

**User Name:** Lloyd Crawford

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**Document (1)**

1. [*Tenn. Code Ann. § 39-17-902*](https://plus.lexis.com/api/document?id=urn:contentItem:50J2-V4S0-R03M-D4DV-00000-00&idtype=PID&context=1530671)

**Client/Matter:** -None-

**Search Terms:** 39-17-902

**Search Type:** Natural Language

**Narrowed by:**

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| Statutes and Legislation | Jurisdiction: Tennessee |

[***Tenn. Code Ann. § 39-17-902***](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50J2-V4S0-R03M-D4DV-00000-00&context=1530671)

Current through the 2022 Regular Session.

***TN - Tennessee Code Annotated* > *Title 39 Criminal Offenses* > *Chapter 17 Offenses Against Public Health, Safety and Welfare* > *Part 9 Obscenity***

***39-17-902*. Producing, importing, preparing, distributing, processing or appearing in obscene material or exhibition — Distribution to or employment of minors.**

**(a)** It is unlawful to knowingly produce, send or cause to be sent, or bring or cause to be brought, into this state for sale, distribution, exhibition or display, or in this state to prepare for distribution, publish, print, exhibit, distribute, or offer to distribute, or to possess with intent to distribute or to exhibit or offer to distribute any obscene matter, or to do any of the aforementioned with any matter found legally obscene that violates the requirements of [*18 U.S.C. § 2257*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H0TT-00000-00&context=1530671). It is unlawful to direct, present or produce any obscene theatrical production, peep show or live performance, and every person who participates in that part of the production which renders the production or performance obscene is guilty of the offense.

**(b)** It is unlawful for any person to hire, employ or use a minor to do or assist in doing any of the acts described in subsection (a) with knowledge that the person is a minor under eighteen (18) years of age, or while in possession of the facts that the person should reasonably know that the person is a minor under eighteen (18) years of age. However, this section shall not apply to those acts that are prohibited by [*§§ 39-17-1003*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50J2-V4S0-R03M-D4FG-00000-00&context=1530671) — [*39-17-1005*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50J2-V4S0-R03M-D4FJ-00000-00&context=1530671).

**(c)**

**(1)** A violation of subsection (a) is a Class A misdemeanor, and, in addition, any corporation or business entity that violates this section shall be fined an amount not less than ten thousand dollars ($10,000) nor more than fifty thousand dollars ($50,000).

**(2)** A second or subsequent violation of subsection (a) is a Class E felony; provided, that the second or subsequent violation occurs after a conviction has been obtained for the previous violation; provided further, that the range of fines authorized for a first violation by a corporation or business entity shall also be applicable for second or subsequent violations by the corporation or entity.

**(d)** A violation of subsection (b) is a Class E felony, and, in addition, a violator shall be fined an amount not less than ten thousand dollars ($10,000) nor more than one hundred thousand dollars ($100,000).

**(e)**

**(1)** It is an exception to this section that the obscene material is possessed by a person having scientific, educational, governmental or other similar justification.

**(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.

**History**

[*Acts 1989, ch. 591, § 1*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4J6N-MHY0-002X-50R0-00000-00&context=1530671); [*1990, ch. 1092, § 4*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4J6N-MK10-002X-5191-00000-00&context=1530671); [*1991, ch. 469, § 1*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4J6N-MKD0-002X-51WX-00000-00&context=1530671); [*1996, ch. 1070, § 1*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4J6N-MNC0-002X-501X-00000-00&context=1530671); [*2022, ch. 1002, § 1*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:65DR-DK81-JP9P-G1JM-00000-00&context=1530671).

Annotations

**Notes**

**Compiler's Notes.**

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

[*Acts 2022, ch. 1002, § 5*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:65DR-DK81-JP9P-G1JM-00000-00&context=1530671) provided that Section 1 of the act, which amended this section, applies to offenses occurring on or after July 1, 2022.

**Amendments.**

The 2022 amendment redesignated (e) as (e)(1), and added (e)(2).

