascivious behavior

(a) Lewd and lascivious behavior is

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

(2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) (1) Lewd and lascivious behavior if committed in the presence of a person 16 or more years of age is a class B nonperson misdemeanor.

(2) Lewd and lascivious behavior if committed in the presence of a person under 16 years of age is a severity level 9, person felony.

Chapter 21, Article 64: Crimes Against the Public Morals

§ 21-6402 (Promotion to minors of material harmful

to minors)

(a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device;

(2) present or distribute to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or

(3) present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of this section is a class B nonperson misdemeanor.

(c) Notwithstanding the provisions of section 15, and amendments

thereto, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

....

(d) As used in this section:

(1) "Blinder rack" means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view;

(2) "harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:

(A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to

- appeal to a prurient interest in sex to minors;
- (B) the average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
- (C) a reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors;
- (3) "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape;
- (4) "minor" means any unmarried person under 18 years of age;
- (5) "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement;
- (6) "performance" means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration;
- (7) "sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;
- (8) "sexual conduct" means acts of masturbation,

homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast; and
(9) "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

KENTUCKY

Title L, Chapter 510: Sexual Offenses

510.148. Indecent exposure in the first degree
(1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years.
(2) Indecent exposure in the first degree is a:
(a) Class B misdemeanor for the first offense;
(b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction;
(c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and
(d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.

510.150. Indecent exposure in the second degree
(1) A person is guilty of indecent exposure in the second degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause

affront or alarm to a person eighteen (18) years of age or older.

(2) Indecent exposure in the second degree is a Class B misdemeanor.

LOUISIANA

Title 14, Chapter 1: Offenses Affecting the General Peace and Order

§ 14:106 (Obscenity)

A. The crime of obscenity is the intentional:

(1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.

• • • •

G. (1) On a first conviction, whoever commits the crime of obscenity shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned, with or without hard labor, for not less than six months nor more than three years, or both.

(2) (a) On a second conviction, the offender shall be imprisoned, with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

(b) The imprisonment provided for in Subparagraph (a), may be imposed at court discretion if the court determines that the offender, due to his employment, could not avoid engagement in the offense. This Subparagraph (b) shall not apply to the manager or other person in charge of an establishment selling or

exhibiting obscene material.

(3) On a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than two years nor more than five years, and in addition may be fined not less than five thousand dollars nor more than ten thousand dollars.

(4) When a violation of Paragraph (1), (2), or (3) of Subsection A of this Section is with or in the presence of an unmarried person under the age of seventeen years, the offender shall be fined not more than ten thousand dollars and shall be imprisoned, with or without hard labor, for not less than two years nor more than five years, without benefit of parole, probation, or suspension of sentence.

H. (1) When a corporation is charged with violating this Section, the corporation, the president, the vice president, the secretary, and the treasurer may all be named as defendants. Upon conviction for a violation of this Section, a corporation shall be sentenced in accordance with Subsection G hereof. All corporate officers who are named as defendants shall be subject to the penalty provisions of this Section as set forth in Subsection G.

MAINE

Title 17A, Part 2, Chapter 35: Prostitution and Public Indecency

§ 854 Indecent conduct

1. A person is guilty of indecent conduct if:

A. In a public place:

1) The actor engages in a sexual act, as defined in section 251. Violation of this subparagraph is a Class E crime;

2) The actor knowingly exposes the actor's genitals under circumstances that in fact are likely to cause affront or alarm. Violation of this subparagraph is a Class E crime;

3) The actor violates subparagraph (1) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime; or

4) The actor violates subparagraph (2) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime;

B. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen from a public place or from another private place. Violation of this paragraph is a Class E crime;

C. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront or alarm. Violation of this paragraph is a Class E crime;

D. The actor violates paragraph B and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that

of the Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime; or E. The actor violates paragraph C and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime.

2. For purposes of this section "public place" includes, but is not limited to, motor vehicles that are on a public way.

2-A. It is a defense to prosecution under subsection 1, paragraph C, that the other person previously lived or currently is living in the same household as the actor.

MARYLAND

Title 11, Subtitle 1: Adult Sexual Displays and Related Crimes

§ 11-107. Indecent exposure

A person convicted of indecent exposure is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a fine not exceeding \$ 1,000 or both.

MASSACHUSETTS

Part IV, Title I, Chapter 272: Crimes Against Chastity, Morality, Decency and Good Order

§ 53. Common Night Walkers, Disorderly Persons and Disturbers of the Peace.

(a) Common night walkers, common street walkers, both male and female, persons who with offensive and disorderly acts or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than \$200, or by both such fine and imprisonment.

