

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 987

Short Title: Limit Child's Access/Computer Porn.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 5, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENITIES BY
3 COMPUTER TRANSMISSION, TO INCREASE THE PENALTIES FOR
4 CERTAIN CRIMINAL OFFENSES CONCERNING MINORS AND
5 OBSCENITY, TO PROHIBIT THE USE OF STATE COMPUTERS TO ACCESS
6 OBSCENITIES, TO REGULATE CERTAIN USES OF STATE COMPUTERS, TO
7 REQUIRE THE INSTALLATION OF APPROPRIATE SOFTWARE ON
8 CERTAIN COMPUTERS ACCESSIBLE TO THE PUBLIC OR THE USE OF
9 OTHER APPROPRIATE MANAGEMENT SCHEMES TO SHIELD MINORS
10 FROM OBSCENITIES TRANSMITTED BY COMPUTER, AND TO DIRECT
11 THE DEPARTMENT OF JUSTICE TO A LIST OF ELECTRONIC SITES
12 KNOWN TO CONTAIN CHILD PORNOGRAPHY AND TO FOCUS MORE OF
13 ITS LAW ENFORCEMENT EFFORT, AS FEASIBLE, TO ENFORCING THE
14 OBSCENITY LAWS.

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** G.S. 14-190.1 reads as rewritten:

17 "**§ 14-190.1. Obscene literature and exhibitions.**

18 (a) It ~~shall be~~ is unlawful for any ~~person, firm or corporation~~ person to
19 intentionally disseminate obscenity. A ~~person, firm or corporation~~ person disseminates
20 obscenity within the meaning of this Article if ~~he or it~~ the person:

- 21 (1) Sells, ~~delivers or provides~~ delivers, makes accessible to another person
22 by computer, or provides or offers or agrees to sell, deliver or provide
23 deliver, make accessible to another person by computer, or provide
24 any obscene writing, picture, record or other representation or
25 embodiment of the obscene; or
26 (2) Presents or directs an obscene play, dance or other performance or
27 participates directly in that portion thereof which makes it obscene; or
28 (3) Publishes, exhibits or otherwise makes available anything obscene; or

- 1 (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees
2 to exhibit, present, rent or to provide: any obscene still or motion
3 picture, film, filmstrip, or projection slide, or sound recording, sound
4 tape, or sound track, or any matter or material of whatever form which
5 is a representation, embodiment, performance, or publication of the
6 obscene.
- 7 (b) For purposes of this Article any material is obscene if:
- 8 (1) The material depicts or describes in a patently offensive way sexual
9 conduct specifically defined by subsection (c) of this section; and
- 10 (2) The average person applying contemporary community standards
11 relating to the depiction or description of sexual matters would find
12 that the material taken as a whole appeals to the prurient interest in
13 sex; and
- 14 (3) The material lacks serious literary, artistic, political, or scientific
15 value; and
- 16 (4) The material as used is not protected or privileged under the
17 Constitution of the United States or the Constitution of North Carolina.
- 18 (c) As used in this Article, "sexual conduct" means:
- 19 (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal
20 or perverted; or
- 21 (2) Masturbation, excretory functions, or lewd exhibition of uncovered
22 genitals; or
- 23 (3) An act or condition that depicts torture, physical restraint by being
24 fettered or bound, or flagellation of or by a nude person or a person
25 clad in undergarments or in revealing or bizarre costume.
- 26 (d) Obscenity shall be judged with reference to ordinary adults except that it shall
27 be judged with reference to children or other especially susceptible audiences if it
28 appears from the character of the material or the circumstances of its dissemination to
29 be especially designed for or directed to such children or audiences.
- 30 (e) It ~~shall be~~ is unlawful for any ~~person, firm or corporation~~ person to
31 knowingly and intentionally create, buy, procure or possess obscene material with the
32 purpose and intent of disseminating it unlawfully.
- 33 (f) It ~~shall be~~ is unlawful for a ~~person, firm or corporation~~ person to advertise or
34 otherwise promote the sale of material represented or held out by said person, firm or
35 corporation as obscene.
- 36 (g) Violation of this section is a Class ~~I-H~~ I felony.
- 37 (h) Obscene material disseminated, procured, or promoted in violation of this
38 section is contraband.
- 39 (i) Nothing in this section shall be deemed to preempt local government
40 regulation of the location or operation of sexually oriented businesses to the extent
41 consistent with the constitutional protection afforded free speech.
- 42 (j) For purposes of this Article, the term "person" means an individual, a firm, a
43 partnership, an association, a corporation, or any other organization or group acting as a
44 unit."

