

## **South Dakota**

### S.D. Codified Laws

#### **S.D. Codified Laws § 22-24-1.1. "Public indecency" defined -- Penalty**

A person commits the crime of public indecency if the person, under circumstances in which that person knows that his or her conduct is likely to annoy, offend, or alarm some other person, exposes his or her anus or genitals in a public place where another may be present who will be annoyed, offended, or alarmed by the person's act. A violation of this section is a Class 2 misdemeanor.

#### **§ 22-24-1.2. Indecent exposure -- Penalty**

A person commits the crime of indecent exposure if, with the intent to arouse or gratify the sexual desire of any person, the person exposes his or her genitals in a public place, or in the view of a public place, under circumstances in which that person knows that person's conduct is likely to annoy, offend, or alarm another person. A violation of this section is a Class 1 misdemeanor. However, if such person has been previously convicted of a felony violation of § 22-22-1, 22-22-7, or 22-24A-3, that person is guilty of a Class 6 felony. Any person convicted of a third or subsequent violation of this section is guilty of a Class 6 felony.

#### **§ 22-24-1.3. Indecent exposure involving a child -- Penalty**

If any person, eighteen years of age or older, with the intent to arouse or gratify the sexual desire of any person, intentionally exposes his or her genitals to a child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure involving a child. Indecent exposure involving a child is a Class 6 felony. A second or subsequent conviction for indecent exposure involving a child is a Class 5 felony.

#### **§ 22-24-1.4. Indecent exposure -- Definition -- Class 1 misdemeanor**

- A person commits the crime of private indecent exposure if:
  - (1) The person exposes the genitals of the person with the intent to arouse or gratify the sexual desire of the person or another person;
  - (2) The person is in a place where another person has a reasonable expectation of privacy;
  - (3) The person is in view of the other person;
  - (4) The exposure reasonably would be expected to annoy, offend, or alarm the other person; and
  - (5) The person knows that the other person did not consent to the exposure.
- Private indecent exposure is a Class 1 misdemeanor.
- This section does not apply to a person who commits the act described in this section if the person cohabits with or is involved in a sexually intimate relationship with the other person.

## **§ 22-24-25. Regulation of obscenity by county or municipality -- Limitations**

Except as provided in § 22-24-37, nothing contained in this chapter limits any county or municipality from regulating obscene material or obscene live conduct within its jurisdiction.

### **§ 22-24-25.1. Regulation of obscenity by county or municipality -- Contemporary community standards test -- Approval by voters**

Any county or municipality may provide, by ordinance, for a contemporary community standards test to regulate the sale, distribution, and use of obscene material and to regulate obscene live conduct in any commercial establishment or public place within its jurisdiction.

### **§ 22-24-27. Regulation of obscenity by county or municipality -- Dissemination of materials to minors -- Definitions**

- Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:
  - (1) "Contemporary community standard," the contemporary community standard of the state in which the question of obscenity is to be tested, by the average person, of the state;
  - (2) "Distributed," to transfer possession of, whether with or without consideration;
  - (3) "Exhibit," to show or display;
  - (4) "Harmful to minors," includes in its meaning the quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, if it:
    - (a) Predominantly appeals to the prurient, shameful, or morbid interest 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) Is without serious literary, artistic, political, or scientific value;
  - (5) "Magistrate," any circuit court or magistrate judge;
  - (6) "Material," anything tangible which is harmful to minors, whether derived through the medium of reading, observation, or sound;
  - (7) "Matter" or "material," any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or recording, transcription or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials;
  - (8) "Minor," any person less than eighteen years of age;
  - (9) "Nudity," within the meaning of subdivision (4) of this section, the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;
  - (10) "Obscene live conduct," any physical human body activity, whether performed or engaged in alone or with other persons, including singing, speaking, dancing, acting, simulation, or pantomiming, where:
    - (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient interest;

(b) The conduct is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and

(c) The conduct is without serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct;

(11) "Obscene material," material:

(a) The dominant theme of which, taken as a whole, appeals to the prurient interest;

(b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and

(c) Lacks serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter;

(12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group;

(13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;

(14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, the breast;

(15) "Sexual excitement," the condition of human male or female genitals when in a state of sexual stimulation or arousal.

### **§ 22-24-28. Dissemination of material harmful to minors -- Penalty**

Any person who disseminates material harmful to minors is guilty of a Class 1 misdemeanor.

