

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1022
SENATE BILL 817

AN ACT TO PROVIDE THAT POSSESSION OF MATERIALS CONTAINING A VISUAL REPRESENTATION OF A MINOR ENGAGING IN SEXUAL ACTIVITY IS A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 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 J felony."

Sec. 2. G.S. 14-190.13 reads as rewritten:

"§ 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; and 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 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.
 - (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 discernibly turgid state."

Sec. 3. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.