1 **SECTION 2.** G.S. 14-190.6 reads as rewritten:

2 "**§ 14-190.6. Employing or permitting minor to assist in offense under Article.**

3 Every person 18 years of age or older who intentionally, in any manner, hires,
4 employs, uses or permits any minor under the age of 16 years to do or assist in doing
5 any act or thing constituting an offense under this Article and involving any material,
6 act or thing he knows or reasonably should know to be obscene within the meaning of
7 G.S. 14-190.1, shall be guilty of a Class ~~I~~H felony."

8 **SECTION 3.** G.S. 14-190.7 reads as rewritten:

9 "**§ 14-190.7. Dissemination to minors under the age of 16 years.**

10 Every person 18 years of age or older who knowingly disseminates to any minor
11 under the age of 16 years any material which he knows or reasonably should know to be
12 obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class ~~I~~H felony."

13 **SECTION 4.** G.S. 14-190.8 reads as rewritten:

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

15 Every person 18 years of age or older who knowingly disseminates to any minor
16 under the age of 13 years any material ~~which he~~that the person knows or reasonably
17 should know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a
18 Class ~~I~~H felon."

19 **SECTION 5.** G.S. 14-190.13 reads as rewritten:

20 "**§ 14-190.13. Definitions for certain offenses concerning minors.**

21 The following definitions apply to G.S. 14-190.14, displaying material harmful to
22 minors; G.S. 14-190.14A, allowing computer access to material harmful to minors; G.S.
23 14-190.15, disseminating or exhibiting to minors harmful material or performances;
24 G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second
25 degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation
26 of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19,
27 participating in prostitution of a ~~minor~~ minor; and G.S. 14-202.6, protection for 'Good
28 Samaritan' blocking screening of offensive material.

29 (1) Harmful to Minors. – That quality of any material or performance that
30 depicts sexually explicit nudity or sexual activity and that, taken as a
31 whole, has the following characteristics:

32 a. The average adult person applying contemporary community
33 standards would find that the material or performance has a
34 predominant tendency to appeal to a prurient interest of minors
35 in sex; and

36 b. The average adult person applying contemporary community
37 standards would find that the depiction of sexually explicit
38 nudity or sexual activity in the material or performance is
39 patently offensive to prevailing standards in the adult
40 community concerning what is suitable for minors; and

41 c. The material or performance lacks serious literary, artistic,
42 political, or scientific value for minors.

43 (2) Material. – Pictures, drawings, video recordings, ~~films~~films, digital
44 images made accessible to another person by computer, or other visual

1 depictions or representations but not material consisting entirely of
2 written words.

3 (3) Minor. – An individual who is less than 18 years old and is not
4 married or judicially emancipated.

5 (4) Prostitution. – Engaging or offering to engage in sexual activity with
6 or for another in exchange for anything of value.

7 (5) Sexual Activity. – Any of the following acts:

8 a. Masturbation, whether done alone or with another human or an
9 animal.

10 b. Vaginal, anal, or oral intercourse, whether done with another
11 human or with an animal.

12 c. Touching, in an act of apparent sexual stimulation or sexual
13 abuse, of the clothed or unclothed genitals, pubic area, or
14 buttocks of another person or the clothed or unclothed breasts
15 of a human female.

16 d. An act or condition that depicts torture, physical restraint by
17 being fettered or bound, or flagellation of or by a person clad in
18 undergarments or in revealing or bizarre costume.

19 e. Excretory functions; provided, however, that this
20 sub-subdivision shall not apply to G.S. 14-190.17A.

21 f. The insertion of any part of a person's body, other than the male
22 sexual organ, or of any object into another person's anus or
23 vagina, except when done as part of a recognized medical
24 procedure.

25 (6) Sexually Explicit Nudity. – The showing of:

26 a. Uncovered, or less than opaquely covered, human genitals,
27 pubic area, or buttocks, or the nipple or any portion of the
28 areola of the human female breast, except as provided in G.S.
29 14-190.9(b); or

30 b. Covered human male genitals in a discernibly turgid state."

31 **SECTION 6.** G.S. 14-190.14(b) reads as rewritten:

32 "(b) Punishment. – Violation of this section is a Class 2~~1~~ misdemeanor. Each day's
33 violation of this section is a separate offense."

