

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 703
HOUSE BILL 1171

AN ACT TO STRENGTHEN THE OBSCENITY LAWS OF THIS STATE AND THE ENFORCEMENT OF THESE LAWS, TO PROTECT MINORS FROM HARMFUL MATERIAL THAT DOES NOT RISE TO THE LEVEL OF OBSCENITY, AND TO STOP THE SEXUAL EXPLOITATION AND PROSTITUTION OF MINORS.

The General Assembly of North Carolina enacts:

Part 1. Obscenity Changes.

Section 1. G.S. 14-190.1 is amended as follows:

- (1) by deleting the words "in any public place" in the first sentence of subsection (a);
- (2) by deleting the word "statewide" in subdivision (b)(2);
- (3) by deleting the word "representation" in subdivision (b)(2) and substituting the word "description";
- (4) by deleting the word "educational" in subdivision (b)(3); and
- (5) by rewriting subsection (c) to read:

"(c) As used in this Article, 'sexual conduct' means:

- (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or
- (2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or
- (3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume."
- (6) by deleting all but the first sentence of subsection (d);
- (7) by rewriting subsection (g) to read:

"(g) Violation of this section is a Class J felony."; and

- (8) by adding a new subsection to read:

"(h) Obscene material disseminated, procured, or promoted in violation of this section is contraband."

Sec. 2. G.S. 14-190.2 is repealed.

Sec. 3. G.S. 14-190.3 is repealed.

Sec. 4. G.S. 14-190.4 is amended by rewriting the last sentence of that section to read:

"Violation of this section is a misdemeanor punishable by imprisonment for up to one year and a fine of up to one thousand dollars (\$1,000)."

Sec. 5. G.S. 14-190.5 is amended as follows:

- (1) by deleting the words "in a public place" from subdivisions (1) and (2); and
- (2) by rewriting that part of the section beginning with the word "punishable" to read:
"punishable by imprisonment for up to one year and a fine of up to one thousand dollars (\$1,000)."

Sec. 6. G.S. 14-190.6 is amended by deleting "other than G.S. 14-190.12" and by rewriting that part of the section beginning with the word "misdemeanor" to read: "Class I felony."

Sec. 7. G.S. 14-190.7 is amended by rewriting that part of the section beginning with the word "misdemeanor" to read:
"Class I felony."

Sec. 8. G.S. 14-190.8 is amended as follows:

- (1) by deleting the phrase "Class I" and substituting the phrase "Class H"; and
- (2) by changing the comma after the word "felon" to a period and deleting the remainder of that section.

Part 2. Protection of Minors Amendments.

Sec. 9. G.S. 14-190.10, 14-190.11, and 14-190.12 are deleted and are replaced by the following sections to read:

"§ 14-190.10. Definitions for certain offenses concerning minors.—The following definitions apply to G.S. 14-190.11, displaying material harmful to minors; G.S. 14-190.12, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.13, first degree sexual exploitation of a minor; G.S. 14-190.14, second degree sexual exploitation of a minor; G.S. 14-190.15, promoting prostitution of a minor; and G.S. 14-190.16, participating in prostitution of a minor.

- (1) Harmful to Minors. That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
 - a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
 - b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
 - c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

- (2) Material. Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.
- (3) Minor. An individual who is less than 18 years old and is not married or judicially emancipated.
- (4) Prostitution. Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.
- (5) Sexual Activity. Any of the following acts:
 - a. Masturbation, whether done alone or with another human or an animal.
 - b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
 - c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
 - d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
 - e. Excretory functions.
 - f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.
- (6) Sexually Explicit Nudity. The showing of:
 - a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or
 - b. Covered human male genitals in a discernably turgid state.

"§ 14-190.11. Displaying material harmful to minors.—(a) Offense. A person commits the offense of displaying material that is harmful to minors if, having custody, control, or supervision of a commercial establishment and knowing the character or content of the material, he displays material that is harmful to minors at that establishment so that it is open to view by minors as part of the invited general public. Material is not considered displayed under this section if the material is placed behind 'blinder racks' that cover the lower two-thirds of the material, is wrapped, is placed behind the counter, or is otherwise covered or located so that the portion that is harmful to minors is not open to the view of minors.

