
OPPOSING ATTEMPTS TO CRIMINALIZE LIBRARIES AND EDUCATION THROUGH STATE OBSCENITY LAWS

AN EVERYLIBRARY INSTITUTE POLICY BRIEF

JANUARY 15, 2023



EveryLibrary
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SETTING THE FRAMEWORK FOR THIS POLICY BRIEF

Obscenity laws are part of the criminal code for each state. The 2021-2022 state legislative sessions saw an alarming and unprecedented increase in the number of bills that would remove librarians, educators, museum professionals, and other bona fide professions from exemptions from prosecution under state obscenity and harmful to minor laws. Three of the introduced bills passed. One was Oklahoma's H3702 (2022), "An act relating to schools" which specifically defined for the first time what professions are now eligible for criminal prosecution in that state. The others were Tennessee HB 2454 (2021) and Missouri SB775 (2022) which redefined what materials are considered obscene and provided penalties for distribution.

With new statutory authority comes new prosecutorial powers. These changes to obscenity laws are newly on the books and, to the best of our knowledge and as of this writing (January 2023), none have yet been utilized by prosecutors. Activist legislators have introduced these bills in the absence of demonstrable community needs. It is purely political action. Legislation like this is intended to make the normal practices of education - including health and sexuality instruction, librarianship, and the circulation of books with information about sex or sexual themes - subject to prosecution under obscenity laws.

In 2023-2024, we anticipate that many legislators whose bills failed in the last session will reintroduce language in this session. Likewise, we anticipate that other legislators and activists will be inspired by the success in Oklahoma, Tennessee, and Missouri to sponsor their own regressive initiatives. Statutes like these create a hostile climate for learning and libraries. In their introduction, they provide fuel for anti-access and moral crusaders to rally supporters and generate attention. If they pass, public library workers, educators, teachers and school staff, college and university faculty and staff, and museum professionals will be exposed to new and pernicious workplace liabilities.

The effort to criminalize bona fide professions is happening alongside a movement to redefine what content of books, ebooks, and materials is considered obscene. The concept of what is appropriate or inappropriate is hotly debated at board meetings, on social media, and in the public square. The concept of "appropriateness" is often defined by the offended party rather than contemporary community standards. The "relevance" of a book to a topic or population should drive library collection development practices and material retention policies.

This Policy Brief is intended to help library leaders understand the potential scope and impact of changes to longstanding exemptions while providing guidance and assistance in forming broad-based policy-focused coalitions to maintain current laws and practices. This Policy Brief is concerned primarily with legislative attempts to redefine or eliminate bona fide professions and certified workplaces from defense from prosecution exemptions. We will not be engaging in a detailed discussion about the Miller Test, the nature and character of potentially obscene materials, or the processes used in making prosecutorial decisions or in court on how to apply the Miller Test. We do see the parallel movement to redefine what books and materials are considered obscene as a backhanded way to circumvent the Miller Test. Our 2022 Policy Brief "[Weathering the Attacks](#)" has a longer discussion of those issues.

OVERVIEW OF LIBRARY AND EDUCATOR EXEMPTIONS IN STATE OBSCENITY AND HARMFUL TO MINORS LAWS

As part of the criminal code, state obscenity statutes are concerned with defining the scope of what materials and behaviors are considered obscene. Likewise, other state statutes generally define what materials can be considered harmful to minors. It is important to note that there is no definition of pornography in federal statutes. State statutes include definitions of pornography as harmful to minors in various ways, usually in addition to a core definition of obscenity. Obscenity is an expansive section of code while harmful to minors describes conduct, access, materials, and distribution in relation to minor children or students. Most states do not use the terms porn or pornography, obscenity. Likewise, most harmful to minors laws do not use the terms porn or pornography either. When those terms appear, they are used as synonyms for obscenity or as a framework to describe the distribution of materials.

Federal statutes concerning obscenity are generally limited to the conduct of interstate commerce or distribution of materials, along with definitions of what constitutes obscene depictions or descriptions in those contexts. State statutes generally govern and define the scope of obscenity laws in this country. Except for companies doing business on the internet, operators of movie theaters, and cable television providers, federal obscenity laws do not name or define workplaces, types of businesses, or job functions.

Generally speaking, state obscenity laws are focused on commercial activity and public behavior. They are structured with three core components. One component defines the places of business, types of business activities, and certain behaviors that the law applies to. A second component usually provides the framework that governs materials (e.g. books, films, visual depictions, reading material) or activities (e.g. distribution, display, performance), usually by reference or incorporation of the three-part Miller Test. In all but six states, a third section sets out any exemptions from prosecution that exist for either bona fide professionals or certified institutions, or exemptions based on the legitimate non-commercial, scientific, or educational purposes of activities.