(b) Disorderly persons and disturbers of the peace, for the first offense, shall be punished by a fine of not more than \$150. On a second or subsequent offense, such person shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than \$200, or by both such fine and imprisonment.

MICHIGAN

Chapter 117: Home Rule Cities

117.5h. Regulation of prohibition of public nudity; "public nudity" defined

Sec. 5h. (1) Whether or not so provided in its charter, a city may, by ordinance, regulate or prohibit public nudity within city boundaries.

(2) As used in this section, "public nudity" means knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with

less than a fully opaque covering of the nipple and areola. A mother's breastfeeding of her baby does not under any circumstances constitute nudity irrespective of whether or not the nipple is covered during or incidental to the feeding.

Chapter 750, Chapter XXVIII: Disorderly Persons

§ 750.167. "Disorderly person" defined; subsequent violations by person convicted of refusing or neglecting to support family.

Sec. 167. (1) A person is a disorderly person if the person is any of the following:

...

(f) A person who is engaged in indecent or obscene conduct in a public place.

...

Chapter 750, Chapter XLVIII: Indecency and Immorality

§ 750.335a. Indecent exposure; violation; penalty

(1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another .

(2) A person who violates subsection (1) is guilty of a crime, as follows:

(a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

(b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of

not more than \$2,000.00, or both.

(c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life .

MINNESOTA

Chapter 617: Abortion; Obscenity; Nuisance

617.23 Indecent Exposure: Penalties

Subdivision 1. Misdemeanor. A person who commits any of the following acts in any public place, or in any place where others are present, is guilty of a misdemeanor:

- (1) willfully and lewdly exposes the person's body, or the private parts thereof;
- (2) procures another to expose private parts; or
- (3) engages in any open or gross lewdness or lascivious behavior, or any public indecency other than behavior specified in this subdivision.

Subd. 2. Gross misdemeanor. A person who commits any of the following acts is guilty of a gross misdemeanor:

- (1) the person violates subdivision 1 in the presence of a minor under the age of 16; or
- (2) the person violates subdivision 1 after having been previously convicted of violating subdivision 1, sections 609.342 to 609.3451, or a statute from another state in conformity with any of those sections.

Subd. 3. Felony. A person 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 \$10,000, or both, if:

(1) the person violates subdivision 2, clause (1), after having been previously convicted of or adjudicated delinquent for violating subdivision 2, clause (1); section 609.3451, subdivision 1, clause (2); or a statute from another state in conformity with subdivision 2, clause (1), or section 609.3451, subdivision 1, clause (2); or

(2) the person commits a violation of subdivision 1, clause (1), in the presence of another person while intentionally confining that person or otherwise intentionally restricting that person's freedom to move.

Subd. 4. Breast-feeding. It is not a violation of this section for a woman to breast-feed.

MISSISSIPPI

Title 97: Crimes, Chapter 29: Crimes Against Public Morals and Decency, In General

§ 97-29-31. Indecent exposure

A person who willfully and lewdly exposes his person, or private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, is guilty of a misdemeanor and, on conviction, shall be punished by a fine not exceeding Five Hundred Dollars (\$ 500.00) or be imprisoned not exceeding six (6) months, or both. It is not a violation of this statute for a woman to breast-feed.

§ 97-29-47. Profanity or drunkenness in public place

If any person shall profanely swear or curse, or use vulgar and indecent language, or be drunk in any public place, in the presence of two (2) or more persons, he shall, on conviction thereof, be fined not

more than one hundred dollars (\$ 100.00) or be imprisoned in the county jail not more than thirty (30) days or both.

Title 97, Chapter 35: Crimes Against Public Peace and Safety

§ 97-35-11. Disturbance by abusive language or indecent exposure; exception

Any person who enters the dwelling house of another, or the yard or curtilage thereof, or upon the public highway, or any other place near such premises, and in the presence or hearing of the family or the possessor or occupant thereof, or of any member thereof, makes use of abusive, profane, vulgar or indecent language, or is guilty of any indecent exposure of his or her person at such place, shall be punished for a misdemeanor. The act of breast-feeding shall not constitute indecent exposure.

MISSOURI

Title 38, Chapter 566: Sexual Offenses

§ 566.083. Sexual misconduct involving a child, penalty -- applicability of section -- affirmative defense not allowed, when

1. A person commits the crime of sexual misconduct involving a child if the person:

(1) Knowingly exposes his or her genitals to a child less than fifteen years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child;

(2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of

arousing or gratifying the sexual desire of any person, including the child; or

(3) Knowingly coerces or induces a child less than fifteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.