### **§ 22-24-29. Dissemination of material harmful to minors -- Giving or selling material**

A person is guilty of disseminating material harmful to minors if that person knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors,

or if that person knowingly sells or loans to a minor for monetary consideration any material described in subdivision § 22-24-27 (4).

**§ 22-24-29.1. Display or sale of magazines or books with obscene material on cover -- Penalty**

No person may knowingly distribute, display, sell, or exhibit for sale in any public place any magazine, book, or newsprint displaying or containing obscene material on its cover or material unless the magazine, book, or newsprint is wrapped and sealed so that no more than its title, name, price, or date is exposed to the public and the magazine, book, or newsprint cannot be viewed or examined without breaking the seal, wrapping, or covering. Any person who violates this section is guilty of a Class 1 misdemeanor.

**§ 22-24-30. Dissemination of material harmful to minors -- Exhibiting or admitting to motion picture**

- A person is guilty of disseminating material harmful to minors if, with reference to a motion picture, show, or other presentation which depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors, that person knowingly:
  - (1) Exhibits such motion picture, show, or other presentation to a minor;
  - (2) Sells or gives to a minor an admission ticket or pass to premises whereon there is exhibited such motion picture, show, or other presentation; or
  - (3) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show, or other presentation.

**§ 22-24-31. Dissemination of materials harmful to minors -- Affirmative defense**

- In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:
  - (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more. A draft card, driver's license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;
  - (2) The minor involved was accompanied by a parent or guardian, or by an adult and the adult represented that he or she was the minor's parent or guardian or an adult and the adult signed a written statement to that effect;
  - (3) The defendant was the parent or guardian of the minor involved; or
  - (4) The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

**§ 22-24-32. Misrepresentation of person as parent to gain minor admission to motion picture**

A person is guilty of a Class 1 misdemeanor if that person knowingly misrepresents that he or she is a parent or guardian of a minor for the purpose of obtaining admission of any

minor to any motion picture, show, or other presentation which is harmful to minors.

**§ 22-24-33. Misrepresentation of age by minor to gain admission to motion picture**

A minor is guilty of a Class 2 misdemeanor if that minor misrepresents his or her age for the purpose of obtaining admission to any motion picture, show, or other presentation which is harmful to minors.

**§ 22-24-34. Dissemination of material harmful to minors -- Each sale as separate offense**

If more than one article or item of material prohibited under §§ 22-24-27 to 22-24-37, inclusive, is sold, given, advertised for sale, distributed commercially, or promoted, by the same person, after a hearing and determination that probable cause exists to believe such article or material is harmful to minors, each such sale, gift, advertisement, distribution, or promotion constitutes a separate offense.

**§ 22-24-37. Dissemination of material harmful to minors -- Inapplicable to law enforcement activities, educational activities, and activities in the course of employment**

- The provisions of §§ 22-24-27 to 22-24-37, inclusive, do not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise proscribed by those sections, if such possession, distribution, or conduct occurs:
  - (1) In the course of law enforcement and judicial activities;
  - (2) In the course of bona fide school, college, university, museum, or public library activities or in the course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or
  - (3) In the course of employment as a moving picture machine operator, or assistant operator, in a motion picture theater in connection with a motion picture film or show exhibited in such theater if such operator or assistant operator has no financial interest in the motion picture theater wherein that operator or assistant operator is so employed other than wages received or owed;
- or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.

**§ 22-24-60. "Prepaid adult entertainment card" defined**

For the purposes of §§ 22-24-60 to 22-24-68, inclusive, a prepaid adult entertainment card is a product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more erotic or pornographic internet sites by means of a predetermined user identification and password unique to each card.

**§ 22-24-61. Sale or distribution of prepaid adult entertainment card to minor --  
Penalty**

It is a Class 1 misdemeanor to sell, give, or distribute any prepaid adult entertainment card or any prepaid adult entertainment telephone card to any person under eighteen years of age.

**§ 22-24-62. "Prepaid adult entertainment telephone card" defined**

A prepaid adult entertainment telephone card is a product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more adult entertainment telephone services for a predetermined number of minutes by means of a telephone number and an access code or password unique to each card.

**§ 22-24-63. Sale or distribution of prepaid adult entertainment card to minor --  
Civil liability**

Any person who knowingly participates in any conduct proscribed by §§ 22-24-60 to 22-24-68, inclusive, is liable for civil damages.