Current obscenity and harmful to minors laws in 44 states have exemptions from or defenses from prosecution under the criminal code for certain professions or particular types of workplaces. In some states, a workplace (school, university, library, museum) or activity (scientific, educational, governmental, or art) are defined as having a legitimate purpose and are therefore exempt. In other states, the term “bona fide” is used when describing which workplaces or professions are exempted from prosecution (i.e. work done at a place of employment in an official capacity). Occasionally, and usually only in statutes defining harmful to minors or pornography, law enforcement is mentioned as exempt from prosecution (and then separately from education, libraries, and museums). In the absence of more specific enumeration, the exemption is for “legitimate scientific or educational purposes”.

Of the 44 states with some type of exemption or defense from prosecution for legitimate purposes, 31 have a specific exemption for “libraries”. For example, Washington state exempts “...any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.” Indiana exempts “Legitimate scientific or educational purposes; a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment.” Minnesota exempts “Recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi-governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization.”

Please see Appendix A of this Policy Brief for a state-by-state review of the bona fide professions and/or certified institutions that are exempt from prosecution in the states.

The current framework of state obscenity laws and harmful to minors laws have been in place since the early 1960s when the Model Penal Code of 1962 created much of the existing state-by-state framework. Significant revisions were necessary following the Miller decision in 1974. Other refinements and clarifications were introduced during the uniform law movement of the early 1980s and, when needed, in response to new Supreme Court decisions. Despite revisions and clarifications over the last 60 years, most states continue to share a common statutory consensus that educational and scientific settings should be exempted from prosecution. It has been a long-standing and settled point of law that the workforce and governing boards of these institutions should not be subjected to criminal prosecution over the books, collections, and materials in their care as well as for performances or displays at their institutions. In many states, institutions like public libraries, higher education, and museums have also been exempted specifically in statute.

In addition to non-commercial considerations, exemptions for educational, scientific, and cultural institutions act to acknowledge their important societal role in supporting learning, research, public access, and civil discourse. These long-standing exemptions also have worked to settle issues where potentially recursive First Amendment or free expression lawsuits could disrupt the work of these institutions. The Wisconsin Legislature has gone as far as to affirm that it is in the interest of the state “to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions” (at Wis. Stat. Ann. s 944.21(8)(a)).

Special interest groups and conservative commentators continue to call for new prosecutorial powers and more expansive definitions of criminal offenses. The Miller Test applies to materials and conduct that could be classified as obscene. Legislative activists are looking to expand those definitions and are focusing on new or expanded definitions for the distribution of pornography to minors, contributing to the delinquency of minors, maintenance of public

decency, defense of marriage (through religious exemptions), and even addressing so-called addictions to pornography.

Changing obscenity statutes to subject educators and librarians to prosecution would significantly disrupt the stability, continuity, and certainty of these institutions. There is no pressing need driven by social developments or changes to contemporary community standards to remove any of these institutional or professional exemptions. States should be very cautious before making such a significant change to the criminal code for what is essentially the religious or moral leanings of special interest groups.

REVIEW OF 2021-2022 STATE LEGISLATION

EveryLibrary, the national political action committee for libraries, [tracked nine bills during the 2021-2022 session](#) which would redefine state obscenity or harmful to minors laws to affect librarians and educators. Three passed, including Oklahoma's H3702 (2022), Tennessee's SB2292 / HB 2454 (2021), and Missouri's SB775 (2022). EveryLibrary continues to track state legislation during the 2023-2024 session about possible changes to obscenity and harmful to minors laws.

EveryLibrary will continue to monitor legislation during the 2023-2024 session affecting libraries, schools, colleges and universities, and museums. Please see https://everylibrary.org/state_obscenity_laws_23-24 for ongoing information.

STATE LAWS ABOUT OBSCENITY AND LIBRARIES THAT PASSED

Missouri

SB775 (2022) - Passed - This act modifies provisions relating to judicial proceedings. Please see Section 573.550 for operative language.

<https://www.senate.mo.gov/22info/pdf-bill/tat/SB775.pdf>

Sponsor: Holly Thompson Rehder (R)

Summary: This act provides that a person commits the offense of providing explicit sexual material to a student if such person is affiliated with a public or private elementary or secondary school in an official capacity and, knowing of its content and character, such person provides, assigns, supplies, distributes, loans, or coerces acceptance of or the approval of the providing of explicit sexual material to a student or possesses with the purpose of providing, assigning, supplying, distributing, loaning, or coercing acceptance of or the approval of the providing of explicit sexual material to a student.