3. It is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

4. Sexual misconduct involving a child or attempted sexual misconduct involving a child is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an offense pursuant to this chapter or the actor has previously pleaded guilty to or has been convicted of an offense against the laws of another state or jurisdiction which would constitute an offense under this chapter, in which case it is a class C felony.

§ 566.093. Sexual misconduct, second degree, penalties

1. A person commits the crime of sexual misconduct in the second degree if such person:

(1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm;

(2) Has sexual contact in the presence of a third person or persons under circumstances in which he or she knows that such conduct is likely to cause affront or alarm; or

(3) Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a

third person.

2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.

Title 38, Chapter 573: Pornography and Related Offenses

§ 573.060. Public display of explicit sexual material

1. A person commits the crime of public display of explicit sexual material if he knowingly or recklessly:

- (1) Displays publicly explicit sexual material; or
- (2) Fails to take prompt action to remove such a display from property in his possession after learning of its existence.

2. Public display of explicit sexual material is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section committed at a different time, in which case it is a class D felony.

3. For purposes of this section, each day there is a violation of this section shall constitute a separate offense.

MONTANA

Title 45, Chapter 5, Part 5: Sexual Crimes

45-5-504 Indecent exposure

(1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:

- (a) abuse, humiliate, harass, or degrade another; or
 - (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.
- (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$ 500 or be imprisoned in the county jail for a term of not more than 6 months, or both.
- (b) On a second conviction, the person shall be fined an amount not to exceed \$ 1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.
- (c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$ 10,000.

NEBRASKA

Chapter 28: Crimes and Punishments, Article 8: Offenses Relating to Morals

§ 28-806. Public indecency; penalty

- (1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:
- (a) An act of sexual penetration; or
 - (b) An exposure of the genitals of the body done with intent to affront or alarm any person; or
 - (c) A lewd fondling or caressing of the body of another person of the same or opposite sex.
- (2) Public indecency is a Class II misdemeanor.

NEVADA

Title 15, Chapter 201: Crimes Against Public Decency and Good Morals, Lewdness and Indecent Exposure

201.210. Open or gross lewdness; penalty

1. A person who commits any act of open or gross lewdness is guilty:

(a) For the first offense, of a gross misdemeanor.

(b) For any subsequent offense, of a category D felony and shall be punished as provided in NRS 193.130.

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

201.220. Indecent or obscene exposure; penalty

1. A person who makes any open and indecent or obscene exposure of his or her person, or of the person of another, is guilty:

(a) For the first offense, of a gross misdemeanor.

(b) For any subsequent offense, of a category D felony and shall be punished as provided in NRS 193.130.

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.

NEW HAMPSHIRE

Title LXII, Chapter 645: Public Indecency

645:1 Indecent Exposure and Lewdness

I. A person is guilty of a misdemeanor if such person

fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

NEW JERSEY

Title 2C, Subtitle 2, Part 1, Chapter 14: Sexual Offenses

§ 2C:14-4. Lewdness

a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would

be affronted or alarmed.

b. A person commits a crime of the fourth degree if:

(1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.

(2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.

c. As used in this section: "lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

Title 2C, Subtitle 2, Part 5, Chapter 33: Riot;
Disorderly Conduct

§ 2C:33-2. Disorderly conduct

...

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group

has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

NEW MEXICO

Chapter 30, Article 9: Sexual Offenses

§ 30-9-14. Indecent exposure

A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.

B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits indecent exposure is guilty of a misdemeanor.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

NEW YORK

Penal Law, Part Three, Title N, Article 245: Offenses Against Public Sensibilities

§ 245.00. Public lewdness

A person is guilty of public lewdness when he intentionally exposes the private or intimate parts of his body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he may readily be observed from either a public place or

from other private premises, and with intent that he be so observed. Public lewdness is a class B misdemeanor.

§ 245.01. Exposure of a person

A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

Exposure of a person is a violation.

Nothing in this section shall prevent the adoption by a city, town or village of a local law prohibiting exposure of a person as herein defined in a public place, at any time, whether or not such person is entertaining or performing in a play, exhibition, show or entertainment.

§ 245.02. Promoting the exposure of a person

A person is guilty of promoting the exposure of a person when he knowingly conducts, maintains, owns, manages, operates or furnishes any public premise or place where a person in a public place appears in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

Promoting the exposure of a person is a violation.

Nothing in this section shall prevent the adoption by a city, town or village of a local law prohibiting the exposure of a person substantially as herein defined in a public place, at any time, whether or not such person is entertaining or performing in a play, exhibition, show or entertainment.