**§ 22-24-64. Sale or distribution of prepaid adult entertainment card to minor --  
Persons who can bring action for damages**

- Any of the following persons may bring an action for damages caused by another person's conduct as proscribed by §§ 22-24-60 to 22-24-68, inclusive:
  - (1) The victimized minor;
  - (2) Any parent, legal guardian, or sibling of a victimized minor; or
  - (3) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by §§ 22-24-60 to 22-24-68, inclusive.
- If the parent or guardian is named as a defendant in the action, the court shall appoint a special guardian to bring the action on behalf of the minor.

**§ 22-24-65. Sale or distribution of prepaid adult entertainment card to minor --  
Persons liable**

Any person entitled to bring an action under § 22-24-64 may seek damages from any person who knowingly participated in the sale or in the chain of distribution of any prepaid adult entertainment card or any prepaid adult entertainment telephone card proscribed by §§ 22-24-60 to 22-24-68, inclusive.

**§ 22-24-66. Sale or distribution of prepaid adult entertainment card to minor --  
Damages recoverable**

- Any person entitled to bring an action under § 22-24-64 may recover the following damages:
  - (1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;
  - (2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;
  - (3) Exemplary damages;
  - (4) Attorneys' fees; and
  - (5) Disbursements.

**§ 22-24-67. Sale or distribution of prepaid adult entertainment card to minor -- Statute of limitations -- Tolling by minority**

Any action for damages under §§ 22-24-60 to 22-24-68, inclusive, shall be commenced within six years of the time the plaintiff knew, or had reason to know, of any injury caused by violations of §§ 22-24-60 to 22-24-68, inclusive. The knowledge of a parent, guardian, or custodian may not be imputed to the minor.

For a plaintiff, the statute of limitations under this section is tolled while any potential plaintiff is incapacitated by minority.

**§ 22-24-68. Sale or distribution of prepaid adult entertainment card to minor -- Seizure and destruction of cards**

As a public nuisance, all prepaid adult entertainment cards and prepaid adult entertainment telephone cards are subject to seizure and destruction without compensation by any law enforcement agency with appropriate jurisdiction.

**§ 22-24A-1. Sale of child pornography -- Penalty**

Any person who sells, or displays for sale, any book, magazine, pamphlet, slide, photograph, film, or electronic or digital media image depicting a minor engaging in a prohibited sexual act, or engaging in an activity that involves nudity, or in the simulation of any such act is guilty of a Class 6 felony.

**§ 22-24A-2. Definitions**

- Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:
  - (1) "Adult," any person eighteen years of age or older;
  - (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
  - (3) "Child" or "minor," any person under the age of eighteen years;
  - (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage

functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;

(5) Deleted by SL 2005, ch 120, § 408.

(6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;

(7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(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) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This term does not include a mother's breast-feeding of her baby;

(8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;

(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

(13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

(14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

(15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

(16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

**§ 22-24A-3. Possession, manufacture, or distribution of child pornography -- Consent or mistake not a defense -- Penalty**

- A person is guilty of possessing, manufacturing, or distributing child pornography if the person:
  - (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;
  - (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or
  - (3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.
- Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.
- A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony.
- The court shall order an assessment pursuant to § 22-22-1.3 of any person

convicted of violating this section.

#### **§ 22-24A-4. Solicitation of minor -- Definitions**

- Terms used in § 22-22-24.5 mean:
  - (1) "Minor," a person fifteen years of age or younger; and
  - (2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.

#### **§ 22-24A-5. Solicitation of minor -- Felonies -- Assessment**

- A person is guilty of solicitation of a minor if the person eighteen years of age or older:
  - (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or
  - (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.
- The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.
- Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.
- A violation of this section is a Class 4 felony.
- The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

#### **§ 22-24A-6. Actions by person residing in another state involving child residing in state -- Jurisdiction -- Service of process**

- Any person, not a citizen or resident of this state, whose actions or conduct constitute a violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, and whose actions or conduct involve a child residing in this state, or someone the person reasonably believes is a child residing in this state, is for the purpose of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, deemed to be transacting business in this state and by that act:
  - (1) Submits to the jurisdiction of the courts of this state in any civil proceeding commenced under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive; and
  - (2) Constitutes the secretary of state as agent for service of legal process in any civil proceeding commenced under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive; and consents that service of legal process shall be made by serving a copy

upon the secretary of state or by filing a copy in the secretary of state's office, and that this service shall be sufficient service if, within one day after service, notice of the service and a copy of the process are sent by registered mail by plaintiff to the person at the person's last-known address and proof of such mailing filed with the clerk of court within one day after mailing.

