

South Carolina
Title 16, Chapter 15, Article 3

- [Offenses against morality and decency](#)

Title 16 - Crimes and Offenses
CHAPTER 15.
OFFENSES AGAINST MORALITY AND DECENCY

ARTICLE 3.

OBSCENITY, MATERIAL HARMFUL TO MINORS, CHILD EXPLOITATION, AND CHILD PROSTITUTION

SECTION 16-15-305. Disseminating, procuring or promoting obscenity unlawful; definitions; penalties; obscene material designated contraband.

(A) It is unlawful for any person knowingly to disseminate obscenity. A person disseminates obscenity within the meaning of this article if he:

- (1) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, digital electronic file, or other representation or description of the obscene;
- (2) presents or directs an obscene play, dance, or other performance, or participates directly in that portion thereof which makes it obscene;
- (3) publishes, exhibits, or otherwise makes available anything obscene to any group or individual; or
- (4) exhibits, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, present, rent, or to provide: any motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, video tapes and recordings, or any matter or material of whatever form which is a representation, description, performance, or publication of the obscene.

(B) For purposes of this article any material is obscene if:

- (1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section;
- (2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex;
- (3) to a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value; and
- (4) the material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.

(C) As used in this article:

(1) "sexual conduct" means:

- (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;
- (b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;
- (c) an act or condition that depicts actual or simulated bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which

reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts 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.

(2) "patently offensive" means obviously and clearly disagreeable, objectionable, repugnant, displeasing, distasteful, or obnoxious to contemporary standards of decency and propriety within the community.

(3) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion and is reflective of an arousal of lewd and lascivious desires and thoughts.

(4) "person" means any individual, corporation, partnership, association, firm, club, or other legal or commercial entity.

(5) "knowingly" means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

(D) Obscenity must be judged with reference to ordinary adults except that it must be judged with reference to children or other especially susceptible audiences or clearly defined deviant sexual groups if it appears from the character of the material or the circumstances of its dissemination to be especially for or directed to children or such audiences or groups.

(E) As used in this article, "community standards" used in determining prurient appeal and patent offensiveness are the standards of the area from which the jury is drawn.

(F) It is unlawful for any person knowingly to create, buy, procure, or process obscene material with the purpose and intent of disseminating it.

(G) It is unlawful for a person to advertise or otherwise promote the sale of material represented or held out by them as obscene.

(H) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(I) Obscene material disseminated, procured, or promoted in violation of this section is contraband and may be seized by appropriate law enforcement authorities.

SECTION 16-15-315. Condition on certain sales for resale or on franchising rights that obscene material be received for resale prohibited; penalties.

No person shall, as a condition to any sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, digital electronic file require that the purchaser or consignee receive for resale any other article, book, publication, or digital electronic file which is obscene within the meaning of Section 16-15-305 nor shall any person 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 the articles, books, publications, or digital electronic files, or by reason of the return thereof. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than one thousand dollars, or both.

SECTION 16-15-325. Participation in preparation of obscene material prohibited; penalties.

Any individual who knowingly:

(a) photographs himself or any other individual or animal for purposes of preparing an obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination; or

(b) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year and fined not more than one thousand dollars.

SECTION 16-15-335. Permitting minor to engage in any act constituting violation of this article prohibited; penalties.

Any individual eighteen years of age or older who knowingly, in any manner, hires, employs, uses, or permits any person under the age of eighteen 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 Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

SECTION 16-15-345. Disseminating obscene material to person under age eighteen prohibited; penalties.

Any individual eighteen years of age or older who knowingly disseminates to any person under the age of eighteen years any material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

SECTION 16-15-355. Disseminating obscene material to minor twelve years of age or younger prohibited; penalties.

Any individual eighteen years of age or older who knowingly disseminates to any minor twelve years of age or younger any material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

SECTION 16-15-365. Exposure of private parts in lewd and lascivious manner, aiding or procuring person to perform such act, or permitting use of premises for such act prohibited; penalties.

Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets 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, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

SECTION 16-15-375. Definitions applicable to Sections 16-15-385 through 16-15-425.

The following definitions apply to Section 16-15-385, disseminating or exhibiting to minors harmful material or performances; Section 16-15-387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16-15-395, first degree sexual exploitation of a minor; Section 16-15-405, second degree sexual exploitation of a minor; Section 16-15-410, third degree sexual exploitation of a minor; Section 16-15-415, promoting prostitution of a minor; and Section 16-15-425, participating in prostitution of a minor.