Oklahoma

H3702 (2022) - Passed - An act relating to schools

http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB3702%20ENR.PDF

Sponsor: Todd Russ (R)

Summary: H3702 proactively describes how certain professions are eligible for prosecution for willful violations of Title 21, Section 1021 “Indecent exposure - Indecent exhibitions - Obscene material or child pornography - Solicitation of minors.” Prior to H3702, only law enforcement was exempt during the conduct of their official duties. Under H3702, “Employees of school districts, charter schools, virtual charter schools, state agencies, public libraries, and universities shall not be exempt from prosecution for willful violations of state law prohibiting indecent exposure to obscene material or child pornography as provided in Section 1021 of Title 21 of the Oklahoma Statutes.” The bill also requires technology protection measures for their digital or online library databases that prevent K-12 grade students from viewing or receiving obscene material. If a provider of online library resources fails to comply, the state entity is required to withhold payment to the provider.

Tennessee

SB2292 / HB 2454 – Passed - Obscenity and Pornography

<https://publications.tnsosfiles.com/acts/112/pub/pc1002.pdf>

Sponsors: Bell and Weaver, respectively.

Summary: HB2452 removed the educational justification exemption from state obscenity statute (at Tennessee Code Annotated, Section 39-17-902) by adding the following new subdivision (e)(2): “The educational justification exception established in subdivision (e)(1) [*which reads: It is an exception to this section that the obscene material is possessed by a person having scientific, educational, governmental or other similar justification*] does not apply if the obscene material is possessed by a person with the intent to send, sell, distribute, exhibit, or display the material to a minor.” HB2454 also mandated that school boards develop procedures for collection development and review to ensure that “materials [are] appropriate for the age and maturity levels of the students who may access the materials, and that is suitable for, and consistent with, the educational mission of the school.”

BILLS ABOUT OBSCENITY AND LIBRARIES THAT FAILED OR DIED IN THE 2021-2022 SESSION

Idaho

HB0666 (2022) – Failed

To Remove A Provision Regarding an affirmative defense and to make technical corrections.

<https://legislature.idaho.gov/sessioninfo/2022/legislation/h0666/>

Commentary: Current Idaho statute provides a defense from prosecution (at § 18-1517) if “The defendant was a bona fide school, college, university, museum or public library, or was acting in his capacity as an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.” HB0666 would have struck the entire defense clause. It passed the House but was not voted on in the Senate because the President

pro tempore opposed it. More people testified in support of the bill than in opposition, claiming explicit materials exist in Idaho libraries. The two individuals who spoke in opposition were librarians from the Boise Public Library. Rep. DeMordaunt (R) said the bill would not criminalize librarians. Rep. Woodings (D) argued the bill would criminalize librarians.

Idaho

HB2176 (2022) – Failed

<https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF2176>

Creating criminal penalty for public or school librarians for distributing materials to minors.

Idaho

HB1134/SB0167 (2022) - Failed

<https://iga.in.gov/legislative/2022/bills/house/1134>

Would remove schools and certain public libraries from the list of entities eligible for a specified defense to criminal prosecutions alleging the dissemination of material harmful to minors or a performance harmful to minors. Provides that a state educational institution may not include or promote certain concepts as part of a course of instruction in a curriculum or direct or otherwise compel a school employee or student to adhere to certain tenets relating to the individual's sex, race, ethnicity, religion, color, national origin, or political affiliation.

Indiana

HB1097/SB0017 (2022) – Failed

<http://iga.in.gov/legislative/2022/bills/house/1097>

Would remove the exemption from prosecution for public libraries, schools, colleges and universities, and museums for obscenity or distribution of material harmful to minors.

Iowa

HF2176 (2022) – Failed

<https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF2176>

A bill for an act relating to obscene material disseminated to a minor by a public or private elementary or secondary school or library, or a public library, creating a civil cause of action, providing criminal penalties, and including effective date provisions.

Tennessee

SB1944 / HB1944 – Referred to Summer Study (Died)

The measure would have required the creation of a mechanism for people to file complaints about allegedly obscene material in digital libraries. It also removes common, longstanding protection that librarians and other educational workers have from obscenity laws due to their role in facilitating the flow of information.

IN CONTEXT - LEGISLATION TO CRIMINALIZE LIBRARIANS AND EDUCATORS

The movement by state legislators to criminalize educators, librarianship, and museum professionals is a logical extension of a worldview that believes that any book or image depicting, describing, or discussing sex or sexuality is inherently immoral. If books that affirm the existence of non-heteronormative sexualities or gender identities beyond one assigned at birth are harmful, then anyone making these books or images available is distributing pornography and peddling obscenity.

In our country, there is a sincerely and deeply held belief among certain people that all non-heteronormative sex and non-conforming gender identities are immoral. It is part of their whole-cloth approach to removing statutory and constitutional protections for sexual and gender minorities. Recent legislative activism to criminalize librarianship and education under obscenity laws is happening alongside efforts to marginalize and re-criminalize homosexuality, sexual freedom, and the trans community. Much of this legislative activism is driven by special interest groups who are looking to radically roll back gains in civil society and education settings for LGBTQ people.

