

ALR 6th *Alert*

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From the **editor**

Volumes 23 and 24 of A.L.R.6th feature annotations on the subject of criminal law, including annotations on the antagonistic defense as a ground for separate trials of codefendants in state homicide offenses (24 A.L.R.6th), the failure of state prosecutors to disclose exculpatory tape recorded evidence as violating due process (24 A.L.R.6th), the admissibility and effect of evidence on one's military service or lack thereof (24 A.L.R.6th), and the "public authority" defense to the criminal prosecution of private citizens (24 A.L.R.6th). Also included are criminal law annotations construing and applying state drug paraphernalia acts (23 A.L.R.6th 307) and state statutes enhancing the penalty for sale or possession of controlled substances within a specified distance of playgrounds (23 A.L.R.6th 679). These volumes also contain a variety of other topics, including the sales tax of cable television equipment (23 A.L.R.6th 165), "deepening insolvency" as a cause of action in tort (23 A.L.R.6th 457), and the liability of a hospital to a patient injured through the use of a defective wheelchair (24 A.L.R.6th).

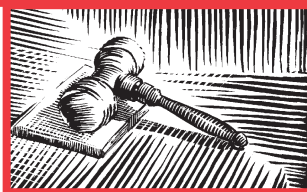
Jennifer J. Ho, J.D.

Highlights

EVIDENCE

Invocation and Effect of State Secrets Privilege

The state or military secrets privilege allows the United States to block discovery in a lawsuit of any information that, if disclosed, would adversely affect national security. The privilege against revealing military secrets belongs to the government and must be asserted by it, and it can neither be claimed nor waived by a private party. This annotation collects and summarizes those cases in which courts have addressed the invocation and effect of the state secrets privilege. [23 A.L.R.6th 521](#)



ADULT OR X-RATED BUSINESSES OR MOVIES

Sexually Oriented Businesses—Nature of Regulation

Many states and municipalities have sought to regulate the operation of sexually oriented businesses. These businesses include sexually oriented book, video, or novelty stores or arcades; live performance or nude dancing cabarets; motion picture theatres or video viewing facilities; escort or outcall agencies; and other types of sexually-oriented businesses. The nature of the regulations includes requirements or limitations regarding the age of patrons or employees; sale of alcohol; signs or

advertising; special licenses, fees, or permits; ownership or management limitations or requirements; performance limitations or requirements; employee restrictions or licensing; premises requirements or limitations; and other forms of regulation. Most often, the challenge to the statute or ordinance regulating sexually oriented businesses will be on the basis of one or more state or federal constitutional grounds or provisions. This annotation collects the state and federal cases that have considered the nature or manner of a particular regulation with respect to the validity and enforceability of statutes and ordinances regulating the operation of sexually oriented businesses. [23 A.L.R.6th 573](#)

See also the related annotations of Validity of Statutes and Ordinances Regulating Operation of Sexually Oriented Businesses—Types of Businesses Regulated, [21 A.L.R.6th 425](#), and Validity of Statutes and Ordinances Regulating Operation of Sexually Oriented Businesses—Legal Issues and Principles, [20 A.L.R.6th 161](#)

CRIMINAL LAW

Sale or Possession of Controlled Substances Within Specified Distance of Playgrounds

It is clear that the best way to win the war against drug abuse is to stop children from starting to experiment with drugs in the first place. Making it more difficult for the children to acquire such drugs, such as by scaring off drug dealers from targeting children, is part of this process. Accordingly, a number of states have enacted statutes which try to ward off drug sales to children by raising the sentence for drug dealing

at or within the proximity of playgrounds. A number of courts have construed and analyzed the provisions of such state statutes, as this annotation illustrates. [23 A.L.R.6th 679](#)

See also the related annotations of Validity, construction, and application of state statutes prohibiting sale or possession of controlled substances within specified distance of schools, [27 A.L.R.5th 593](#) and Validity and construction of 21 U.S.C.A. sec. 860 enhancing penalty for drug distribution if offense occurs within 1,000 feet of school, college, or university, [108 A.L.R. Fed 783](#)