§ 245.10. Public display of offensive sexual material; definitions of terms

The following definitions are applicable to section 245.11:

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 fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
2. "Sexual conduct" means an act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
3. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizzare costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
4. "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

§ 245.11. Public display of offensive sexual material

A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, display board, viewing screen, moving picture screen, marquee or similar place, in such manner that the display is easily visible from or in any: public street, sidewalk or thoroughfare; transportation facility; or any place accessible to members of the public without fee or other limit or condition of admission such as a minimum age requirement and including but not limited to schools, places of amusement, parks and playgrounds but excluding rooms or apartments designed for actual residence; any pictorial, three-dimensional or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, and that:

- (a) depicts nudity, or actual or simulated sexual conduct or sado-masochistic abuse; or
- (b) depicts or appears to depict nudity, or actual or simulated sexual conduct or sado-masochistic abuse, with the area of the male or female subject's unclothed or apparently unclothed genitals, pubic area or buttocks, or of the female subject's unclothed or apparently unclothed breast, obscured by a covering or mark placed or printed on or in front of the material displayed, or obscured or altered in any other manner.

Public display of offensive sexual material is a Class A misdemeanor.

NORTH CAROLINA

Chapter 14, Subchapter 07, Article 26: Offenses Against Public Morality and Decency

§ 14-190.9. Indecent exposure

(a) Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the

breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech.

NORTH DAKOTA

Title 12.1, Chapter 12.1-20: Sex Offenses

12.1-20-12.1. Indecent exposure

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
 - a. Masturbates in a public place or in the presence of a minor; or
 - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

OHIO

Title 29, Chapter 2907: Sex Offenses

§ 2907.09. Public indecency

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

- (1) Expose the person's private parts;
- (2) Engage in sexual conduct or masturbation;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

- (1) Engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
- (4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C)(1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.

(2) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of

division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(4) Except as otherwise provided in division (C)(4) of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the second degree. If

the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (B)(1), (2), or (3) of this section is a felony of the fifth degree.

(5) Except as otherwise provided in division (C)(5) of this section, a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, a violation of division (B)(4) of this section is a felony of the fifth degree.

OKLAHOMA

Title 21, Part 1, Chapter 2: General Provisions

§ 22. Gross injuries--Grossly disturbing peace--Openly outraging public decency--Injurious acts not expressly forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, including but not limited to urination in a public place, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor.

Title 21, Part IV, Chapter 36: Crimes Against Religion and Conscience

§ 906. Obscene language a misdemeanor, when

If any person shall utter or speak any obscene or lascivious language or word in any public place, or in the presence of females, or in the presence of children under ten (10) years of age, he shall be liable to a fine of not more than One Hundred Dollars (\$100.00), or imprisonment for not more than thirty (30) days, or both.

Title 21, Part IV, Chapter 39: Oklahoma Law on Obscenity and Child Pornography

§ 1040.52. Showing of specified actual or simulated sexual activity and nudity at certain outdoor theaters prohibited--Penalty

A. Every owner or operator of an outdoor theater in this state is guilty of a misdemeanor who shows or causes to be shown a motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or
2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.

C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this act.

D. Upon conviction of a violation of this section such person shall be imprisoned in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$ 1,000.00), or be both so imprisoned and fined.

OREGON

Title 16, Chapter 163: Offenses Against Persons

163.465 Public indecency

(1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

- (a) An act of sexual intercourse;
- (b) An act of deviate sexual intercourse; or
- (c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2) (a) Public indecency is a Class A misdemeanor.
(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445.

Title 16, Chapter 167: Offenses Against Public Health, Decency , and Animals

167.060 Definitions for ORS 167.060 to 167.095
As used in ORS 167.060 to 167.095, unless the

context requires otherwise:

(1) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(2) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

...

(5) "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered.

...

167.090 Publicly displaying nudity or sex for advertising purposes

(1) A person commits the crime of publicly displaying nudity or sex for advertising purposes if, for advertising purposes, the person knowingly:

(a) Displays publicly or causes to be displayed publicly a picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement, or any page, poster or other written or printed matter bearing such representation or a

verbal description or narrative account of such items or activities, or any obscenities; or
(b) Permits any display described in this section on premises owned, rented or operated by the person.
(2) Publicly displaying nudity or sex for advertising purposes is a Class A misdemeanor.

PENNSYLVANIA

Title 18, Part II, Article B, Chapter 31, Subchapter B: Definition of Offenses

§ 3127. Indecent exposure

(a) Offense defined. --A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

(b) Grading. --If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the second degree.

Title 18, Part II, Article F, Chapter 59: Public Indecency

§ 5901. Open lewdness

A person commits a misdemeanor of the third degree if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

Title 18, Part II, Article F, Chapter 55: Riot,

Disorderly Conduct, and Related Offenses

§ 5503. Disorderly conduct

(a) Offense defined. --A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

...

