

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1587

Short Title: No Computer Access of Obscenities.

(Public)

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Sponsors: Senator Cooper.

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Referred to: Judiciary.

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June 1, 1998

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENITIES BY COMPUTER  
3 TRANSMISSION, TO PROHIBIT THE USE OF STATE COMPUTERS TO  
4 ACCESS OBSCENITIES, TO REGULATE CERTAIN USES OF STATE  
5 COMPUTERS, AND TO REQUIRE THE INSTALLATION OF APPROPRIATE  
6 SOFTWARE ON CERTAIN COMPUTERS ACCESSIBLE TO THE PUBLIC OR  
7 THE USE OF OTHER APPROPRIATE MANAGEMENT SCHEMES TO SHIELD  
8 MINORS FROM OBSCENITIES TRANSMITTED BY COMPUTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-190.1(a) reads as rewritten:

9 "(a) It shall be unlawful for any person, firm or corporation to intentionally  
10 disseminate obscenity. A person, firm or corporation disseminates obscenity within the  
11 meaning of this Article if he or it:

- (1) Sells, ~~delivers or provides~~ delivers, transmits by computer, or provides or offers or agrees to sell, ~~deliver or provide~~ deliver, transmit by computer, 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."

Section 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~~ films, digital images transmitted by computer, 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.

(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."

Section 3. G.S. 14-190.15 reads as rewritten:

"§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors.

1 (a) Disseminating Harmful Material. – A person commits the offense of  
2 disseminating harmful material to minors if, with or without consideration and knowing  
3 the character or content of the material, he:

(1) Sells, furnishes, presents, transmits through the computer, or distributes to a minor material that is harmful to minors; or

(2) Allows a minor to ~~review or peruse~~ review, peruse, or access by computer material that is harmful to minors.

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

8 (c) Defenses. – Except as provided in subdivision (3), a mistake of age is not a  
9 defense to a prosecution under this section. It is an affirmative defense to a prosecution  
10 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.

(3a) If the method of dissemination was by transmitting a digital image by computer and before disseminating the harmful material, the defendant requested and received a verified credit card, debit account, adult access code, or adult personal identification number indicating that the minor to whom the material was disseminated 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."

Section 4. Article 26 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"§ 14-190.14A. Allowing computer access to material harmful to minors.

(a) Offense. – A person commits the offense of allowing computer access to material that is harmful to minors if:

(1) The person has custody, control, or supervision of a computer in a public or commercial location;

(2) The computer is accessible to minors as part of the invited general public; and

(3) The person allows a minor to access material that is harmful to minors on that computer, knowing the character or content of the material.

(b) Punishment. – Violation of this section is a Class 2 misdemeanor.

"§ 14-202.4. Unlawful to access or transmit obscenities on a State-owned computer.

(a) It is unlawful for any person to intentionally disseminate or access obscenity on a State-owned computer.

(b) This section does not apply if the person is engaged in the performance of official duties or other legitimate activities and the transmission access is related to the official duty.

(c) A violation of this section is a Class 1 misdemeanor.

(d) For purposes of this section, a "State-owned computer" is a computer purchased with public funds.

"§ 14-202.5. Internet provider strictly liable for dissemination of obscene material or material that is harmful to minors.

(a) Any Internet provider that provides Internet services to a customer in this State shall be strictly liable for the dissemination of obscene material or material that is harmful to minors if the materials are provided via a paid subscription service or by means of a free advertisement or viewing of such materials through its Internet, and the service provider fails to restrict access to the site within five working days of its receipt of a written or electronic notice to restrict that access.

(b) An Internet service provider shall be protected from liability under this section if the material is provided through a site that requires written authorization of adulthood or the use of a credit card before it may be accessed, utilizes a subscriber access verification system that requires its member to initially provide written verification of adulthood or the use of a credit card, or offers links to filtering software on the first accessibility page of the service."

Section 5. By January 1, 1999, the Department of Administration shall adopt rules governing the use of State computers, the Internet and electronic mail by State employees to implement this act.

Section 6. By January 1, 1999, the Department of Public Instruction, in conjunction with the local school districts, shall evaluate the use of computers in the public school system and recommend to the State Board of Education appropriate software to shield students

from obscene materials transmitted by computer. Upon receiving the recommendation from the Department of Public Instruction, the State Board of Education shall select appropriate software that is client based or server based to shield students from obscene materials and shall supervise the statewide installation and maintenance of that software in the public school system.

Section 7. By January 1, 1999, public libraries that operate computers with Internet access that is available to minors shall take one of the following actions with respect to such computers:

- (1) Install by January 1, 1999, and maintain thereafter, appropriate software that is client based or server based to shield users from obscene material.
- (2) Permit access to such computers by minors only when they are accompanied and monitored by their parent, guardian, or by another authorized adult or library personnel.

Section 8. This act becomes effective December 1, 1998, and applies to offenses committed on or after that date.