

Cass County Child Protection Ordinance

Zero Tolerance for the Dissemination of Sexually Explicit Material to Minors Preface

MCL 722.675(1)(a) and **(b)** state:

A person is guilty of disseminating sexually explicit matter to a minor if that person does either of the following:

- (a) Knowingly disseminates to a minor sexually explicit visual or verbal material that is harmful to minors.
- (b) Knowingly exhibits to a minor a sexually explicit performance that is harmful to minors.

Additionally, this statute provides definitions to facilitate the enforcement of **MCL 722.675(1)** as follows:

MCL 722.675(2) defines the term "Knowingly"

MCL 722.673(g) defines "sexually explicit performance"

MCL 722.673(h) defines "sexually explicit verbal material"

MCL 722.673(i) defines "sexually explicit visual material"

MCL 722.674(a) defines a 3 part test for determining if "sexually explicit matter" meets the

threshold for "harmful to minors"

The 3 part test of **MCL 722.674(a)** provides for each county to set standards to which the 3 part test will be applied.

This ordinance is to be construed to establish that within Cass County Michigan the 3 part test is met when any "sexually explicit matter" as described in **MCL 722.673(f)** is disseminated to a minor. And moreover, the exceptions as laid out in **MCL 722.676**, may only be met in accordance with the provisions of this ordinance as **MCL 722.676** is subject to limitations imposed by **MCL 380.10**, a parents fundamental right to direct the care teaching and education of their child

Preamble

An ordinance to: (1) prohibit the dissemination, exhibiting, display, or making accessible "sexually explicit matter" to minors; (2) provide penalties and sanctions; (3) impose duties on law enforcement and the county prosecuting attorney; and (4) preempt local units of government from complicity in the dissemination, exhibition, display, or making accessible.

Cass County Child Protection Ordinance Section I

(1) This body (Cass County Board of Commissioners) is an appropriate legal body to define 'contemporary local community standards' under [722.674\(b\)](#) because this body is the only body with legal jurisdiction over the entire county.

Section II addressing the 3 part test

(2) 'considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards' as referenced in [MCL 722.674\(a\)\(i\)](#) is satisfied by an act either of (A) dissemination to a minor sexually explicit visual or verbal material as laid out in [MCL 722.673\(f\)](#) or (B) exhibition to a minor a sexually explicit performance as laid out in [MCL 722.673\(f\)](#)

(3) 'patently offensive to contemporary local community standards' as referenced in [MCL 722.674\(a\)\(ii\)](#) is satisfied by either of (A) dissemination to a minor sexually explicit visual or verbal material as laid out in [MCL 722.673\(f\)](#) or (B) exhibition to a minor a sexually explicit performance as laid out in [MCL 722.673\(f\)](#)

(4) 'it' as referenced in [MCL 722.674\(a\)\(iii\)](#) or the term 'sexually explicit matter' as referenced in this ordinance means any portion of 'sexually explicit matter' as laid out in [MCL 722.673\(f\)](#)

(5) 'considered as a whole, it lacks serious literary, artistic, political, educational, and scientific value for minors' as referenced in [MCL 722.674\(a\)\(iii\)](#) means any 'sexually explicit matter' as laid out in [MCL 722.673\(f\)](#)

Section III exceptions

(6) 'sexually explicit matter' as described in [MCL 722.674](#) does not include (A) scientific text that is exclusively intended and arranged to teach biological reproduction that does not include any material that may be construed or arranged to contribute to a "Prurient interest" and (B) any ancient religious text

(7) 'that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852' as reference in [MCL 722.676](#) means "that has in their possession and discloses upon request from

a time previous to the dissemination and ending at the conclusion of any action under [MCL 722 Act 33 of 1978](#), a notarized statement signed by each of the corresponding parents and guardians, each stating that the corresponding parents and guardians have reviewed the corresponding 'sexually explicit matter' and give permission for the dissemination"

Section IV enforcement

(8) Law enforcement is mandated to act under one or more of [MCL 764.15\(1\)\(a\)](#), [MCL 764.15\(1\)\(b\)](#), [MCL 764.15\(1\)\(c\)](#), and [MCL 764.15\(1\)\(n\)](#), upon breach of this ordinance.

Section V administration

(9) All employees or contractors, permanent or temporary, of any government or governmental related unit located at least in part in this county must within 30 days of the passing of this ordinance, within 30 days of becoming an employee or contractor, and every 365 days thereafter provide a notarized attestation to the county clerk that they have read and understood this ordinance such as to additionally satisfy each limitation relating to the term 'knowingly' found in [MCL 722.675](#). The county clerk to retain each provided attestation and alert law enforcement when any aforementioned employee or contractor is not in compliance. Any persons not in compliance with the attestation requirement is in breach of this ordinance.

Applicable Law

1. [MCL 722 Act 33 of 1978](#) prohibits the dissemination of sexually explicit matter to minors 2. [MCL 722.673\(f\)](#) 'sexually explicit matter' means sexually explicit **visual** material, sexually explicit **verbal** material, or sexually explicit **performance**.
3. [MCL 722.673\(g\)](#) 'sexually explicit performance' **means a** motion picture, video game, exhibition, show, **representation, or other presentation that, in whole or in part,** depicts nudity, **sexual excitement**, erotic fondling, **sexual intercourse**, or sadomasochistic abuse.
4. [MCL 722.673\(h\)](#) 'sexually explicit verbal material' **means a** book, pamphlet, magazine, **printed matter** reproduced in any manner, or sound recording **that contains an explicit and detailed** verbal description or **narrative account of sexual excitement**, erotic fondling, **sexual intercourse**, or sadomasochistic abuse.
5. [MCL 722.673\(i\)](#) Statutory definition of 'sexually explicit visual material' **means a** picture, photograph, drawing, sculpture, motion picture film, video game, or **similar visual representation** that depicts nudity, **sexual excitement**, erotic fondling, **sexual intercourse**, or sadomasochistic abuse, or **a book**, magazine, or pamphlet **that contains such a visual representation**.
6. [MCL 722.675\(1\)](#) Felony Acts (a) and (b) for disseminating sexually explicit matter to minors
7. [MCL 722.674\(a\)](#) 'harmful to minors' 3 part test (i), (ii), and (iii) for criminality 8. [MCL 722.674\(b\)](#) 'Local community' means the county in which the matter was disseminated
9. [MCL 722.674\(c\)](#) 'Prurient interest' means a lustful interest in sexual stimulation or gratification with respect to the determined interest of a 17 year old minor.
10. [MCL 722.676\(b\)](#) persons excluded include a school official in compliance with MCL 380.1-MCL 380.1852

11. [MCL 380.10](#) it is the fundamental right of a parent to determine and direct the care, teaching, and education of their child. The public schools of this state serve the needs of the pupils by cooperating with the pupils' parents.

12. [MCL 764.15](#) arrest by an officer without a warrant