

Conducting SM Related Legal Research

Overview

The law is interpreted – sometimes to our favor, and sometimes not. For example, while the NCSF firmly believes that consensual SM activity between adults is legal, there are those that have a differing opinion and will intentionally interpret the law in an unfavorable way. Therefore, it is extremely important for the SM-Leather-Fetish communities to have an understanding of the laws that may affect us. Knowing relevant laws will greatly assist our communities in safely organizing and maintaining SM-Leather-Fetish activities and functions.

There are numerous laws, ordinances, and regulations at all levels of government - federal, state, regional, county and city. It's not easy to locate all of the laws that may affect us, but it's very important. You should make every attempt to thoroughly research your laws if your activities may come under the scrutiny of law enforcement or local authorities. In addition, NCSF recommends that thorough legal research should include consultation with a knowledgeable attorney, state Attorney General, local prosecutor, or other legal authority, familiar with the current interpretation of the law for the jurisdiction in question.

Obviously, it is impossible to provide a comprehensive list of every law and its interpretation for every jurisdiction, so this material is designed to give the reader a basic understanding of legal research and the tools to get started.

Research Realities

The question "Is SM legal in my state?" is not an appropriate research question. What we call "SM" includes a wide variety of behaviors, attitudes and acts without common legal terminology. For example, a state may not specifically prohibit "bondage" or "mummification", but every state has laws against holding someone against his/her will. The key term is not "SM" but rather "consent." Therefore, the better question to research might be "What types of consensual sexual expression are allowed under state and local laws?" or "How is consent defined by statutory and case law in the state?"

In many jurisdictions, only procreative consensual intercourse between married heterosexual couples in the privacy of the home is "legal." Therefore looking at all laws pertaining to sex may be a good place to start. Of course, sex laws are usually selectively enforced. And they can be contradictory: a local jurisdiction may recognize gay couples, but the state makes sodomy between people of the same sex a felony, then again, it doesn't enforce the law against anyone.

Finally, remember that if "they" want to get you, they'll look through everything including if your dog has the appropriate license or they will dig up laws that haven't been enforced in 30 or 100 years.

Statutes and Case Law in our Legal System

When people talk about "what the law says" or "what the law is," they are typically referring to statutes (sometimes called codes). When disputes arise over the meaning of statutes, state and federal courts issue court opinions that interpret the statutes -- this is "case law." In addition, numerous federal and state agencies, such as the Environmental Protection Agency, the IRS and the various Secretary of State's offices, issue regulations that cover the legal areas that the agencies control (such as environmental law, federal taxes and corporations law).

Researching Federal vs. State Statutes

States make the law in most of the areas related to alternative sexual practices, such as child custody, marriage, divorce, public indecency, assault, kidnapping, weapon violations, etc. A few areas now involve both

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state and federal statutes, including employment regulation. (Note: state laws usually give way to federal laws that address the same issue.)

Finding Relevant Statutes

There are two main ways to find a particular state or federal statute: (1) at a library or (2) on the web. We recommend using government websites to locate the applicable laws, where and when available, and as a preliminary research method. This should be followed up with hardcopy research at the library. You can locate relevant statutes on the internet by doing a keyword search or by browsing the table of contents. Not all states allow you to do a keyword search, but for the ones that do, you simply enter a few terms that relate to the subject you're looking for.

Searching Statutes

To do a good search you need to anticipate the words used in the statutes you are searching. Example: if you are looking for a statute that defines weapons in reference to the transportation of weapons on public highways, you might choose to use the search term "transport." If that search pulled up hundreds of statutes, you may try narrowing the search. You could try adding the words "weapon" and "public." Or, if your search doesn't pull up any statutes, you can try to broaden the search by using fewer or more common search terms.

Browsing Statutes

Browsing the table of contents of statutes is often a better way to find laws on your subject because it lets you look first at the general subjects (Titles, or sometimes Divisions). From there you can move to particular topics (Chapters, or sometimes Articles), and then to the precise statutes you need (Sections). By browsing, you also get a general idea of all the statutes there are on a specific subject.

Read Related Statutes / Ordinances

If you are interested in a particular area of the law (for example, adult entertainment regulations), you need to read all relevant statutes on that subject. If you don't, you may miss an important statute that contradicts the law you have found. Example: A regulation may not specifically prohibit flagellation on the premises of an adult business, but a different regulation prohibits flagellation in instances where the adult business serves alcohol. Once you find a relevant statute/ordinance, you should continue searching until you are convinced that you've found every statute/ordinance that may affect that particular issue.

Understanding Statutes / Ordinances

Some statutes are clearly written, while others are very difficult to understand. Exceptions to the statute, "whereases" and cross-references to other statutes can make it very hard to understand what a statute means. Here are some rules to use when interpreting a statute:

- Read the statute several times.
- Pay close attention to all the "ands" and "ors." The use of "and" to end a series means that all elements of the series are included, or necessary, but an "or" at the end of a series means that only one of the elements need be included.
- Assume all words and punctuation in the statute have meaning. It's tempting to skip words you don't quite understand and ignore awkward punctuation. Don't do it.
- If the statute is but one of a number you are studying, interpret it to be consistent with the other statutes if at all possible.
- Interpret a statute so that it makes sense rather than lead to some absurd or improbable result.

