

South Carolina Department of Social Services

751 Criminal Sexual Conduct

CHAPTER 7, Child Protective and Preventive Services

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Section 16-3-651. Criminal sexual conduct definitions.

For the purposes of Sections 16-3-651 to 16-3-659.1:

- (a) "Actor" means a person accused of criminal sexual conduct;
- (b) "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.
- (c) "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of use of a deadly weapon.
- (d) "Intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breast of a female human being.
- (e) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (f) "Mentally incapacitated" means that a person is rendered temporarily incapable

of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

(g) "Physically helpless" means that person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to act.

(h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

Section 16-3-655. Criminal sexual conduct with a minor.

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim who is less than eleven years of age.

(2) A person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age.

(3) A person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

Section 16-3-800. Definitions.

As used in this article.

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than eighteen years of age.

(2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience.

(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

Section 16-3-810. Engaging child for sexual performance; penalty.

- (a) It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or legal guardian or custodian of a child younger than eighteen years of age to consent to the participation by the child in a sexual performance.
- (b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in Section 16-3-653.

Section 16-3-820. Producing, directing or promoting sexual performance by child; penalty.

- (a) It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.
- (b) any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in Section 16-3-654.

Section 16-3-830. Reasonable belief as to majority of child as affirmative defense.

It is an affirmative defense to a prosecution under this article that the defendant, in good faith, reasonably believed that the person who engaged in sexual conduct was eighteen years of age or older.

Section 16-3-840. Methods of judicial determination of age of child.

When it becomes necessary for the purposes of this article to determine whether a child who participated in sexual conduct was younger than eighteen years of age, the court or jury may make this determination by any of the following:

- (1) personal inspection of the child;
- (2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;
- (3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;
- (4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or
- (5) any other method authorized by law or by rules of evidence.

Section 16-3-850. Film processor or computer technician to report film or computer images containing sexually explicit pictures of minors.

Any retail or wholesale film processor or photo finisher who is requested to develop film, and any computer technician working with a computer who views an image of a child younger than eighteen years of age who is engaging in sexual conduct, sexual performance, or a sexually explicit posture must report the name and address of the individual requesting the development of the film, or of the owner or person in possession of the computer to law enforcement officials in the state and county or municipality from which the film was originally forwarded. Compliance with this section does not give rise to any civil liability on the part of anyone making the report.

Section 16-15-20. Incest.

Any person who shall have carnal intercourse with each other within the following degrees of relationship, to wit:

(1) a man with his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister; or

(2) a woman with her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother or mother's brother;

Shall be guilty of incest and shall be punished by a fine of not less than five hundred dollars or imprisonment not less than one year in the Penitentiary, or both such fine and imprisonment.

Section 16-15-140. Committing or attempting lewd act upon child under sixteen.

It is unlawful for a person over the age of fourteen years to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.

A person violating the provisions of this section is guilty of a felony and, upon

conviction, must be fined in the discretion of the court or imprisoned no more than fifteen years, or both.

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 [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.

An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years 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 16-15-355. 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 [16-15-305](#) is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

Section 16-15-375. Definitions applicable to §§ 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 16-15-415. 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 19-11-90, Priest-penitent privilege.

In any legal or quasi-legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred.

Referenced Documents

Revision Comments

Sections 16-15-335, 16-15-345, and 16-15-355 were added to this section.