In addition, certain special interest groups focused on parental control and parental concern are working to eliminate the teaching of sex education, gender studies, and even health and well-being in P-12 settings. They look at exemptions and defense from prosecution as being the legal gateway that enables the teaching of sex education. Removing educators (and thereby school librarians) from an exemption would thereby dissuade or dismantle sex ed and gender studies by exposing teachers and educators to prosecution. This novel legal theory is being advanced by faith-based legal clinics including Liberty University. See the 2018 publication ["Materials Deemed Harmful to Minors Are Welcomed into Classrooms and Libraries via Educational 'Obscenity Exemptions'"](#) for a particularly salient discussion of this perspective.

POLICY COALITIONS - RECOMMENDATIONS FOR ACTION

If proposed legislation in your state looks to amend or repeal the types of bona fide professions that have a defense from prosecution exemption under current obscenity law or look to amend or repeal which types of institutions are exempt, this section of the Policy Brief is intended to provide you with actionable insights into ways to build a broad-based common cause coalition to oppose bad policies. We offer five pathways to identify other stakeholders who likely share your concerns and a framework for initial discussions to find common ground. In every state there are organizations, agencies, and stakeholder groups who

It is important that library stakeholders approach these other stakeholders with a defined frame of reference for common concerns and a specific ask about opposing activist legislation. The six potential allies include elected officials, boards and administrators concerned with the cost of risk management; the unions and professional associations concerned with safeguarding the future of public sector work; LGBTQ stakeholders and allies concerned with the civil rights and

dignity of individuals and families; good government and free expression stakeholders interested in limiting overreach; organizations which are concerned when religion and private morality intrude on the public sector; and stakeholders within the academic and publishing community who are impinged by obscenity allegations.

A. FINDING COMMON CAUSE AROUND LIABILITY, INSURANCE, AND RISK MANAGEMENT

Book banners, would-be censors, and moral crusaders are looking for new ways to advance their agendas. Changing obscenity laws to include librarians, educators, and/or higher ed will expose cities and counties, schools, cultural institutions, and libraries to spurious lawsuits and nuisance claims as well as the potential for politically motivated prosecution. Allegations or lawsuits are more than distractions. They create new direct and indirect costs for risk management.

If a state were to remove bona fide professions or certified types of institutions from the defense from prosecution exemption, those institutions and organizations would need to acquire an entirely new level and type of liability insurance to protect institutions. This would include the workforce as well as directors and officers. In most states, the defense from prosecution or exemptions from prosecution have been in place since the early 1960s with the last significant revisions happening in the early 1980s. Any sudden change to obscenity laws that exposes the workforce and boards of schools, libraries, museums, and/or colleges and universities to new criminal or civil penalties would force insurance providers to reexamine the scope and costs of their policies. In places where independent boards govern schools, libraries, and higher education, the impact of higher insurance premiums would be borne directly by the institution and its taxpayers. In places where libraries, schools, or museums are a department of town, city, or county government, any new insurance scheme would impact the budget of their municipalities.

City and County risk management and budget officials should be concerned with any changes to obscenity laws that would expose new parts of their workforce and governance to new liability. For municipalities with law enforcement or public safety responsibilities, insurance coverage for police, fire, and rescue is already the most significant portion of municipal insurance costs. Insurance carriers, common pool providers, and self-insurers are all imposing significant increases in premiums for police and public safety. Insurance costs are driven by actual or anticipated liability claims against the police, workers' compensation mandates, and allegations of misconduct. Changing obscenity statutes so that additional municipal departments like libraries, cultural institutions, and/or education could be prosecuted over books would add significant new pressures on already strained budgets.

Independent school districts, library districts, higher ed, and cultural institutions governing boards should have similar fiduciary concerns. Administrators should all be concerned about the increased costs of insurance. In particular, for schools and higher ed, a wide range of factors contribute to their significant costs of insurance coverage. Campus safety, workplace accidents, health and environmental hazards, pandemic-related issues, data breaches, and professional

misconduct are all current factors pushing premiums to the limit. Public libraries are likewise already experiencing increased insurance costs driven by workplace mandates, continuity of operations, and public accommodation. If public education and/or public libraries are removed from these obscenity exemptions, the impact on the cost of insurance for these taxing bodies would be significant. For higher ed, whether public or private, the increased institutional insurance costs would be unprecedented.

Library advocates should approach municipalities, education, and cultural institution stakeholders to oppose politically motivated and unnecessary changes to obscenity laws. If obscenity laws are changed so that libraries, cultural institutions, schools, and/or higher ed are subject to prosecution over books and materials, cities and county administrators and institutional governing boards must anticipate new workforce liability claims and significant increases to the cost of insurance. School boards and administrators, college and university administrations, museum and cultural institutions, and city and county officials should all be approached as stakeholders with a fiduciary responsibility to manage and mitigate risk. Changing obscenity laws in response to pressure from pro-censorship special interest groups will increase insurance expenses.

