

From: "James, Jesse" <Jesse.James@legis.wisconsin.gov>
Sent: Wednesday, January 5, 2022, 7:15 PM
To: "Magnafici, Gae" <Gae.Magnafici@legis.wisconsin.gov>; "Tittl, Paul" <Paul.Tittl@legis.wisconsin.gov>
Subject: Fwd: WI Statutes on ' Exposing a child to harmful material or harmful descriptions or narrations.'
Attachments: ECASD-Library-books.xlsx

Here is item of our discussion tonight.

Jesse

From: [REDACTED]
Sent: Friday, December 17, 2021 11:08:44 AM
To: James, Jesse <Jesse.James@legis.wisconsin.gov>
Subject: Fw: WI Statutes on ' Exposing a child to harmful material or harmful descriptions or narrations.'

Jesse -- Below is the state statute a Waukesha parent sent me, the pictures from the book Mac sent me yesterday, the letter WILL prepared for Elmbrook School District. I did meet with principal today. He didn't defend the book, he said he didn't know it was in the school, told me he would get it out of the classroom and is going to investigate the book and get back to me before break. He did say it had a library tag on it. I also attached the list of other books I know are in our district that are pornographic in nature.

<https://will-law.org/wp-content/uploads/2021/07/2021-07-13-FINAL-Elmbrook-Letter.pdf>

2nd Edition

QUEER

The Ultimate LGBTQ Guide for Teens

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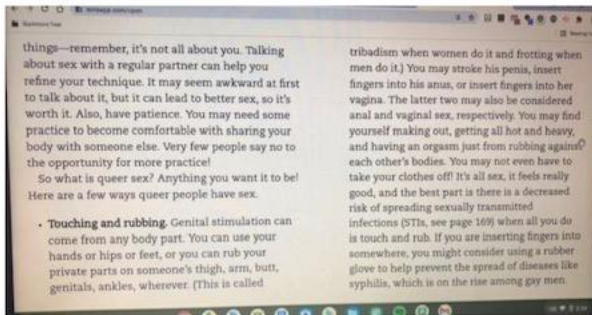
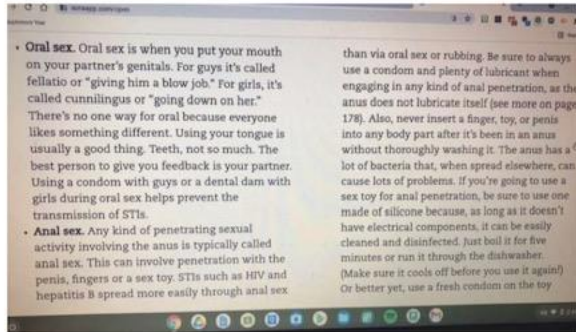
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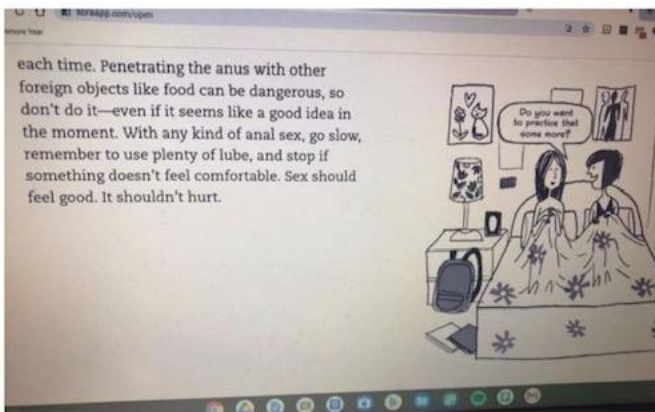
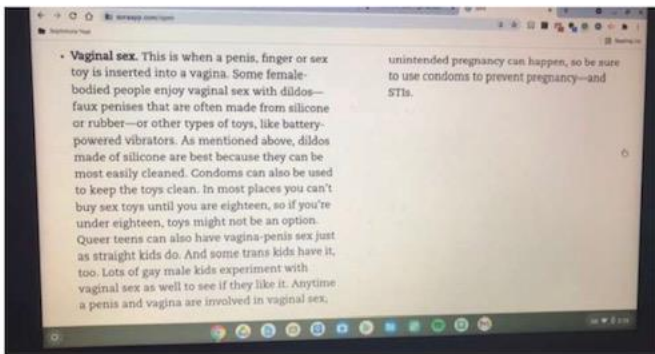
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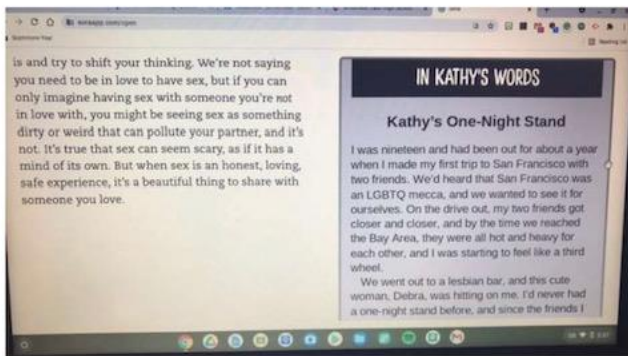
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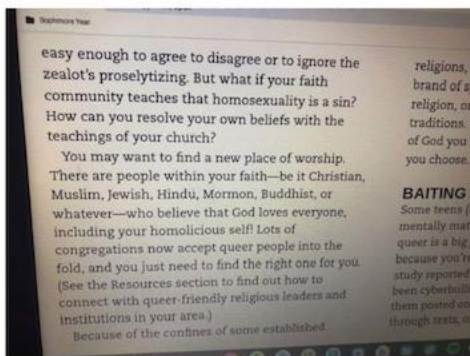
In a second book offered by Elmbrook's Sora, *Queer: The Ultimate LGBTQ Guide For Teens* by Kathy Beige, the author offers a work around for "online dating" when an app has a minimum age of eighteen: "Be aware that many dating sites have a minimum age of eighteen, **although some people arrange dates through Twitter or Facebook too.**" (emphasis supplied). In *Queer*, the author offers detailed information and instructions around oral sex, anal sex, vaginal sex, "touching and rubbing," and "queer sex."