34 **SECTION 7.** G.S. 14-190.15 reads as rewritten:

35 "**§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful**
36 **performances to minors.**

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

40 (1) Sells, furnishes, presents, makes accessible by computer, or distributes
41 to a minor material that is harmful to minors; or

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

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

5 (c) Defenses. – Except as provided in subdivision (3), a mistake of age is not a
6 defense to a prosecution under this section. It is an affirmative defense to a prosecution
7 under this section that:

8 (1) The defendant was a parent or legal guardian of the minor.

9 (2) The defendant was a school, church, museum, public library,
10 governmental agency, medical clinic, or hospital carrying out its
11 legitimate function; or an employee or agent of such an organization
12 acting in that capacity and carrying out a legitimate duty of ~~his~~ the
13 employee's or agent's employment.

14 (3) Before disseminating or exhibiting the harmful material or
15 performance, the defendant requested and received a ~~driver's~~ drivers
16 license, student identification card, or other official governmental or
17 educational identification card or paper indicating that the minor to
18 whom the material or performance was disseminated or exhibited was
19 at least 18 years old, and the defendant reasonably believed the minor
20 was at least 18 years old.

21 (3a) The material made accessible to another person by computer:

22 a. Included on the first page of the text set out from surrounding
23 written or graphical material so as to be conspicuous the
24 following statement: `Warning: Viewer discretion and parental
25 guidance is advised. These materials may be harmful to minors.'
26 and

27 b. Is located at a registered web site with a domain address
28 assigned only to adult-oriented sites in compliance with the
29 policies established by the Internet Corporation for Assigned
30 Names and Numbers (ICANN), the United States Department
31 of Commerce, or any other entity approved by the federal
32 government to assign domain names.

33 (4) The dissemination was made with the prior consent of a parent or
34 guardian of the recipient.

35 (d) Punishment. – Violation of this section is a Class 1 misdemeanor."

36 **SECTION 8.** G.S. 14-190.16(d) reads as rewritten:

37 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~D~~ C
38 felony."

39 **SECTION 9.** G.S. 14-190.17(d) reads as rewritten:

40 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~F~~ E felony."

41 **SECTION 10.** G.S. 14-190.17A(d) reads as rewritten:

42 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~I~~ H
43 felony."

1 **SECTION 11.** Article 26 of Chapter 14 of the General Statutes is amended
2 by adding the following new section:

3 **"§ 14-190.14A. Allowing computer access to material harmful to minors.**

4 (a) Offense. – A person commits the offense of allowing computer access to
5 material that is harmful to minors if all of the following conditions are met:

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

8 (2) The computer is accessible to minors as part of the invited general
9 public.

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

13 (b) Defenses. – Except as provided in subdivisions (3) and (4) of this subsection,
14 a mistake of age is not a defense to a prosecution under this section. It is an affirmative
15 defense to a prosecution under this section that:

16 (1) The defendant was a parent or legal guardian of the minor.

17 (2) The defendant was a school, church, museum, public library,
18 governmental agency, medical clinic, or hospital carrying out its
19 legitimate function; or an employee or agent of such an organization
20 acting in that capacity and carrying out a legitimate duty of the
21 employee's or agent's employment.

22 (3) Before allowing the minor to access by computer the harmful material,
23 the defendant requested and received a drivers license, student
24 identification card, or other official governmental or educational
25 identification card or paper indicating that the minor to whom the
26 material or performance was disseminated or exhibited was at least 18
27 years old, and the defendant reasonably believed the minor was at least
28 18 years old.

29 (4) The dissemination was made with the prior consent of a parent or
30 guardian of the minor.

31 (c) Punishment. – Violation of this section is a Class 1 misdemeanor."

32 **SECTION 12.** Article 26 of Chapter 14 of the General Statutes is amended
33 by adding the following new sections:

34 **"§ 14-202.5. Unlawful to access or disseminate obscenities on a governmental**
35 **computer.**

36 (a) The following definitions apply in this section:

37 (1) Computer. – Includes all of the following terms as they are defined in
38 G.S. 14-453: computer, computer network, computer program,
39 computer software, computer system, and data.

40 (2) Government. – The State of North Carolina or any agency or political
41 subdivision of the State.

42 (3) Government computer. – A computer used for government purposes
43 that is owned or leased in whole or in part or is otherwise under the

1 control and general management of the State or any agency or political
2 subdivision of the State.