- The service of legal process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may also be made by personally serving the summons upon the person outside this state with the same force and effect as though summons had been personally served within this state. Such service shall be made in like manner as service within this state. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

### **§ 22-24A-7. Civil liability for sexual offense -- Offenses creating liability**

Any person, except a minor, who knowingly participates in any conduct proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, is liable for civil damages.

### **§ 22-24A-8. Civil liability for sexual offense -- Persons who may bring action**

- Any of the following persons may bring an action for damages caused by another person's conduct as proscribed by §§ 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive:
  - (1) The child;
  - (2) Any parent, legal guardian, or sibling of a victimized child;
  - (3) Any medical facility, insurer, governmental entity, employer, or other entity that funds a treatment program or employee assistance program for the child or that otherwise expended money or provided services on behalf of the child;
  - (4) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.
- If the parent or guardian is named as a defendant in the action, the court shall appoint a special guardian to bring the action on behalf of the child.

### **§ 22-24A-9. Civil liability for sexual offenses -- Knowing participant in production or chain of distribution**

Any person entitled to bring an action under § 22-22-24.8 may seek damages from any person, except a minor, who knowingly participated in the production or in the chain of distribution of any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, and 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.

### **§ 22-24A-10. Civil liability for sexual offenses -- Types of damages recoverable**

- Any person entitled to bring an action under § 22-24A-8 may recover all of the following damages:

- (1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;
- (2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;
- (3) Exemplary damages;
- (4) Attorneys' fees; and
- (5) Disbursements.

**§ 22-24A-11. Civil liability for sexual offense -- Joining of two or more plaintiffs or defendants in one action**

Two or more persons may join in one action under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, as plaintiffs if their respective actions have at least one common occurrence of proscribed conduct under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, and if any portion of the period of such conduct overlaps with the period for every other plaintiff. Two or more persons may be joined in one action under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, as defendants if those persons are liable to at least one plaintiff.

**§ 22-24A-12. Civil liability for sexual offense -- No exemption of assets from execution of judgment**

Any person against whom a judgment has been rendered under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment. Any assets sought to satisfy a judgment under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

**§ 22-24A-13. Civil liability for sexual offense -- Statute of limitations -- Tolling for minority**

Any action for damages under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, shall be commenced within six years of the time the plaintiff knew, or had reason to know, of any injury caused by violations of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive. The knowledge of a parent, guardian, or custodian may not be imputed to the minor.

For a plaintiff, the statute of limitations under this section is tolled while any potential plaintiff is incapacitated by minority.

#### **§ 22-24A-14. Civil liability for sexual offense -- Stay pending criminal investigation -- Tolling**

On motion by a governmental agency involved in an investigation or prosecution, any civil action brought under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action. The statute of limitations as provided in § 22-22-24.13 shall be tolled for the time any such stay is in effect.

#### **§ 22-24A-15. Civil liability for sexual offense -- Forfeiture of property upon conviction**

- Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, shall forfeit to the state the person's interest in the following and no property right exists in them:
  - (1) Any photograph, film, videotape, book, digital media or visual depiction that has been manufactured, distributed, purchased, possessed, acquired, or received in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;
  - (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession or concealment of any visual depiction proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive,
  - (5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to acquire or distribute any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful sale or purchase, attempted sale or purchase, distribution, or attempted distribution of any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.
- Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Any other property seized

and forfeited shall be used to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and above the amount necessary to reimburse for the investigation and prosecution shall be used to satisfy any civil judgments. The attorney general shall promulgate rules, pursuant to chapter 1-26, to implement the distribution of seized and forfeited assets.

**§ 22-24A-16. Duty of internet service provider to report child pornography -  
- Unlawful to permit use of service to produce child pornography -- Penalty for  
violation**

Any person working at or for an internet service provider or other electronic communication service who has knowledge of or observes, within the scope of the person's professional capacity or employment, a visual depiction that depicts a minor whom the person knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The provider need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a provider to review all visual depictions received by subscribers or handled by the provider within the provider's professional capacity or employment.