(3) uses obscene language, or makes an obscene gesture; or

...

(b) Grading. --An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist.

Otherwise disorderly conduct is a summary offense.

(c) Definition. --As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

RHODE ISLAND

Title 11, Chapter 31: Obscene and Objectionable Publications and Shows

§ 11-31-10. Sale or exhibition to minors of indecent publications, pictures, or articles

(a) Every person who shall willfully or knowingly engage in the business of selling, lending, giving away, showing, advertising for sale, or distributing

to any person under the age of eighteen (18) years, has in his or her possession with intent to engage in that business or to otherwise offer for sale or commercial distribution to any person under the age of eighteen (18) years, or who shall display at newsstands or any other business establishment frequented by persons under the age of eighteen (18) years or where persons under the age of eighteen (18) years are or may be invited as a part of the general public, any motion picture, any still picture, photograph, or any book, pocket book, pamphlet, or magazine of which the cover or content consists of explicit representations of "sexual conduct", "sexual excitement", "nudity" and which is indecent for minors or which is predominantly made up of descriptions of "sexual conduct", "sexual excitement", "nudity" and which is indecent, shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$ 1,000), or by imprisonment for not more than two (2) years, or both.

(b) As used in this section, the following words have the following meaning:

(1) "Indecent for minors" means:

(i) Appealing to the prurient interest in sex of minors;

(ii) Patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors; and

(iii) Lacking serious literary, artistic, political, or scientific value for minors;

(2) "Knowingly" means having knowledge of the character and content of the publication or failure on notice to exercise reasonable inspection which would disclose its content and character;

(3) "Nudity" means less than completely and

opaquely covered; human genitals, pubic regions, buttock, and female breast below a point immediately above the top of the areola;

(4) "Sexual conduct" means act of human masturbation, sexual intercourse, sodomy, fondling, or other erotic touching of human genitals, pubic region, buttock, or female breasts; and

(5) "Sexual excitement" means human genitals in a state of sexual stimulation or arousal.

Title 11, Chapter 45: Disorderly Conduct

§ 11-45-2. Indecent exposure -- Disorderly conduct

(a) A person commits indecent exposure/disorderly conduct when for the purpose of sexual arousal, gratification or stimulation, such person intentionally, knowingly, or recklessly:

(1) Exposes his or her genitals to the view of another under circumstances in which his or her conduct is likely to cause affront, distress, or alarm to that person;

(b) Any person may be a complainant for the purposes of instituting action for any violation of this section. This act shall not apply to any conduct between consenting adults where the complainant is an unintended witness;

(c) Any person found guilty of, or who pleads nolo contendere to the crime of indecent exposure/disorderly conduct, shall be imprisoned for a term of not more than one year, or fined not more than one thousand dollars (\$ 1,000), or both. Any subsequent offense shall be punished by imprisonment for a term of up to three (3) years;

(d) Counseling. Every person convicted of, or placed on probation for a violation of this section, may be ordered to attend appropriate professional

counseling to address his or her behavior;
(e) In no event shall the provisions of this section be construed to apply to breastfeeding in public.

SOUTH CAROLINA

Title 16, Chapter 15, Article 1: Miscellaneous Offenses

§ 16-15-130. Indecent exposure; breastfeeding.

(A) (1) It is unlawful for a person to willfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway.

(2) This subsection does not apply to a woman who breastfeeds her own child in a public place, on property of others, to the view of any person on a street or highway, or any other place where a woman and her child are authorized to be.

(B) A person who violates the provisions of subsection (A)(1) is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

Title 16, Chapter 15, Article 3: Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution

§ 16-15-365. Exposure of private parts in lewd and lascivious manner, aiding or procuring person to perform such act, or permitting use of premises for such act prohibited; penalties.

Any person who willfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or

aids or abets any such act, or who procures another to perform such act, or any person, who as owner, manager, lessee, director, promoter, or agent, or in any other capacity knowingly hires, leases, or permits the land, building, or premises of which he is owner, lessee, or tenant, or over which he has control, to be used for purposes of any such act, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

SOUTH DAKOTA

Title 9, Chapter 9-29: General Police Powers

§ 9-29-9. Prohibit obscene or immoral materials
Every municipality shall have power to prohibit the sale or exhibition of any obscene or immoral publication, print, film, picture, or illustration.

Title 22, Chapter 22-24: Obscenity and Public Indecency

§ 22-24-1.1. "Public indecency" defined -- Penalty
A person commits the crime of public indecency if the person, under circumstances in which that person knows that his or her conduct is likely to annoy, offend, or alarm some other person, exposes his or her anus or genitals in a public place where another may be present who will be annoyed, offended, or alarmed by the person's act. A violation of this section is a Class 2 misdemeanor.