B. FINDING COMMON CAUSE WITH UNIONS AND PROFESSIONAL ASSOCIATIONS ABOUT THE FUTURE OF WORK

If a state removes certified institutions and workplaces from their defense from prosecution, staff at all levels and roles within that institution would be potentially subjected to allegations of official misconduct, spurious lawsuits and harassment, and politically motivated prosecution. In some states, proposed legislation to remove schools and public libraries from defense from prosecution has included a provision to add colleges and universities into the framework. This would appear to be an effort to divide a potential coalition by pitting the interests of one group against another. Likewise, in some states, the proposed legislation would only remove one group while leaving others in the definition of exempt professions. Again, this would appear to attempt to water down any multi-sector organizing and coalition work.

Library Advocates should approach the unions and professional associations representing these workforces to find a common cause in opposing politically motivated changes to obscenity laws. When educators and library staff are being harassed and slandered by moral crusaders, book banners, and censors there are significant opportunities to stand together to support the dignity of work and oppose workplace intimidation. In states with labor protections, the union community is a key stakeholder and should be engaged. In so-called right-to-work states, professional associations should be at the forefront of this issue. It is important for any policy coalition to the unions and professional associations that convene and represent the workforce.

C. FINDING COMMON CAUSE WITH LGBTQ ORGANIZATIONS AND ALLIED GROUPS ABOUT CIVIL RIGHTS

One of the most pernicious aspects of the movement to redefine which types of books, ebooks, and academic materials is their narrative that stories or information about LGBTQ characters, themes, or subjects are inherently obscene and harmful, especially to children. The key stakeholders and the most authentic voice in opposing changes to obscenity laws that would reclassify books and materials are the affected communities. Library coalitions must have legitimate representatives of organizations and stakeholder groups from LGBTQ populations and root their opposition to criminalization in the dignity, civil rights, and right to exist of those neighbors, students, and families.

D. FINDING COMMON CAUSE ABOUT REASONABLE LAWS AND LIMITED GOVERNMENT

The special interest groups attempting to change obscenity laws are doing so for religiously motivated or politically opportunistic reasons. In a September 2022 survey of American voters by the EveryLibrary Institute, fully 92% of voters oppose attempts to ban and censor materials. It stands to reason that there is little-to-no interest among the vast majority of the voting public to change the criminal code over books and other materials. That survey also showed that 75% of voters are paying attention to how elected officials deal with book bans and censorship. Likewise, the majority of voters believe that people should be left alone to determine their own reading for themselves and their own children.

Library advocates should approach and engage organizations and associations which focus on free expression and access, along with organizations focused on limiting government overreach, to find common cause opposing unnecessary changes to state obscenity laws. Likewise, in states where colleges and universities and/or public libraries are not specifically named in the statute, it could be important for stakeholders to not only oppose removing educators from current law but also advance an affirmative policy agenda to include those other workplaces and professions in state obscenity statutes.

E. FINDING COMMON CAUSE ABOUT SEPARATION OF CHURCH AND STATE GROUPS

If religious or morally-focused groups are allowed to marginalize or even criminalize sexuality and gender identities which do not accord with their belief system, then majority populations need to recognize that they have ceded Constitutional protections over every behavior, interest, or identity to a new form of religious law. Book banners and censors today may say that they hope to protect their children from gay, lesbian, transgendered, and queer lifestyles. But efforts to criminalize books by weaponizing obscenity laws will eliminate full representations of all people from society. Policymakers must understand the difference between safeguarding Constitutionally protected personal belief systems and the allowing of those personal belief systems to violate the constitutional rights of others. If this is allowed to continue our society will rapidly deteriorate into a theocratic rather than pluralistic society.

F. FINDING ALLIES AMONG ACADEMICS AND THE PUBLISHING COMMUNITY

It is important to note that publishers, database vendors, librarians, and educators do their work in compliance with the law. Publishing companies are not publishing books for children that are obscene. Database vendors are not curating content for schools that includes obscene materials. If we continue to allow anti-access activists to label books about people they do not like or concepts that upset them as obscene, schools and libraries will be forced to curtail access to these books or even eliminate these books from their library shelves and databases. The allegations in much recent anti-access legislation are that school library shelves and school library databases are full of obscene, pornographic, or otherwise harmful materials. These allegations are patently false and absurd.

The Miller Test has been the operative law of the land since 1974. Educational publishers and database providers know the law and follow it. They employ professional educators, subject specialists, writers, editors, and reviewers to create and curate content. State standards and local curricula guide the development of these books, research databases, and educational resources. While individual anti-access activists may allege otherwise, it is preposterous to think that reputable publishers and database providers wish to harm students. The entire business model of educational publishing is predicated on the titles being relevant to the needs of schools and school libraries. Trade publishers are aligned toward creating content for children and teens that is commercially viable in every state of the union. It is important for policymakers and legislators to be reminded about the core falsehoods of this movement to redefine obscenity laws.