It is unlawful for any owner or operator of a computer on-line service, internet service, or local internet bulletin board service knowingly to permit a subscriber to utilize the service to produce or reproduce visual depictions of prohibited sexual acts with a minor.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

**§ 22-24A-17. Duty of film and print processor to report child pornography --  
Unlawful to permit use of service to produce child pornography -- Penalty for  
violation**

Any person working at or for a commercial film and photograph print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The processor need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a processor to review all films, photographs, videotapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

It is unlawful for any owner or operator of a photography or film studio, photograph or film developing service, photograph or film reproducing service, or video to film reproducing service knowingly to permit any person to utilize photograph or film reproduction or development services to produce or reproduce visual depictions of prohibited sexual acts with a minor.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section

does not constitute grounds for a civil action for damages against any person.

### **§ 22-24A-18. Duty of computer repair technician to report child pornography -- Penalty for violation**

Any commercial computer repair technician who has knowledge of or observes, within the scope of the technician's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction of a minor whom the technician knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement agency as soon as reasonably possible. The computer repair technician need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a computer repair technician to review all data, disks, or tapes delivered to the computer repair technician within the computer repair technician's professional capacity or employment.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

### **§ 22-24A-19. Certain provisions inapplicable to law enforcement officers and licensed medical professionals in performance of their duties**

The provisions of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, do not apply to the performance of official duties by any law enforcement officer, court employee, attorney, licensed physician, psychologist, social worker, or any person acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

### **§ 22-24A-20. Materials involving only nudity made for artistic or educational purposes**

The provisions of § 22-22-24.3 and §§ 22-24A-1, 22-24A-3, and 22-24A-5 do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing, or making of films, photographs, or other materials involving only nudity, if the materials are made for and have a serious literary, artistic, educational, or scientific value.

### **§ 22-24B-1. "Sex crime" defined**

- For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:
  - (1) Rape as set forth in § 22-22-1;
  - (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
  - (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
  - (4) Incest if committed by an adult;

- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt to commit any of the crimes listed in this section or any conspiracy or solicitation to commit any of the crimes listed in this section;
- (16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;
- (17) Any federal crime or court martial offense that would constitute a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state; or
- (19) If the victim is a minor:
  - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
  - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28;
  - or
  - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.

### **§ 9-29-9. Prohibit obscene or immoral materials**

Every municipality shall have power to prohibit the sale or exhibition of any **obscene** or immoral publication, print, film, picture, or illustration.

### **§ 23A-36-1. Determination of probable cause for search warrant -- Notice of hearing**

Upon the filing of an affidavit for a search warrant to search for obscene material, the magistrate shall determine, by examination of the matter sought to be seized, if attached, by an examination of the affidavit describing the matter, or by such other manner or means that he deems necessary, if probable cause exists for a hearing upon the question of the issuance of a search warrant. If the magistrate determines that probable cause exists for a hearing, he shall issue notice to the person or persons in possession of the matter, setting a time and place for a hearing to determine if a search warrant shall issue.

### **§ 23A-36-2. Hearing on search warrant -- Evidence**

The hearing on the affidavit for the issuance of a search warrant shall be at such time and upon such reasonable notice given in such manner as the magistrate may direct. The magistrate's order as to notice and hearing shall give the adverse party the right to appear and produce the matter described in the affidavit for a search warrant, but shall not in any manner require him to produce the said matter.

### **§ 23A-36-3. Order to prevent removal of material before hearing**

The magistrate shall further have authority to render such orders as are reasonable and necessary, to protect the court's jurisdiction over the matter described in the affidavit for a search warrant and may issue orders requiring that the matter not be removed from its location as described in the affidavit for a search warrant or to make any change, alteration, or destruction of the matter until such time as a hearing has been conducted and the search warrant executed or the request therefor denied.

### **§ 23A-36-4. Hearing on obscenity -- Probable cause for search warrant**

At the time of the hearing on the issuance of a search warrant, the magistrate shall hear evidence concerning the obscenity of the matter and shall examine the matter or any copy of the same, if produced in court, and shall afford any person in possession of the matter sought to be seized or claiming ownership of or interest in the matter an opportunity to be heard as to the obscenity or nonobscenity of the matter. At the close of the hearing, the magistrate shall make a determination of whether probable cause exists to believe that the matter is obscene or nonobscene and shall determine if probable cause exists for the immediate issuance of a search warrant for its seizure.

### **§ 23A-36-5. Issuance of search warrant**

If the magistrate finds that probable cause exists to believe that the matter is obscene and that probable cause exists for the immediate issuance of a search warrant, then he shall issue a search warrant ordering the seizure of the matter described in the affidavit for a search warrant.