WITNESSES

Observation of One Spouse of Acts of Other Spouse as Within Marital Privilege

Communications between husband and wife are presumed to be confidential. In general, the law prohibits a spouse from testifying as a witness with respect to any knowledge or information obtained by either during the marriage and by reason of its existence, and such knowledge is not confined to mere statements by one to the other, but embraces all knowledge upon the part of either obtained by reason of the marriage relation and which, but for the confidence growing out of it, would not have been known. This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided whether, or under what circumstances, one spouse's observations of the other spouse's acts are within the marital privilege, which holds that one spouse may bar the other spouse from testifying as to confidential communications between the spouses. [23 A.L.R.6th 1](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in [24 A.L.R.6th](#) in May 2007. Some of the annotations listed may be rescheduled.



the result that critical parts may wear down and break. Courts have reached a variety of conclusions as to whether and under what circumstances a hospital could be found liable for injuries to a patient caused by a defective wheelchair or similar appliance or hospital furnishings, as this annotation illustrates. [24 A.L.R.6th](#)

HOSPITALS

Liability of Hospital to Patient Injured Through Defective Wheel Chair or Similar Furniture or Appliance

Wheelchairs are a boon for those whose mobility is restricted for a variety of reasons, and are of critical need in hospitals where nonambulatory patients can be transported within the hospital's premises much more easily than by moving beds or gurneys. However, wheelchairs often see heavy usage in hospitals, with

DAMAGES

Recovery of Punitive Damages for Exposure to Asbestos

Asbestos is a naturally occurring, fibrous material that was used in many products incorporated into the daily lives of Americans prior to the 1970s. Because of its fire resistance, noise insulation, and electrical insulation properties, it was used as component in building materials, paper products, and plastics. Because asbestos is a known carcinogen, there is no known "safe level" of exposure. To impose greater regulation on this

hazardous material, most states require inspections for asbestos prior to building renovation and demolition and have implemented their own statewide air-pollution regulations to deal with asbestos.

Manufacturers and suppliers have been held liable for injuries due to exposure to asbestos under theories of negligence and products liability, and courts have awarded compensatory and punitive damages. This annotation collects and discusses those cases in which courts have considered the award of punitive damages based upon exposure to asbestos. **24 A.L.R.6th**

CONSTITUTIONAL LAW

Federal and State Constitutional and Statutory Speech or Debate Provisions

The Speech or Debate Clause of the U.S. Constitution (U.S. Const. Art. I § 6, cl. 1), in relevant part, provides as follows: "The Senators and Representatives . . . shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place" (emphasis added). In addition, 43 state constitutions contain a provision, analogous to the U.S. Constitution's Speech or Debate Clause, granting state legislators a legal privilege in connection with their legislative work. These provisions are frequently used by legislators or others in

an attempt to shield documents, objects, or activities from scrutiny under a variety of circumstances. The question most often to be resolved is whether the actions in question fall within the sphere of legitimate legislative activity. This annotation collects the state and federal cases in which the courts have considered the construction and application of Speech or Debate provisions found in federal or state constitutions or statutes. **24 A.L.R.6th**

CRIMINAL LAW

Public Authority Defense to Criminal Prosecution of Private Citizen

Government officials, particularly those in the law enforcement and intelligence communities, sometimes engage in covert activities which involve violation of criminal laws. One common example is the purchase or sale of illegal narcotics by a policeman or police informant in order to obtain evidence against the other party to the transaction. The "public authority" defense follows from the conviction that when a public official authorizes a private citizen, like a police informant, to perform an act that would otherwise be a crime, justice and public policy dictates that the private citizen be allowed a defense. To establish this defense the citizen must engage in otherwise criminal acts with the reasonable belief that a government official has approved those actions. This annotation collects all cases which have construed or applied the public authority defense where the defendant was a private citizen. **24 A.L.R.6th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 23 A.L.R.6th or scheduled for publication in 24 A.L.R.6th. Some of the annotations listed may be rescheduled.

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Validity of Statutes and Ordinances Regulating Operation of Sexually Oriented Businesses—Nature of Regulation. **23 A.L.R.6th 573**

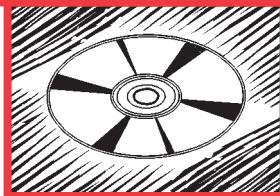
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