3 (b) Except to the extent required in conjunction with a bona fide government-
4 approved research project or other government-approved undertaking, no person shall
5 utilize a government computer to access, download, print, or store any information,
6 infrastructure files, or services having obscene content. The approval for the research
7 project or undertaking shall be in writing and signed by the appropriate governmental
8 official. Any such approval shall be a public record available to the public as provided
9 by Chapter 132 of the General Statutes.

10 (c) A violation of this section is a Class 1 misdemeanor and is also grounds for
11 disciplinary action under Chapter 126 of the General Statutes.

12 **"§ 14-202.6. Internet service provider shall provide software or services to block**
13 **or screen obscene material or material that is harmful to minors; civil**
14 **penalty.**

15 (a) The following definitions apply in G.S. 14-202.6 and G.S. 14-202.7:

16 (1) Freeware. – Software that is distributed to a person free of charge
17 regardless of whether use of the software is subject to certain
18 restrictions.

19 (2) Information content provider. – Any person or entity that is
20 responsible, in whole or in part, for the creation or development of
21 information provided thorough the Internet or any other interactive
22 computer service.

23 (3) Internet. – The largest nonproprietary nonprofit cooperative public
24 computer network, popularly known as the Internet.

25 (4) Interactive computer service. – Any information service or system that
26 provides or enables computer access by multiple users to the Internet.

27 (5) Internet service provider. – Any information, service, or access
28 software provider that meets all of the following requirements:

29 a. The provider provides or enables computer access to the
30 Internet by multiple users by a computer server.

31 b. The provider charges users' fees for access to its computer
32 server.

33 c. The provider is domiciled or does business in this State.

34 (6) Shareware. – Copyrighted software in which the copyright owner sets
35 certain conditions for its use and distribution, including requiring
36 payment to the copyright owner after a person who has secured a copy
37 of the software decides to use the software, regardless of whether the
38 payment is for additional support or functionality of the software.

39 (b) An Internet service provider shall provide free of charge to each subscriber of
40 the service in this State a link leading to fully functional shareware, freeware, or
41 demonstration versions of the software or to a service that, for at least one operating
42 system, enables the subscriber to automatically block or screen material on the Internet.

43 (c) An Internet service provider is considered to be in compliance with this
44 section if the Internet service provider places, on the provider's first page of worldwide

1 web text information accessible to a subscriber, a link leading to the software or a
2 service described by this section. The identity of the link or other on-screen depiction of
3 the link shall appear set out from surrounding written or graphical material so as to be
4 conspicuous.

5 (d) An Internet service provider who provides a link that complies with this
6 section is not liable to a subscriber for any temporary inoperability of the link or for the
7 effectiveness of the software or service to which the person links.

8 (e) An Internet service provider is liable to the State for a civil penalty of two
9 thousand dollars (\$2,000) for each day on which the Internet service provider provides
10 an interactive computer service for a fee but fails to provide a link to software or a
11 service as required by this section. The aggregate civil penalty shall not exceed sixty
12 thousand dollars (\$60,000).

13 (f) The Attorney General may institute a suit to recover the civil penalty. Before
14 filing suit, the Attorney General shall give the Internet service provider notice of the
15 provider's noncompliance and liability for a civil penalty. If the Internet service provider
16 complies with the requirements of this section not later than the 30th day after the date
17 of the notice, the violation is considered cured, and the Internet service provider is not
18 liable for the civil penalty.

19 **"§ 14-202.7. Protection for 'Good Samaritan' blocking and screening of offensive**
20 **material.**

21 (a) For purposes of this Article, no provider of an interactive computer service
22 shall be treated as the publisher or speaker of any information provided by another
23 information content provider.

24 (b) No provider of an interactive computer service shall be held civilly liable on
25 account of either of the following:

26 (1) Any action voluntarily taken in good faith to restrict access to or
27 availability of material that the provider considers to be obscene,
28 harmful to minors, or otherwise objectionable, whether or not such
29 material is constitutionally protected.

30 (2) Any action taken to enable or make available to information content
31 providers or others the technical means to restrict access to material
32 described in subdivision (1) of this subsection.

33 (c) Nothing in this section shall be construed to impair the enforcement of any
34 criminal law of Chapter 14 of the General Statutes or any other State or federal criminal
35 statute."