§ 22-24-1.2. Indecent exposure -- Penalty
A person commits the crime of indecent exposure if, with the intent to arouse or gratify the sexual desire

of any person, the person exposes his or her genitals in a public place, or in the view of a public place, under circumstances in which that person knows that person's conduct is likely to annoy, offend, or alarm another person. A violation of this section is a Class 1 misdemeanor. However, if such person has been previously convicted of a felony violation of § 22-22-1, 22-22-7, or 22-24A-3, that person is guilty of a Class 6 felony. Any person convicted of a third or subsequent violation of this section is guilty of a Class 6 felony.

TENNESSEE

Title 39, Chapter 13, Part 5: Sexual Offenses

39-13-511. Public indecency -- Indecent exposure.

(a) (1) (A) A person commits the offense of public indecency who, in a public place, as defined in subdivision (a)(2)(B), knowingly or intentionally:

(i) Engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions or other ultimate sex acts;

(ii) Appears in a state of nudity; or

(iii) Fondles the genitals of the person, or another person.

(B) A person does not violate subdivision (a)(1)(A) if the person makes intentional and reasonable attempts to conceal the person from public view while performing an excretory function, and the person performs the function in an unincorporated area of the state.

(2) As used in subdivision (a)(1):

(A) "Nudity" or "state of nudity" means the showing of the bare human male or female genitals or pubic

area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. "Nudity" or "state of nudity" does not include a mother in the act of nursing the mother's baby; and (B) (i) "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. "Public place" includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations.

(ii) Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. "Public place" does not include enclosed single sex public restrooms, enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation,

or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation or an accredited private college. "Public place" does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.

(3) Public indecency is punishable as follows:

(A) A first or second offense is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500); and

(B) A third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both.

(4) (A) If a person is arrested for public indecency while working as an employee or a contractor, the employer or principal may be held liable for a fine imposed by subdivision (a)(3).

(B) The employer may not be held liable under this section, unless it is shown the employer knew or should have known the acts of the employee or contractor were in violation of this section.

(5) This subsection (a) does not apply to any theatrical production that contains nudity as defined by this section, performed in a theater by a professional or amateur theatrical or musical company that has serious artistic merit; provided, that the production is not in violation of chapter 17, part 9 of this title.

(6) This subsection (a) shall not affect in any fashion the ability of local jurisdictions or the state of Tennessee to regulate any activity where alcoholic

beverages, including malt beverages, are sold for consumption.

(b) (1) A person commits the offense of indecent exposure who:

(A) In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:

(i) Intentionally:

(a) Exposes the person's genitals or buttocks to another; or

(b) Engages in sexual contact or sexual penetration as defined in § 39-13-501; and

(ii) Reasonably expects that the acts will be viewed by another and the acts:

(a) Will offend an ordinary viewer; or

(b) Are for the purpose of sexual arousal and gratification of the defendant; or

(B) (i) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:

(a) Exposure of such person's genitals, buttocks or female breasts; or

(b) Masturbation.

(ii) Knowingly engages in the person's own residence, in the intended presence of any child, for the defendant's sexual arousal or gratification the following intentional conduct:

(a) Exposure of the person's genitals, buttocks or female breasts; or

(b) Masturbation.

(iii) No prosecution shall be commenced for a violation of subdivision (b)(1)(B)(ii)(a) based solely upon the uncorroborated testimony of a witness who

shares with the accused any of the relationships described in § 36-3-601(5).

(iv) For the provisions of subdivision (b)(1)(B)(i) or (b)(1)(B)(ii) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.

(2) "Indecent exposure," as defined in subdivision (b)(1), is a Class B misdemeanor, unless the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, in which event, indecent exposure is a Class A misdemeanor. Additionally, "indecent exposure," as defined in subdivision (b)(1), is a Class E felony when the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section.

(c) (1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard:

(A) Intentionally exposes the person's genitals or buttocks to the guard; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c), "guard" means any sheriff, jailer, guard, correctional officer or other authorized personnel charged with the custody of the person.

(3) Notwithstanding subdivision (b)(2), a violation of this subsection (c) is a Class A misdemeanor.

(d) This section does not apply to a mother who is breastfeeding her child who is twelve (12) months of age or younger in any location, public or private.

TEXAS

Title 9, Chapter 42: Disorderly Conduct and Related Offenses

§ 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

...

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act; or

...

(c) For purposes of this section:

(1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; .. .