### **§ 23A-36-6. Notice alleging seized material not obscene -- Time of hearing**

In the event that a search warrant is issued and matter alleged to be obscene is seized, any person alleged to be in possession of the matter or claiming ownership of the matter at the time of its possession or seizure may file a notice in writing with the magistrate within ten days of the date of the seizure alleging that the matter is not obscene and the magistrate shall set a hearing within one day after request therefor, or at such time as the requesting party might agree.

### **§ 23A-36-7. Hearing on obscenity -- Return to owner**

At a hearing pursuant to § 23A-36-6, evidence may be presented as to the obscenity or nonobscenity of the matter seized and at the conclusion of such additional hearing, the magistrate shall make a further determination of whether probable cause exists to believe that the matter is obscene or nonobscene. If at such hearing the magistrate finds that no probable cause exists to believe that the matter is obscene, then the matter shall be returned to the person or persons from whom it was seized.

### **§ 23A-36-8. Expert testimony not required -- Community standards**

In the prosecution for a violation of the provisions of this chapter, neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter which is the subject of any such prosecution. Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex, or excretion, or which bears upon the question of serious literary, artistic, political, or scientific value shall be admissible when offered by either the prosecution or the defense.

### **§ 23A-36-9. Verdict**

The jury, or the court, if a jury trial is waived, shall render a general verdict. In the verdict that is rendered, a determination as to whether the material is obscene shall also be made.

### **§ 23A-36-10. Destruction of seized obscene material**

Upon the conviction of the accused, the court may, when the conviction becomes final, order any matter in respect whereof the accused stands convicted, and which remains in the possession or under the control of the prosecuting attorney or any law enforcement agency, to be destroyed, and the court may cause to be destroyed any such material in its possession or under its control.

### **§ 21-8-16. Enforcement of obscenity and public decency laws**

The circuit courts of this state and the judges thereof, may, upon application of the attorney general, or any state's attorney or city attorney within his respective jurisdiction, issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the obscenity and public decency laws of this state. Such restraining orders or injunctions may be issued to prevent any person from violating the obscenity and public decency laws of this state.

### **§ 21-8-17. Notice required in obscenity cases -- Right to trial -- Timing and**

## **contents of order**

Notwithstanding § 21-8-16, no restraining order or injunction shall be issued without notice to the person sought to be enjoined. Such person shall be entitled to a trial of the issues within one day after the filing of his answer to the complaint, and a decision shall be rendered by the court within two days of the conclusion of the trial. If a final order or judgment of injunction is entered against the person sought to be enjoined, it shall contain a provision directing the person to surrender any obscene matter in his possession which is subject to the injunction, to the sheriff of the county in which the action was brought, and the sheriff shall be directed to seize and destroy such matter.

## **§ 21-8-18. Findings required to order seizure and destruction of matter harmful to minors**

The final order or judgment of injunction shall not enjoin or prohibit a person from selling, distributing or promoting matter which is harmful to minors, to persons other than minors, nor shall it order the seizure and destruction of matter harmful to minors unless the court finds that the person was selling, distributing or promoting, or intends to sell, distribute or promote such matter to minors.

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## **FILTERING LAWS:**

### **§ 22-24-55. Restriction on computer access to obscene material by public school**

- Any public school that provides a public access computer shall do one or both of the following:
  - (1) Equip the computer with software that will limit minors' ability to gain access to obscene materials or purchase internet connectivity from an internet service provider that provides filter services to limit access to obscene materials; or
  - (2) Develop and implement, by January 1, 2001, a local policy that establishes measures to restrict minors from computer access to obscene materials.

### **§ 22-24-56. Establishment of policy to restrict computer access to obscene material by public libraries**

Any public library that provides a public access computer shall develop and implement, by January 1, 2001, a local policy that establishes measures to restrict minors from computer access to obscene materials.

### **§ 22-24-57. School or library not liable for damages for minor access to obscene materials through public access computer**

No public school that complies with § 22-24-55 or any public library that complies with § 22-24-56 may be held liable for any damages that may arise from a minor gaining access to obscene materials through the use of a public access computer that is owned or controlled by the public school or public library.

**§ 22-24-58. "Obscene material" defined**

For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene material is defined pursuant to subdivision 22-24-27 (11).

**§ 22-24-59. "Public access computer" defined**

For the purposes of §§ 22-24-55 to 22-24-59, inclusive, a public access computer is any computer that is located in a public school or public library.