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- Track down all cross-references to other statutes and sections and read those statutes and sections.

Making Sure the Statutes are Up to Date

Many state statutes on the web are not up to date, but the state website will usually tell you the year that the collection was last updated. If the statutes are out of date, you'll need to find out if any statutes you're interested in were amended or repealed by the legislature since the posting date. You can do this by doing a search of all the bills passed in the state since the posting date. These bills should be available on the state legislature's website.

The Importance of Case Law

When disputes arise over the meaning of statutes, judges are called on to interpret the statutes. Judges' interpretations of those statutes -- called "opinions", "decisions", or "cases" -- are as important to understanding what the law is as the words of the statutes itself. So once you find a statute that seems to address your situation, consider taking the next step and see how the courts have interpreted it.

The U.S. Supreme Court

The Supreme Court is the highest federal court in the country, and its opinions are the final word on what the law means. The Supreme Court can decide what a legislature meant when it wrote a law, or it can even overturn (revoke) a federal or state statute if it finds it unconstitutional.

Recommended Topics to Research

There is no common legal terminology for "SM" per se because SM includes a wide variety of behaviors that have not been categorized. So look for laws governing sexual behavior generally, including prostitution, rape, sexual assault, sodomy, etc. Other terms such as "flagellation" and "sodomasochistic abuse" may bring up some statutory, regulatory or case law, particularly when searching a large, cross-referenced database. Here are some keywords that may assist you in your research:

Abuse	False Imprisonment	Paraphernalia	Sexual
Adult	Flagellation	Permits	Statute
Adult Entertainment	Indecent	Police	Uniforms
Alcohol	Kidnapping	Public	Weapon
Assault	Knife	Rape	Zoning
Battery	Lewd	Sodomasochism	
Consensual	Minor	Sodomasochistic	
Consent	Ordinance	Sex	

Selected Basic Legal Terms:

Annotated Codes - Publications that combine statutes with cases that interpret the statutes.

Bill - What a statute is called when it is introduced in Congress or a state legislature prior to becoming a law. An assigned number is used to refer to a bill. The number has two parts: HB (House Bill) or SB (Senate Bill) depending on where it was introduced, and the number that identifies the particular bill. Example: SB1137

Case Law - is an opinion from the state and federal courts that interpret statutes.

Chapter - A term that identifies a group of related state or federal statutes that have been gathered together within a particular Title or Code. Example: Virginia Statutes, Title 18.2, Chapter 4 is "Crimes Against the Person"

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Citation - Is a reference to a statute that describes where it is published. Example: the federal citation "42 USC 1021" tells us that this cited federal statute can be found in Title 42, Section 1021 of the United States Code

Code - In general, "Code" refers to the main body of statutes of the jurisdiction. Example: the Arizona State Code

Ordinance / Regulation – A law at the local (city or county) level.

Statutory Schemes – Are groups of statutes that relate to one particular subject. Example: all of the federal statutes that make up Title VII of the Civil Rights Act (which forbids employment discrimination and sexual harassment) are known as a statutory scheme because they are all related to each other

Title - In the federal system and in some states, "Title" is used to denote a collection of state or federal statutes by subject matter, as in Title 42 of the U.S. Code for civil rights statutes.

Recommended Websites – Places to Start

ACLU's Legal Research Resource www.aclu.org/court/resource4.html
Cornell Univ. Legal Information Institute's Law References Page www.law.cornell.edu/statutes.html - state
Georgia State Univ. Meta-Index for U.S. Legal Research gsulaw.gsu.edu/metaindex/
Guide to Internet Legal Research..... www.ali-aba.org/aliaba/B_Appendix1.htm#top

Recommended Websites – Specific Topics

ACLU's Guide to Sodomy Laws www.aclu.org/issues/gay/sodomy.html
ACLU's State & Local Laws Protecting Lesbians and Gays Against Workplace Discrimination
..... www.aclu.org/issues/gay/gaylaws.html
Alternatives to Marriage Project www.unmarried.org
Dr. Bernardo Attias's "Sexuality, Consent, and the Law in the US" www.csun.edu/~hfspc002/SMLaw.html
Kink Aware Professionals List www.bannon.com/~race/kap/

Recommended Websites – BDSM Sites with Legal Info

Ambrosio's BDSM and the Law www.io.com/~ambrosio/law/index.html
Else Strix' ProDomiNation Network Legal Resources www.prodomination.com/resourceguide/legal.htm
The Leather Quest's Leather Law Repository www.leatherquest.com/smLaw.htm

Policy Emphasis

1. NCSF recommends thoroughly researching your local laws and ordinances including alcohol beverage regulations.
2. Each situation is unique - there are no blanket rules or tactics that will work in every situation. Decisions concerning law enforcement related issues must be decided based on all available information at the time.

Disclaimer: The material presented is not offered as legal advice. Many options are suggested for dealing with law enforcement and other authorities. The best course of action for you to take in a given situation is dependent on that situation and is entirely up to the parties involved. No single option is always going to work. Remember that situations, laws, and attitudes will vary from place to place and from time to time.