(1) "Harmful to minors" means 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) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) "Material" means pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations but not material consisting entirely of written words.

(3) "Minor" means an individual who is less than eighteen years old.

(4) "Prostitution" means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) "Sexual activity" includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or 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 bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(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" means 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.

SECTION 16-15-385. Disseminating harmful material to minors and exhibiting harmful performance to minor defined; defenses; penalties.

(A) A person commits the offense of disseminating harmful material to minors if, 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.

A person does not commit an offense under this subsection when he employs a minor to work in a theater if the minor's parent or guardian consents to the employment and if the minor is not allowed in the viewing area when material harmful to minors is shown.

(B) 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 which is harmful to minors.

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

(1) the defendant was a parent or legal guardian of a minor, but this item does not apply when the parent or legal guardian exhibits or disseminates the harmful material for the sexual gratification of the parent, guardian, or minor.

(2) the defendant was a school, church, museum, public, school, college, or university library, government 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 eighteen years old, and the defendant reasonably believed the minor was at least eighteen years old.

(D) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

SECTION 16-15-387. Unlawful to employ person under eighteen to appear in public place in state of sexually explicit nudity; mistake as to age; violation, penalty.

It is unlawful for any person to employ a person under the age of eighteen years to appear in a state of sexually explicit nudity, as defined in Section 16-15-375(6), in a public place.

Mistake of age is not a defense to a prosecution under this section. A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

SECTION 16-15-395. First degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

(A) An individual 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;

(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;

(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, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

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

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

(D) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than ten years. No part of the minimum sentence of imprisonment may be suspended nor is the individual convicted eligible for parole until he has served the minimum term of imprisonment. Sentences imposed pursuant to this section shall run consecutively with and commence at the expiration of any other sentence being served by the person sentenced.

SECTION 16-15-405. Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

(A) An individual 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, duplicates, produces, or creates digital electronic file 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) In a prosecution under this section, the trier of fact may infer that a participant in sexual activity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

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

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.

SECTION 16-15-410. Third degree sexual exploitation of a minor.

(A) An individual 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) In a prosecution under this section, the trier of fact may infer that a participant in sexual activity depicted as a minor through its title, text, visual representation, or otherwise is a minor.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years

SECTION 16-15-415. Promoting prostitution of a minor defined; defenses; penalties.

(A) An individual 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 promotes the prostitution of or by a minor.

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

(C) An individual who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than ten years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.

SECTION 16-15-425. Participating in prostitution of a minor defined; defenses; penalties.

(A) An individual 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 is not a defense to a prosecution under this section.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.

SECTION 16-15-435. Circuit solicitor to request search and arrest warrants for violations of Sections 16-15-305 through 16-15-325; hearing on obscenity issue.

(A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

(B) Following seizure of allegedly obscene property pursuant to a warrant requested by a solicitor, and issued by a neutral and detached magistrate based on supporting affidavits, any interested party may request and the court having appropriate jurisdiction must promptly conduct an adversarial hearing for the purpose of obtaining a judicial determination, based on a preponderance of the evidence, of the obscenity issue.

SECTION 16-15-445. Seizure and forfeiture of equipment used in committing violation of Sections 16-15-305, 16-15-395, or 16-15-405; procedures; destruction, retention or sale of forfeited property; allocation of proceeds of sale.

(A) All equipment used directly by a person in committing a violation of Section 16-15-305, 16-15-395 or 16-15-405, including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.

(B) Prior to entering a forfeiture order, the court must conduct a hearing to determine ownership and the rights of innocent third parties with respect to the property, and notice of the hearing must be given to all interested parties. The court must incorporate into its forfeiture order provisions necessary to protect the interests of innocent third parties.

(C) Subject to the limitations of subsection (B), property forfeited pursuant to court order must be destroyed by the arresting law enforcement agency, unless that law enforcement agency can show good cause for retaining the property. Ownership of property so retained vests in the arresting law enforcement agency which may use the property in the performance of its duties, destroy it, or sell it at public auction. Retained property may be sold at public auction after giving notice, in a newspaper of general circulation in the county, of the date, time, and place of the auction and a description of the property to be auctioned. After payment of the expenses of the auction, one-half of the net proceeds may be retained by the arresting law enforcement agency, and one-half must be remitted to the State Treasurer for deposit to the credit of the Victim's Compensation Fund.