

North Carolina

N.C. Gen. Stat.

Chapter 14.

Criminal Law. SUBCHAPTER I. GENERAL PROVISIONS.

N.C. Gen. Stat. § 14-190.1. Obscene literature and exhibitions. (a) It shall be unlawful for any person, firm or

corporation to intentionally disseminate obscenity. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

(1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

(2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

(3) Publishes, exhibits or otherwise makes available anything obscene; or

(4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if: (1) The material depicts or describes in a patently

offensive way sexual conduct specifically defined

by subsection (c) of this section; and (2) The average person applying contemporary community standards relating to the depiction or description

of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and

(3) The material lacks serious literary, artistic, political, or scientific value; and

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(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. (d) Obscenity shall be judged with reference to ordinary

adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences.

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Violation of this section is a Class I felony.

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

(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech. (1971, c. 405, s. 1; 1973, c. 1434, s. 1; 1985, c. 703, s. 1; 1993, c. 539, s. 1194; 1994, Ex. Sess., c. 24, s. 14(c); 1998-46, s. 2.)

§ 14-190.2. Repealed by Session Laws 1985, c. 703, s. 2.

§ 14-190.3. Repealed by Session Laws 1985, c. 703, s. 3.

§ 14-190.4. Coercing acceptance of obscene articles or publications.

No person, firm or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other article, book, or publication which is obscene within the meaning of G.S. 14-190.1; nor shall any person, firm or corporation deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof. Violation of this section is a Class 1 misdemeanor. (1971, c. 405, s. 1; 1985, c. 703, s. 4; 1993, c. 539, s. 122; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.5. Preparation of obscene photographs, slides and motion pictures.

Every person who knowingly: (1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for the purpose of dissemination; or
(2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for the purpose of dissemination, shall be guilty of a Class 1 misdemeanor. (1971, c. 405, s. 1; 1985, c. 703, s. 5; 1993, c. 539, s. 123; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.6. Employing or permitting minor to assist in offense under Article.

Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a Class I felony. (1971, c. 405, s. 1; 1983, c. 916, s. 2; 1985, c. 703, s. 6.)

§ 14-190.7. Dissemination to minors under the age of 16 years.

Every person 18 years of age or older who knowingly disseminates to any minor under the age of 16 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class I felony. (1971, c. 405, s. 1; 1977, c. 440, s. 2; 1985, c. 703, s. 7.)

§ 14-190.8. Dissemination to minors under the age of 13 years.

Every person 18 years of age or older who knowingly disseminates to any minor under the age of 13 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a Class I felon. (1971, c. 405, s. 1; 1977, c. 440, s. 3; 1979, c. 760, s. 5; 1983, c. 175, ss. 7, 10, c. 720, ss. 4, 10; 1985, c. 703, s. 8; 1993, c. 539, s. 1195; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.9. Indecent exposure. (a) Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or

private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech. (1971, c. 591, s. 1; 1993, c. 301, s. 1; c. 539, s. 124; 1994, Ex. Sess., c. 24, s. 14(c); 1998-46, s. 3.)

§§ 14-190.10 through 14-190.12. Repealed by Session Laws 1985, c. 703, s. 9.

§ 14-190.13. Definitions for certain offenses concerning minors

- The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, 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; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

- 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.
 - g. The lascivious exhibition of the genitals or pubic area of any person.
- (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, except as provided in G.S. 14-190.9(b); or
 - b. Covered human male genitals in a discernibly turgid state.

§ 14-190.14. 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 Class 2 misdemeanor. Each day's violation of this section is a separate offense. (1985, c. 703, s. 9; 1993, c. 539, s. 125; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.15. 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), a 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 Class 1 misdemeanor. (1985, c. 703, s. 9; 1993, c. 539, s. 126; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.16. 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 C felony.

§ 14-190.17. 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 E felony.

§ 14-190.17A. Third degree sexual exploitation of a minor

- (a) Offense. -- A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging 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.

§ 19-1. What are nuisances under this Chapter

- (a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of **obscene** or lewd matter, as defined in this Chapter, shall constitute a nuisance.