

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 1260

Short Title: Parental Rights & Child Protection Act. (Public)

Sponsors: Representatives Davis; and Morris.

Referred to: Judiciary I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO DISSEMINATE CERTAIN MATERIALS TO A MINOR WITHOUT WRITTEN PARENTAL CONSENT AND TO PROVIDE THAT CRIMINAL AND CIVIL PENALTIES MAY BE IMPOSED FOR THOSE VIOLATIONS.

The General Assembly of North Carolina enacts:

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

"Article 26B.

"Parental Rights and Child Protection.

"§ 14-202.15. Definitions.

The following definitions apply in this Article:

(1) Material. – The term includes any type of literature, pamphlet, book, magazine, audio or visual tape recording, or other information in any form.

(2) Person. – The term includes a person, group, association, agency, business, institution, governmental unit, or entity.

"§ 14-202.16. Unlawful dissemination of certain materials to a minor.

(a) It is unlawful for any person to disseminate to a minor, without first obtaining the written permission of the minor's parent, any material that the person knows, or reasonably should know, recommends, condones, or advocates engaging in any of the following: sexual acts, unnatural sexual acts, alternate lifestyles, any other form of sexual activity outside the bonds of matrimony between a lawfully married man and woman, or a violation of any provision of Chapter 14 of the General Statutes. A person who willfully violates this subsection is guilty of a Class I felony and is also civilly liable as provided by this section.

(b) The parent or legal guardian of a minor may file a civil action against a person who violates subsection (a) of this section. If the violation is proved by clear and

1 convincing evidence, then, in addition to any other remedies in law, the parent or legal
2 guardian shall be awarded triple damages. The parent or legal guardian shall also be
3 awarded attorneys' fees and court costs.

4 (c) The parent or legal guardian of a minor, who alleges a violation of subsection
5 (a) of this section in a civil action, upon proper verification of pleadings or by affidavit,
6 sufficient to show unto the court the nature of the material and its dissemination, may
7 apply to the court for a temporary injunction to prevent further improper dissemination
8 and shall not be liable for any damages in law or equity, or any other manner, for failure
9 to prevail at trial."

10 **SECTION 2.** G.S. 14-190.15 reads as rewritten:

11 "**§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful**
12 **performances to minors.**

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

16 (1) Sells, furnishes, presents, or distributes to a minor material that is
17 harmful to minors; or

18 (2) Allows a minor to review or peruse material that is harmful to minors.

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

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

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

27 (2) The defendant was a school, church, museum, public ~~library,~~ library
28 that provides a suitable separate section or designated area for minors
29 devoid of harmful materials to minors and makes reasonable efforts to
30 restrict from minors materials harmful to minors according to an
31 appropriate library card system, shelving system, or other means
32 designed to accommodate a wholesome learning atmosphere,
33 governmental agency, medical clinic, or hospital carrying out its
34 legitimate function; or an employee or agent of such an organization
35 acting in that capacity and carrying out a legitimate duty of his
36 employment.

37 (3) Before disseminating or exhibiting the harmful material or
38 performance, the defendant requested and received a driver's license,
39 student identification card, or other official governmental or
40 educational identification card or paper indicating that the minor to
41 whom the material or performance was disseminated or exhibited was
42 at least 18 years old, and the defendant reasonably believed the minor
43 was at least 18 years old.

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

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

4 (e) The parent or guardian of a minor may file a civil action against a person who
5 violates subsection (a) or (b) of this section. If the parent or guardian of a minor proves
6 by clear and convincing evidence a violation of subsection (a) or (b) of this section,
7 then, in addition to any other remedies in law, the parent or guardian of the minor shall
8 be awarded triple damages, attorneys' fees and costs.

9 (f) The parent or guardian of a minor, who alleges a violation of subsection (a)
10 or (b) of this section in a civil action, upon proper verification of pleadings or by
11 affidavit, sufficient to show unto the court the nature of the material and its
12 dissemination, may apply to the court for a preliminary injunction to prevent further
13 improper dissemination and shall not be liable for any damages in law or equity, or any
14 other manner, for failure to prevail at the hearing on the request for a preliminary
15 injunction or at trial. After trial on the merits, if the parent or guardian prevails, then the
16 court, in addition to all other remedies, may issue a permanent injunction."

17 **SECTION 3.** This act becomes effective December 1, 2001, and applies to
18 offenses committed on or after that date.