MESSAGES ABOUT CENSORSHIP THAT RESONATE WITH THE PUBLIC AND POLICYMAKERS

- There is little appetite among voters for more government intrusion into reading. Over 90% of voters oppose book bans and censorship. Changing obscenity laws to criminalize libraries, school books, and higher ed goes too far.
- If you don't like a book at a library, don't check it out. Attempts to change state obscenity laws would make everyone a criminal.
- Reading prepares students for success in a complex world. Short-sighted politicians are banning books and saying obscenity and porn is everywhere. Librarians and educators help parents make good reading choices for their children.
- A book about sex may make someone uncomfortable. It's a complex and very personal topic. But categorically describing all books about sex as obscene or pornographic is someone else imposing their personal morality on everyone. That isn't how our society should work.

- People across the political spectrum trust librarians and educators. These proposed changes to criminal obscenity laws are targeting librarians and schoolteachers in highly political and troubling ways.
- Proposed changes to state obscenity laws won't protect children from images on the internet or their phones. Targeting public libraries and schools over books is misguided and doesn't address the real issues.
- Changing state obscenity laws to prosecute librarians is a back-handed attack on our First Amendment rights. There are already good policies in libraries that protect and preserve access to books and reading. This law would make it a crime for them to lend you a book someone else doesn't like.
- Strong laws about obscenity are necessary and important in society. Most laws have been in place since and are working well since the Kennedy and Reagan years. The people who think they are broken seem to be motivated by their own religious or moral convictions. We don't need to suddenly criminalize libraries, educators, and museums to safeguard America.
- State obscenity laws rely on a long-standing Supreme Court decision called the Miller Test to determine if a book or movie is actually obscene or just makes some people uncomfortable. The Miller Test has been used successfully since the Reagan years to make sure any limits on a particular book don't limit our overall right to read.
- When someone is uncomfortable with a book or movie they don't have to read or watch it. Changing obscenity laws would criminalize libraries in our state. That means everyone's right to read is under threat.

ADVOCACY RESOURCES FROM EVERYLIBRARY AND THE EVERYLIBRARY INSTITUTE

EveryLibrary partners with state library associations to support and advance their legislative and policy agenda. [EveryLibrary](#) can provide your association's legislative or intellectual freedom committee with free digital organizing resources, and targeted online campaign tools via [action.everylibrary.org](#), [Save School Librarians](#), or the new [Fight for the First](#) platform. State partners can immediately access their state file of voters and library activists. EveryLibrary is proud to provide financial support for outreach as well as making its own independent expenditures to help amplify partner messaging. The [EveryLibrary Institute](#) provides pro-bono technical assistance and support to state library association leaders on these issues and can help customize state-specific versions of this brief to inform legislators, stakeholders, and allies.

For questions or comments about this Policy Brief, or to discuss issues of local or national concern, please contact John Chrastka, Executive Director, EveryLibrary and the EveryLibrary Institute at john.chrastka@everylibrary.org or 312-574-0316.

FIGHTING BACK AGAINST POLITICIZED LEGISLATION

The right to read and think freely is a bedrock principle of our society and the right to be secure in one's own reading should not be threatened or impinged by the moral or religious beliefs of anyone else. If as a society we agree that the role of public libraries rises to the level of safeguarding the right to read, then the work of a librarian cannot and should not be criminalized. In school libraries, collection development decisions are driven by the relevance of materials to the district curriculum and to state standards while also supporting the independent reading interests of different ages and abilities across various topics and interests. The educational usefulness of any book, ebook, or other material is based on the relevance of that title, database, or resource to those three missions. School librarians have a unique and powerful role in supporting education standards and the curriculum while enabling independent reading and discovery that is foundational to student success.

In the 2023-2024 legislative season, many state library associations will need new support and strategies to inoculate themselves against politically motivated legislation that is designed to criminalize our profession and institutions. Numerous state laws safeguard the independence of public libraries from political whims and the pressures of politics. The legislative initiatives in 2021-2022 should serve as a wake-up call that libraries and educational institutions are facing unprecedented pressures. The current statutory framework that has allowed librarians, educators, researchers, and museum professionals to work in support of diverse populations and ideas without undue concerns or harassment has the potential to break down. Our sector is facing unprecedented challenges that represent an existential threat to publicly funded school libraries and public libraries. We cannot stand quietly by and let that occur.

EveryLibrary will continue to monitor and engage legislation during the 2023-2024 session affecting libraries, schools, colleges and universities, and museums.

Please see https://everylibrary.org/state_obscenity_laws_23-24 for ongoing information.