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(7) or (a)(8), in which event it is a Class B misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a)(7) or (9) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

UTAH

Title 76, Chapter 9, Part 7: Miscellaneous Provisions

§ 76-9-702. Lewdness -- Sexual battery -- Public urination

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

- (a) an act of sexual intercourse or sodomy;
- (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;
- (c) masturbates; or
- (d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

- (i) the person is a sex offender as defined in Section 77-27-21.7;
- (ii) the person has been previously convicted two or more times of violating Subsection (1); or
- (iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

- (3) A person is guilty of sexual battery if the person under circumstances not amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.
- (4) Sexual battery is a class A misdemeanor.

Title 76, Chapter 10, Part 12: Pornographic and Harmful Materials and Performances

§ 76-10-1227. Indecent public displays -- Definitions

(1) For purposes of this section and Section 76-10-1228:

(a) "Description or depiction of illicit sex or sexual immorality" means:

- (i) human genitals in a state of sexual stimulation or arousal;
- (ii) acts of human masturbation, sexual intercourse, or sodomy;
- (iii) fondling or other erotic touching of human genitals or pubic region; or
- (iv) fondling or other erotic touching of the human buttock or female breast.

(b) "Nude or partially denuded figure" means:

- (i) less than completely and opaquely covering human:
 - (A) genitals;
 - (B) pubic regions;
 - (C) buttock; and

(D) female breast below a point immediately above the top of the areola; and

(ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2) (a) Subject to Subsection (2)(c), this section and Section 76-10-1228 do not apply to

any material which, when taken as a whole, has serious value for minors.

(b) As used in Subsection (2)(a), "serious value" means having serious literary, artistic, political, or scientific value for minors, taking into consideration the ages of all minors who could be exposed to the material.

(c) A description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors.

§ 76-10-1228. Indecent public displays --

Prohibitions -- Penalty

(1) Subject to the affirmative defense in Subsection 76-10-1208(3), a person is guilty of a class A misdemeanor who willfully or knowingly:

(a) engages in the business of selling, lending, giving away, showing, advertising for sale, or distributing to a minor or has in the person's possession with intent to engage in that business or to otherwise offer for sale or commercial distribution to a minor any material with:

(i) a description or depiction of illicit sex or sexual immorality; or

(ii) a nude or partially denuded figure; or

(b) publicly displays at newsstands or any other establishment frequented by minors, or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped, or recorded performance, or any still picture or

photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:

(i) exploits, is devoted to, or is principally made up of one or more descriptions or depictions of illicit sex or sexual immorality; or

(ii) consists of one or more pictures of nude or partially denuded figures.

(2) (a) A violation of this section is punishable by:

(i) a minimum mandatory fine of not less than \$ 500; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This section supersedes Section 77-18-1.

§ 76-10-1229. Distribution of pornographic material through cable television prohibited -- Definitions -- Prosecution of violation

(1) No person, including a franchisee, shall knowingly distribute by wire or cable any pornographic or indecent material to its subscribers.

(2) For purposes of this section "material" means any visual display shown on a cable television system, whether or not accompanied by sound, or any sound recording played on a cable television system.

(3) For purposes of this section "pornographic material" is any material defined as pornographic in Sections 76-10-1201 and 76-10-1203.

(4) For purposes of this section "indecent material" means any material described in Section 76-10-1227.

(5) For purposes of this section "distribute" means to send, transmit, retransmit, or otherwise pass through a cable television system.

(6) Prosecution for violation of this section may be initiated at the instance of the attorney general or any county or city attorney of an interested political subdivision or at the instance of the governing body

of any such political subdivision.

(7) Any person who violates this section is guilty of a class A misdemeanor.

VERMONT

Title 13, Chapter 59, Subchapter 1: Lewd and Indecent Conduct

§ 2601. Lewd and lascivious conduct

A person guilty of open and gross lewdness and lascivious behavior shall be imprisoned not more than five years or fined not more than \$ 300.00, or both.

Title 13, Part 1, Chapter 63: Obscenity

§ 2801. Definitions

As used in this act:

- (1) "Minor" means any person less than 18 years old.
- (2) "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 fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
- (3) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
- (4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (5) "Sado-masochistic abuse" means flagellation or

torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

(A) Predominantly appeals to the prurient, shameful or morbid interest of minors; and

(B) Is patently offensive to prevailing standards in the adult community in the state of Vermont as a whole with respect to what is suitable material for minors; and

(C) Is taken as a whole, lacks serious literary, artistic, political, or scientific value, for minors.

(7) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(8) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, sidewalk, or lobby of a building which has unrestricted access by the public.