**Effective Dates.**

[*Acts 2022, ch. 1002, § 5*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:65DR-DK81-JP9P-G1JM-00000-00&context=1530671). July 1, 2022.

**Commentary**

**Sentencing Commission Comments.**

This section is similar to prior code § 39-6-1104. Subsection (b) is limited to the use of minors in the sale or distribution of obscene materials, as compared with title 39, ch. 17, part 10, where minors are used in the production of the materials. Subsection (e) is similar to prior code § 39-6-1117, and exempts possession of obscene materials pursuant to subsection (a) by persons having scientific, educational, governmental or other similar justification.

**Case Notes**

 1. Possession.  
 2. Actual Knowledge.  
 3. Police Report.

**NOTES TO DECISIONS**

**1. Possession.**

Although there was sufficient evidence from which to infer defendant's possession of obscene matter, the fact that the defendant possessed the material did not per se establish that he knowingly did so. [*State v. Pendergrass, 13 S.W.3d 389, 1999 Tenn. Crim. App. LEXIS 829 (Tenn. Crim. App. 1999)*](https://plus.lexis.com/api/document?collection=cases&id=urn:contentItem:3X5R-6FJ0-0039-42NP-00000-00&context=1530671) .

**2. Actual Knowledge.**

Because of the legislature's clear and unambiguous choice of the word “knowingly” in [*T.C.A. §****39-17-902****(a)*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50J2-V4S0-R03M-D4DV-00000-00&context=1530671), a conviction for distribution of obscene matter may be sustained only if there is sufficient proof of record of actual knowledge of the proscribed conduct. [*State v. Pendergrass, 13 S.W.3d 389, 1999 Tenn. Crim. App. LEXIS 829 (Tenn. Crim. App. 1999)*](https://plus.lexis.com/api/document?collection=cases&id=urn:contentItem:3X5R-6FJ0-0039-42NP-00000-00&context=1530671) .

**3. Police Report.**

Plaintiff attached to his complaint as an exhibit the police report concerning the investigation pursuant to the statute, and the trial court did not err by considering the reference in the report to the statute, as the report was a part of the complaint for purposes of the motion to dismiss. [*Pagliara v. Moses, 605 S.W.3d 619, 2020 Tenn. App. LEXIS 71 (Tenn. Ct. App. Feb. 20, 2020)*](https://plus.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y80-SK21-JW09-M392-00000-00&context=1530671) , appeal denied, [*— S.W.3d —, 2020 Tenn. LEXIS 331 (Tenn. June 6, 2020)*](https://plus.lexis.com/api/document?collection=cases&id=urn:contentItem:60YY-NPF1-F8KH-X30R-00000-00&context=1530671) .

**Opinion Notes**

**Attorney General Opinions.**

Constitutionality of penalties, OAG 90-02 (1/8/90) .

Constitutionality of excluding public libraries from exemption for possession of certain obscene materials, OAG 99-108 (5/10/99) .

Constitutionality of legislation restricting sale or trafficking of pornographic, x-rated materials in particular county, OAG 03-056 (5/01/03) .

**Research References & Practice Aids**

**Cross-References.**

Application for consent to petition to convene investigative grand jury, [*§ 40-12-201*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50JB-7970-R03M-81J7-00000-00&context=1530671).

Penalty for Class A misdemeanor, [*§ 40-35-111*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50JB-7980-R03N-T257-00000-00&context=1530671).

Penalty for Class E felony, [*§ 40-35-111*](https://plus.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:50JB-7980-R03N-T257-00000-00&context=1530671).

Sexual exploitation of children, title 39, ch. 17, part 10.

**Textbooks.**

Tennessee Jurisprudence, 6A Tenn. Juris., Constitutional Law, §§ 73, 78; 20 Tenn. Juris., Obscenity, §§ 1, 2.

**Law Reviews.**

1985 Tennessee Survey: Selected Developments in Tennessee Law, [*53 Tenn. L. Rev. 307 (1986)*](https://plus.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:3S3T-W8F0-00CW-112V-00000-00&context=1530671).

TENNESSEE CODE ANNOTATED

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