STATES WITH CERTAIN EXEMPTIONS FROM PROSECUTION OR DEFENSE FROM PROSECUTION UNDER OBSCENITY OR HARMFUL TO MINORS LAWS

*States with * specifically include libraries in their definitions.*

Alabama: Ala. Code § 13A-12-200.4

A bona fide medical, scientific, educational, legislative, judicial, or law enforcement purpose.

Arkansas: Ark. Code Ann. § 5-68-308 *

No employee, director, or trustee of a bona fide school, museum, or public library, acting within the scope of his or her regular employment.

California: Cal. Penal Code § 313.3

Legitimate scientific or educational purposes.

Colorado: Colo. Rev. Stat. Ann. § 18-7-503 *

The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher education; The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds.

Connecticut: Conn. Gen. Stat. Ann. § 53a-195

Persons or institutions having scientific, educational or governmental justification for possessing or viewing the same.

Delaware: Del. Code Ann. tit. 11, § 1362

Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.

Georgia: Ga. Code Ann. § 16-12-104 *

Any public library operated by the state or any of its political subdivisions nor to any library operated as a part of any school, college, or university.

Hawaii: Haw. Rev. Stat. § 712-1215 *

A parent, guardian, or other person in loco parentis to the minor or to a sibling of the minor, or to a person who commits any act specified therein in the person's capacity and within the scope of the person's employment as a member of the staff of any public library.

Idaho: Idaho Statutes § 18-1517 *

A bona fide school, college, university, museum or public library, or was acting in his capacity as an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Illinois: 720 Ill. Comp. Stat. Ann. 5 § 11-21 *

A bona fide school, museum, or public library, or was a person acting in the course of his or her employment as an employee or official of such organization or retail outlet affiliated with and serving the educational purpose of such organization; Legitimate scientific or educational purposes.

Indiana: Ind. Code Ann. § 35-49-3-4 *

Legitimate scientific or educational purposes; a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment.

Iowa: Iowa Code. Chapter 728 § 728.7 *

For educational purposes in any accredited school, or any public library, or in any educational program; an exhibition or display of art works or the use of any materials in any public library.

Kansas: K.S.A. 21-6401*

Persons or institutions having scientific, educational or governmental justification for possessing or viewing the same; an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

Kentucky: KRS § 531.070

A bona fide scientific, educational, governmental, or other similar justification for conduct which would, except for such justification, be criminal under this chapter.

Louisiana: La. Rev. Stat. Ann. 14, § 106

Recognized and established schools, churches, museums, medical clinics, hospitals, physicians, public libraries, governmental agencies, quasi-governmental sponsored organizations and persons acting in their capacity as employees or agents of such organizations, or a person solely employed to operate a movie projector in a duly licensed theatre.

Maine: 17 M.R.S.A. § 2911 *

Any noncommercial distribution or exhibition for purely educational purposes by any library, art gallery, museum, public school, private school or institution of learning, nor to any commercial distribution or exhibition by any art gallery or museum.

Maryland: MD Code Criminal Law § 11-210

A person having a bona fide scientific, educational, governmental, artistic, news, or other similar justification for possessing or distributing prohibited matter is not subject to the prohibitions and penalties imposed by this subtitle; A distribution made in accordance with a bona fide scientific,

educational, governmental, artistic, news, or other similar justification is not subject to the prohibitions and penalties imposed by this subtitle.

Massachusetts: Mass. Gen. Laws Ann. 272 § 29 *

A bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Michigan: Mich. Comp. Laws Ann. § 752.367 *

An employee of, or as a member of the board of directors of, any of the following: (i) A public or private college, university, or vocational school; (ii) A library established by this state or a library established by a county, city, township, village, or other local units of government or authority or combination of local units of government and authorities or a library established by a community college district; or (iii) A public or private not for profit art museum that is exempt from taxation under section 501(c)(3) of the internal revenue code.

Minnesota: Minnesota Statutes Annotated (Ch. 609-624) § 617.295 *

Recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi-governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization.

Mississippi: Miss. Code. Ann. § 97-29-107 *

A person who while acting in his capacity as an employee is employed on a full-time or part-time basis by (i) any recognized historical society or museum accorded charitable status by the federal government; (ii) any state, county or municipal public library; or (iii) any library of any public or private school, college or university in this state.

Montana: Montana Code Annotated §45-8-206 *

A bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution; The person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum.

Nebraska: Neb. Rev. Stat. § 28-815 *

Such person's activity consists of teaching in regularly established and recognized educational institutions, galleries or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history, science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation.

Nevada: NV Rev Stat § 201.237 *

Those universities, schools, museums or libraries which are operated by or are under the direct control of the State, or any political subdivision of the State, or to persons while acting as employees of such organizations.

New Hampshire: N.H. Rev. Stat. § 650:4

Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.