§ 2802. Disseminating indecent material to a minor in the presence of the minor

(a) No person may, with knowledge of its character and content, sell, lend, distribute or give away to a minor:

(1) Any picture, photograph, drawing, sculpture,

motion picture film, or similar visual representation or image, including any such representation or image which is stored electronically, of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subdivision (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

(b) No person may, with knowledge of the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors:

(1) Exhibit such a motion picture, show or other presentation to a minor; or

(2) Sell or give away to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation; or

(3) Admit a minor to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation.

(c) This section shall apply only to acts occurring in the presence of the minor.

§ 2804. Exhibition of motion pictures

No person may, with knowledge of the character and content, exhibit a motion picture, show or other presentation, harmful to minors as defined in subdivision 2801(6) of this title, which in whole or

part depicts nudity and sexual conduct, as defined in section 2801, such that it may be viewed by minors from public property or private property not under the control of the person exhibiting the motion picture, show or other presentation.

§ 2804a. Publicly displaying sex or nudity for advertising purposes

No person may knowingly, publicly display nudity or sex for advertising purposes. A violation of this section occurs if a person:

- (1) Displays publicly or causes to be displayed publicly for advertising purposes a picture, photograph, drawing, sculpture or other visual representation or image, including any such representation or image which is communicated, transmitted, or stored electronically, of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement, which is harmful to minors, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities; or
- (2) Permits any public display described in this section on premises owned, rented or operated by him or her; or
- (3) For advertising purposes, purchases space in any newspaper, magazine or other circular, printed in this state, in order to insert any article or advertisement which contains material harmful to minors.

§ 2805. Presumption and defense

(a) A person who engages in conduct prohibited by section 2802, 2802a, 2803, 2804, 2804a, or 2804b of this title is presumed to do so with knowledge of the

character and content of the material, or the motion picture, show or presentation exhibited or to be exhibited.

(b) In any prosecution arising under section 2802, 2802a, 2803, or 2804 of this title, it is an affirmative defense:

(1) That the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older; or

(2) That the defendant was in a parental or guardianship relationship with the minor; or that the minor was accompanied by a parent or legal guardian; or

(3) That the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

(c) In any prosecution arising out of sections 2804a and 2804b of this title, it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for literary, political, scientific or artistic purposes; or

(2) That the public display was exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting; or

(3) That the defendant was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated

with and serving the educational purpose of such organization.

VIRGINIA

Title 18.2, Chapter 8, Article 5: Obscenity and Related Offenses

§ 18.2-387. Indecent exposure

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

§ 18.2-388. Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center

If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. In any area in which there is located a court-approved detoxification center a law-enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

WASHINGTON

Title 9A, Chapter 9A.88: Indecent Exposure-Prostitution

§ 9A.88.010. Indecent exposure

(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2) (a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.

(c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in RCW 9.94A.030.

WASHINGTON D.C.

Division IV, Title 22, Subtitle 1, Chapter 13: Disturbances of the Public Peace

§ 22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor [Formerly § 22-1112]

It is unlawful for a person, in public, to make an obscene or indecent exposure of his or her genitalia or anus, to engage in masturbation, or to engage in a sexual act as defined in § 22-3001(8). It is unlawful for a person to make an obscene or indecent sexual proposal to a minor. A person who violates any provision of this section shall be guilty of a

misdemeanor and, upon conviction, shall be fined not more than \$ 500, imprisoned for not more than 90 days, or both.

WEST VIRGINIA

Chapter 61, Article 8: Crimes Against Chastity, Morality and Decency

§ 61-8-9. Indecent exposure

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: Provided, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than two hundred fifty dollars, or both fined and confined.

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one

thousand dollars and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and imprisoned in a state correctional facility for not less than one year nor more than five years.

WISCONSIN

Chapter 944, Subchapter IV: Obscenity

944.20. Lewd and lascivious behavior

(1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or

(b) Publicly and indecently exposes genitals or pubic area.

(2) Subsection (1) does not apply to a mother's breast-feeding of her child

Chapter 947: Crimes Against Public Peace, Order, and Other Interests

947.01. Disorderly conduct

Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

WYOMING

Title 6, Chapter 4, Article 2: Public Indecency

§ 6-4-201. Public indecency; exception; penalties

(a) A person is guilty of public indecency if, while in a public place where he may reasonably be expected to be viewed by others, he:

(i) Performs an act of sexual intrusion, as defined by W.S. 6-2-301(a)(vii); or

(ii) Exposes his intimate parts, as defined by W.S. 6-2-301(a)(ii), with the intent of arousing the sexual desire of himself or another person; or

(iii) Engages in sexual contact, as defined by W.S. 6-2-301(a)(vi), with or without consent, with the intent of arousing the sexual desire of himself or another person.

(b) The act of breastfeeding an infant child, including breastfeeding in any place where the woman may legally be, does not constitute public indecency.

(c) Public indecency is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.