36 **SECTION 13.** G.S. 14-196 reads as rewritten:

37 **"§ 14-196. Using profane, indecent or threatening language to any person over**
38 **telephone; ~~by electronic communications;~~ annoying or harassing by**
39 **repeated telephoning— electronic communications or making false**
40 **statements over telephone. by electronic communications.**

41 (a) It ~~shall be~~ is unlawful for any person:

42 (1) To use in ~~telephonic~~ electronic communications any words or language
43 of a profane, vulgar, lewd, lascivious or indecent character, nature or
44 connotation;

- 1 (2) To use in ~~telephonic~~electronic communications any words or language
2 threatening to inflict bodily harm to any person or to that person's
3 child, sibling, spouse, or dependent or physical injury to the property
4 of any person, or for the purpose of extorting money or other things of
5 value from any person;
- 6 (3) To ~~telephone~~electronically communicate with another repeatedly,
7 whether or not conversation ensues, for the purpose of abusing,
8 annoying, threatening, terrifying, harassing or embarrassing any
9 person at the called ~~number~~; phone number or electronic address;
- 10 (4) To ~~make a telephone call~~electronically communicate and fail to hang
11 up or disengage the connection with the intent to disrupt the service of
12 another;
- 13 (5) To ~~telephone~~electronically communicate with another and to
14 knowingly make any false statement concerning death, injury, illness,
15 disfigurement, indecent conduct or criminal conduct of the person
16 ~~telephoned~~electronically contacted or of any member of ~~his~~the
17 person's family or household with the intent to abuse, annoy, threaten,
18 terrify, harass, or embarrass;
- 19 (6) To knowingly permit any ~~telephone~~electronic communication device
20 under ~~his~~the person's control to be used for any purpose prohibited by
21 this section.

22 (b) Any of the above offenses may be deemed to have been committed at either
23 the place at which the ~~telephone call or calls were made~~electronic communication
24 originated or at the place where the ~~telephone call or calls were~~electronic
25 communication was received. For purposes of this section, ~~the term "telephonic~~
26 ~~communications"~~ shall include the terms 'electronic communications', 'electronically
27 communicated', and 'electronically contacted' include communications made or
28 received by way of a telephone answering machine or recorder, telefacsimile machine,
29 ~~or computer modem~~; modem, electronic mail, and all of the following as defined in G.S.
30 14-453: computer, computer network, computer program, computer software, and
31 computer system.

32 (c) Anyone violating the provisions of this section ~~shall be~~is guilty of a Class 2
33 misdemeanor."

34 **SECTION 14.** By January 1, 2002, the Department of Administration shall
35 adopt rules governing the use of State computers, the Internet, and electronic mail by
36 State employees to implement this act.

37 **SECTION 15.** By January 1, 2002, the Department of Public Instruction, in
38 conjunction with the local school districts, shall evaluate the use of computers in the
39 public school system and recommend to the State Board of Education appropriate
40 software to shield students from obscene materials transmitted by computer. Upon
41 receiving the recommendation from the Department of Public Instruction, the State
42 Board of Education shall select appropriate software that is client-based or server-based
43 or the functional equivalent to shield students from obscene materials. The State Board

1 of Education shall supervise the statewide installation and maintenance of the software
2 in the public school system if that option is selected.

3 **SECTION 16.** By January 1, 2002, public libraries that operate computers
4 with Internet access that is available to minors shall take one of the following actions
5 with respect to such computers:

6 (1) Install by January 1, 2002, and maintain thereafter, appropriate
7 software that is client-based or server-based, or the functional
8 equivalent, to shield minors from obscene material.

9 (2) Use an Internet service provider that provides freeware to shield
10 minors from obscene material.

11 (3) Permit access to such computers by a minor only if: (i) the minor is
12 accompanied and monitored by the minor's parent, legal guardian, or
13 by another authorized adult or library personnel; or (ii) the minor has
14 written consent from the minor's parent or legal guardian granting
15 permission for the minor to have access to the computer without adult
16 supervision.

17 **SECTION 17.** The Department of Justice shall publish a list, without
18 images, of Usenet newsgroups, IP addresses, World Wide Web sites or other Internet
19 sources that have been found to contain child pornography. This list shall also be
20 posted on the Internet site of the Department of Justice.

21 **SECTION 18.** The Department of Justice shall, as feasible, implement more
22 of its law enforcement effort to enforce obscenity laws, and to identify and discourage
23 deceptive or unfair practices that entice children to view obscene materials, including
24 the practices of "mouse trapping" and deceptive meta-tagging.

25 **SECTION 19.** This act becomes effective December 1, 2001, and applies to
26 offenses committed on or after that date.