New Mexico: N. M. S. A. 1978, § 30-37-5 *

A bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

New York: Penal Law § 235.15(1)

Persons or institutions having scientific, educational, governmental or other similar justification.

North Carolina: N.C. Gen. Stat. Ann. § 14-190.15 *

A school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

North Dakota: N.D. Cent. Code Ann. § 12.1-27.1-11 *

A bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only.

Ohio: Ohio Rev. Code Ann. § 2907.31 *

A bona fide medical, scientific, educational, governmental, judicial, or other proper purposes, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

Oregon: O.R.S. § 167.085 *

A bona fide school, museum or public library, or was acting in the course of employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Pennsylvania: 18 Pa. Cons. Stat. Ann. s 5903 *

Any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

South Carolina: S.C. Code § 16-15-385 *

A school, church, museum, public, school, college, or university library, government agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

South Dakota: SDCL § 22-24-31 *

A bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Texas: Tex. Penal Code Ann. § 43.24

A person having scientific, educational, governmental, or other similar justification.

Utah: UT Code § 76-10-1208

Institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.

Vermont: 13 V.S.A. § 2805 *

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: VA Code Ann. § 18.2-383 *

The purchase, distribution, exhibition, or loan of any book, magazine, or other printed or manuscript material by any library, school, or institution of higher education, supported by public appropriation; The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school, or institution of higher education, supported by public appropriation; The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum of fine arts, school, or institution of higher education, supported by public appropriation.

Washington: RCWA 9.68.015 *

Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

West Virginia: W. Va. Code, § 61-8A-3 *

A bona fide school, in the presentation of local or state approved curriculum; A public library, or museum, which is displaying or distributing any obscene matter to a minor only when the minor was accompanied by his or her parent.

Wisconsin: Wis. Stat. Ann. s 944.21 *

An employee, a member of the board of directors or a trustee of A public elementary or secondary school; A private school; A vocational or technical school; Any institution of higher education that is accredited; A library that receives funding from any unit of government.

Wyoming: Wyo. Stat. § 6-4-302 *

A bona fide school, college, university, museum or public library activities or in the course of employment of such an organization.

STATES THAT LACK AN EXEMPTION FOR BONA FIDE PROFESSIONS OR INSTITUTIONS

Alaska: AK Stat. Ann. § 11.61.128

Applies the three-part Miller Test to define harmful materials. No exemption for education or libraries.

New Jersey: N.J.S.A. 2C:34-3

Statute focuses on film and visual depictions and exempts employees of theaters

Rhode Island: R.I. Gen.Laws § 11-31-10

Applies the three-part Miller Test to define obscene and harmful materials.

STATES WITH RECENT CHANGES TO OBSCENITY OR HARMFUL TO MINORS LAWS AFFECTING LIBRARIES AND/OR SCHOOLS

Missouri: Mo. Ann. Stat. § 573.010

Uses “pornography” rather than obscenity in its three-part Miller Test. In 2022, SB775 added a new section at 573.550 which specifically enumerates that Person affiliated with a public or private elementary or secondary school in an official capacity, an administrator, teacher, librarian, media center personnel, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school board member, school bus driver, guidance counselor, coach, guest lecturer, guest speaker, or other nonschool employee who is invited to present information to students by a teacher, administrator, or other school employee” are eligible for prosecution.

Oklahoma: 21 Okl.St.Ann. § 1040.75

Three-part Miller Test for obscenity plus “any description, exhibition, presentation or representation, in whatever form, of inappropriate violence.” Section §21-1021.1 exemptions for law enforcement during the conduct of their official duties. In 2022, H3702 now describes how “Employees of school districts, charter schools, virtual charter schools, state agencies, public libraries, and universities shall not be exempt from prosecution for willful violations of state law prohibiting indecent exposure to obscene material or child pornography as provided in Section 1021 of Title 21 of the Oklahoma Statutes.”

Tennessee: Tenn. Code Ann. § 39-17-902

HB2452 (2022) removed the educational justification exemption from state obscenity statute (at Tennessee Code Annotated, Section 39-17-902) by adding the following new subdivision (e)(2): “The educational justification exception established in subdivision (e) (1) does not apply if the obscene material is possessed by a person with the intent to send, sell, distribute, exhibit, or display the material to a minor.”

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SUGGESTED CITATION:

CHRASTKA, JOHN. (2023, JANUARY) EVERYLIBRARY INSTITUTE
“OPPOSING ATTEMPTS TO CRIMINALIZE LIBRARIES AND EDUCATION THROUGH STATE OBSCENITY LAWS: AN EVERYLIBRARY INSTITUTE POLICY BRIEF”
URL: https://www.everylibraryinstitute.org/new_policy_brief_state_obscenity_laws_libraries_ed_2023

Portions of this commentary previously appeared on [EveryLibrary](#)

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Published January 15, 2023

