

# Applicable Laws continued

## UNITED STATES CONSTITUTION

### *Tenth Amendment*

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

### *Fourteenth Amendment*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## NEW YORK STATUTES

### *Education Law*

#### **§262. Use of Public and Indian Libraries**

Every library established under section two hundred fifty-five of this chapter shall be forever free to the inhabitants of the municipality or district or Indian reservation, which establishes it, subject always to rules of the library trustees who shall have authority to exclude any persons who willfully violate such rules; and the trustees may, under such conditions as they think expedient, extend the privileges of the library to persons living outside such municipality or district or Indian reservation.

#### **§264. Injuries to property**

Whoever intentionally injures, defaces, or destroys any property belonging to or deposited in any incorporated library, reading-room, museum or other educational institution, shall be punished by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or both such fine and imprisonment.

*Education Law*

**§260a Meetings of board of trustees**

Every meeting, including a special district meeting, of a board of trustees of public library systems, cooperative library system, public library or free association library, including every committee meeting and subcommittee meeting of any such board of trustees in cities having a population of one million or more, shall be open to the general public. Such meetings shall be held in conformity with and in pursuance to the provisions of article seven of the public officers law.

**§265. Detention**

Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution, such article or property may be kept, shall be punished by fine of not less than one nor more than twenty-five dollars, or by imprisonment in jail not exceeding six months, and the said notice shall bear on its face a copy of this section.

*Civil Practice Law and Rules*

**§ 4509. Library Records [Confidentiality]**

Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

*Public Officers Law. Freedom of Information Law*

**§87(2) Access to agency records.**

Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that: (a) are specifically exempted from disclosure by state or federal statute; (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

*Penal Law*

**§235 (1) Obscenity; definitions of terms**

Any material or performance is "obscene" if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of genitals, and (c) considered as a whole, it lacks serious literary, artistic, political and scientific value.

**§235.10 Obscenity; presumptions**

1. Any person who promotes or wholesale promotes obscene material, or possesses same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.
2. A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

The provisions of this section shall not apply to public libraries or association libraries as defined in subdivision two of section two hundred fifty-three of the education law, or trustees or employees of such public libraries or association libraries when acting in the course, and scope of their duties or employment.

*Penal Law*

**§235.15 Obscenity; defense**

1. In any prosecution for obscenity, it is an affirmative defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.

**§235.20 Disseminating indecent material to minors**

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when: (a) considered as a whole, appeals to the prurient interest in sex of minors; and (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) considered as a whole, lacks serious literary, artistic, political and scientific value for minors.

*Chapter 600, An act to amend the penal law, in relation to disseminating indecent material to minors through any computer communication system.*

**§6 (1) applies to Section 235.22 of the penal law**

A person is guilty of disseminating indecent material to minors in first degree when:

1. Knowing the character and content of the communication which, whole or in part, depicts actual or simulated nudity, sexual conduct, sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate in such communication with a person, who is a minor;