

## Repeal Educational Justification for Provision of Harmful Material to Minor in Texas Penal Code

**WHEREAS**, in the Miller vs. California case of 1973, the Supreme Court of the United States has determined that the First Amendment of the United States Constitution does not protect materials which are obscene, defined as:

1. Materials which taken as a whole, appeal to prurient interests according to contemporary community standards;
2. Materials that, according to contemporary community standards as viewed by the average person, depict or describe sexual conduct in a patently offensive way; and
3. Materials that a reasonable person finds that, taken as a whole, lack serious literary, artistic, political, or scientific value;

**WHEREAS**, Texas has a compelling state interest in protecting the health, safety and welfare of minors by repealing the affirmative defenses for the “sale, distribution, or display of harmful material to minors for “scientific, educational, governmental, or other similar justification” from Texas Penal Code Section 43.24 SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR, which prohibits the dissemination of materials deemed harmful to minors, defined as “...material whose dominant theme taken as a whole:

- (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
- (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- (C) is utterly without redeeming social value for minors;”

**WHEREAS**, the study of human biology, anatomy and physiology is not harmful to minors and does not meet the standard of the Miller test;

**WHEREAS**, HB 900 (88thR) codified the definition of sexually explicit library material, prohibiting them from school libraries;

**WHEREAS**, Texas Administrative Code, Title 13, Part 1, Chapter 4, Subchapter A, Rule 4.2 requires school library collection development standards to “Prohibit the possession, acquisition, and purchase of harmful material, as defined by Penal Code, §43.24, library material rated...or library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982);”

**WHEREAS**, HB 1181 (88thR) was signed into law by Governor Abbot, was upheld in court, requiring age verification for access to sexual material online (<https://texasscorecard.com/wp-content/uploads/2023/11/hb1181-ca5-motion-to-stay-injunction-granted-11-14-23.pdf>);

**WHEREAS**, pornography and sex industry advertisements have been found in vendor supplied digital resources commonly referred to as “Research Databases” (EBSCO, GALE and TexQuest) widely purchased and distributed by Texas schools as scholastic tools for K-12 students. These databases escape internet filtering, exploiting loopholes in our state statutes and federal Children’s Internet Protection Act (CIPA) laws designed to protect children from obscene and harmful material. First exposures may occur via school supplied technology and learning resources;

**THEREFORE, be it resolved that Plank #172 be amended as follows:**

172. Obscenity Exemption: We call upon the Texas Legislature to abolish the educational justification as an affirmative defensive to prosecution for the sale, distribution or display of harmful material to minors in Texas Penal Code 43.24(c) and 43.25(f)(2-3). The State of Texas shall repeal all Texas laws based on the fraudulent research by Dr. Alfred Kinsey and prosecute violations of Texas Penal Code 43.24 and 43.25 to the fullest extent of the law, effectively stripping school districts of sovereign immunity when these offenses occur in an educational setting, on school-provided devices or via their educational resources.

A copy of this resolution should be sent to the \_\_\_\_\_ County/Senate District # \_\_\_\_ Convention Resolutions Committee from Precinct # \_\_\_\_ with the recommendation that it be passed and sent to the State Convention Platform Committee of the \_\_\_\_\_ Party of Texas.