In *Queer*, the authors also deal with religious objections, and note that “you may want to find a new place of worship” if your church does not accept the student's sexual practices.



Here ya go ... State Statutes 948.11 – Exposing a child to harmful material or harmful descriptions or narrations.

Look at the area I have highlighted in Green below. There is the carve-out for Schools and Libraries exempting them from enforcement under these statutes. Nice eh?

948.11 Exposing a child to harmful material or harmful descriptions or narrations.

(1) Definitions. In this section:

(ag) “Harmful description or narrative account” means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) “Harmful material” means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and

3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(d) "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.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

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

(2) Criminal penalties.

(a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child before or during the communication.

(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class A misdemeanor if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2.The person has face-to-face contact with the child.

(c)It is an affirmative defense to a prosecution for a violation of pars.(a) 2.,(am) 2., and(b) 2.if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) Extradition.If any person is convicted under sub.(2)and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

(4) Libraries and educational institutions.

(a)The legislature finds that the libraries and educational institutions under par.(b)carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds 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.

(b)No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1.A public elementary or secondary school.

2.A private school, as defined in s.[115.001 \(3r\)](#), or a tribal school, as defined in s.[115.001 \(15m\)](#).

3.Any school offering vocational, technical or adult education that:

a.Is a technical college, is a school approved by the department of safety and professional services under s.[440.52](#), or is a school described in s.[440.52 \(1\) \(e\) 6.,7.or8.](#); and

b.Is exempt from taxation under section[501](#)(c) (3) of the internal revenue code, as defined in s.[71.01 \(6\)](#).

4.Any institution of higher education that is accredited, as described in s.[39.30 \(1\) \(d\)](#), and is exempt from taxation under section[501](#)(c) (3) of the internal revenue code, as defined in s.[71.01 \(6\)](#).

5.A library that receives funding from any unit of government.

(5) Severability.The provisions of this section, including the provisions of sub.(4), are severable, as provided in s.[990.001 \(11\)](#).

History:[1987 a. 332](#); [1989 a. 31](#); [1993 a. 220,399](#); [1995 a. 27s.9154 \(1\)](#); [1997 a. 27,82](#); [1999 a. 9](#); [2001 a. 16,104,109](#); [2005 a. 22,25,254](#); [2009 a. 302](#); [2017 a. 59](#).

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions, and their employees and directors does not violate equal protection rights. State v. Thiel, [183 Wis. 2d 505, 515 N.W.2d 847](#) (1994).

An individual violates this section if he or she, aware of the nature of the material, knowingly offers or presents for inspection to a specific minor material defined as harmful to children in sub. (1) (b). The personal contact between the perpetrator and the child-victim is what allows the state to impose on the defendant the risk that the victim is a minor. State v. Trochinski, [2002 WI 56, 253 Wis. 2d 38, 644 N.W.2d 891, 00-2545](#).

Evidence was not insufficient to sustain the jury's verdict solely because the jury did not view the video alleged to be "harmful material," but instead heard only the children victim's and a detective's descriptions of what they saw. State v. Booker, [2006 WI 79, 292 Wis. 2d 43, 717 N.W.2d 676, 04-1435](#).

"Verbally" in sub. (2) (am) is most reasonably read as proscribing communication to children of harmful matter in words, whether oral or written, and to distinguish sub. (2) (am) from sub. (2) (a), which primarily proscribes visual representations. State v. Ebersold, [2007 WI App 232, 306 Wis. 2d 371, 742 N.W.2d 876, 06-0833](#).

When the jury was instructed that the state had to prove only that the defendant exhibited harmful material to the child and the instruction did not include the word "knowing" or "intentional," in light of the instructions in the case and reviewing the proceedings as a whole, there was a reasonable likelihood that the jury was confused and misled about the need for the state to prove an element of the crime. State v. Gonzalez, [2011 WI 63, 335 Wis. 2d 270, 802 N.W.2d 454, 09-1249](#).