(b) Punishment. Violation of this section is a misdemeanor and is punishable by imprisonment for up to six months and a fine of at least five hundred dollars (\$500.00). Each day's violation of this section is a separate offense.

"§ 14-190.12. Disseminating harmful material to minors; exhibiting harmful performances to minors.—(a) Disseminating Harmful Material. A person commits

the offense of disseminating harmful material to minors if, with or without consideration and knowing the character or content of the material, he:

- (1) Sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or
- (2) Allows a minor to review or peruse material that is harmful to minors.

(b) Exhibiting Harmful Performance. A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance that is harmful to minors.

(c) Defenses. Except as provided in subdivision (3), mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

- (1) The defendant was a parent or legal guardian of the minor.
- (2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.
- (3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.
- (4) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(d) Punishment. Violation of this section is a misdemeanor and is punishable by imprisonment for up to two years and a fine.

"§ 14-190.13. First degree sexual exploitation of a minor.— (a) Offense. A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

- (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
- (2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
- (3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(b) Inference. In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. Violation of this section is a Class G felony. Notwithstanding any other provision of law, except a person sentenced as a committed youthful offender, a person convicted under this section shall receive a sentence of at least six years and shall be entitled to credit for good behavior under G.S. 15A-1340.7, except that such credit shall not reduce the time served to less than three years. A person so convicted shall serve a term of not less than three years, excluding gain time granted under G.S. 148-13. The sentencing judge shall not suspend the sentence and shall not place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the person sentenced.

"§ 14-190.14. Second degree sexual exploitation of a minor.—(a) Offense. A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity;
or

(2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

(b) Inference. In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. Violation of this section is a Class H felony. Notwithstanding any other provision of law, except a person sentenced as a committed youthful offender, a person convicted under this section shall receive a sentence of at least four years and shall be entitled to credit for good behavior under G.S. 15A-1340.7, except that such credit shall not reduce the time served to less than two years. A person so convicted shall serve a term of not less than two years, excluding gain time granted under G.S. 148-13. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the person sentenced.

"§ 14-190.15. Promoting prostitution of a minor.—(a) Offense. A person commits the offense of promoting prostitution of a minor if he knowingly:

- (1) Entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or
- (2) Supervises, supports, advises, or protects the prostitution of or by a minor.

(b) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(c) Punishment and Sentencing. Violation of this section is a Class G felony. Notwithstanding any other provision of law, except a person sentenced as a committed youthful offender, a person convicted under this section shall receive a sentence of at least six years and shall be entitled to credit for good behavior under G.S. 15A-1340.7, except that such credit shall not reduce the time served to less than three years. A person so convicted shall serve a sentence of not less than three years, excluding gain time granted under G.S. 148-13. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the person sentenced.

"§ 14-190.16. Participating in prostitution of a minor.—(a) Offense. A person commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, 'patronizing a minor prostitute' means:

- (1) Soliciting or requesting a minor to participate in prostitution;
- (2) Paying or agreeing to pay a minor, either directly or through the minor's agent, to participate in prostitution; or
- (3) Paying a minor, or the minor's agent, for having participated in prostitution, pursuant to a prior agreement.

(b) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(c) Punishment and Sentencing. Violation of this section is a Class H felony. Notwithstanding any other provision of law, except a person sentenced as a committed youthful offender, a person convicted under this section shall receive a sentence of at least four years and shall be entitled to credit for good behavior under G.S. 15A-1340.7, except that such credit shall not reduce the time served to less than two years. A person so convicted shall serve a term of not less than two years, excluding gain time granted under G.S. 148-13. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the person sentenced."

Sec. 9.1. Article 26 of Chapter 14 of the General Statutes is further amended by adding a new section to read:

"§ 14-190.17. Warrants for obscenity offenses.—A search warrant or criminal process for a violation of G.S. 14-190.1 through 14-190.5 may be issued only upon the request of a prosecutor."

Sec. 10. This act shall become effective October 1, 1985, and shall apply to offenses committed on or after that date.

In the General Assembly read three times and ratified, this the 11th day of July, 1985.