

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1032  
Judiciary II Committee Substitute Adopted 4/25/01

Short Title: Minors' Internet Access.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT REQUIRING PUBLIC LIBRARIES AND SCHOOLS TO IMPLEMENT  
3 POLICIES TO PROTECT MINORS FROM OBSCENE MATERIAL OR  
4 MATERIAL HARMFUL TO MINORS THROUGH USE OF THE INTERNET, TO  
5 PROHIBIT THE DISSEMINATION OF OBSCENITIES BY COMPUTER  
6 TRANSMISSION, TO INCREASE THE PENALTIES FOR CERTAIN  
7 CRIMINAL OFFENSES CONCERNING MINORS AND OBSCENITY, TO  
8 PROHIBIT THE USE OF STATE COMPUTERS TO ACCESS OBSCENITIES,  
9 AND TO REGULATE CERTAIN USES OF STATE COMPUTERS.

10 The General Assembly of North Carolina enacts:

11 SECTION 1. Chapter 125 of the General Statutes is amended by adding a  
12 new section to read:

13 "Article 4.

14 "Minors' Internet Access.

15 "**§ 125-20. Protection of minors from certain material on the Internet.**

16 Each public library must adopt a policy governing acceptable use of the Internet by  
17 library users. The policy shall outline how the library will assist children in accessing  
18 educational resources on the Internet and work to prevent children's access to materials  
19 that are harmful to minors on the Internet. The policy shall be approved by the library's  
20 governing authority and shall be filed with the State Library in order to receive grants  
21 from the Aid to Public Libraries Fund."

22 SECTION 2. Chapter 115C of the General Statutes is amended by adding a  
23 new section to read:

24 "**§ 115C-102.9. Protection of minors from certain material on the Internet.**

25 (a) Policy and Procedures. – On or before January 1, 2002, the State Board of  
26 Education shall adopt a policy regarding minors' access to the Internet. At a minimum,  
27 the policy shall contain provisions that seek to prevent access by minors to obscene  
28 material and material that is harmful to minors and establish appropriate measures to be

1 taken against persons who violate the policy. The policy shall include either or both of  
2 the following features:

- 3       (1) Equipping the computers with software that will limit minors' ability to  
4 gain access to obscene materials or material harmful to minors.  
5       (2) Purchasing Internet connectivity from an Internet service provider that  
6 provides filter services to limit access to obscene materials or material  
7 harmful to minors.

8       (b) Implementation and Compliance. – The Department of Public Instruction  
9 shall make the policy available to all local boards of education that shall be responsible  
10 for implementing the policy. Each local board of education shall report annually to the  
11 State Board on its efforts to implement the provisions set out in subsection (a) of this  
12 section.

13       (c) Technical Assistance or Information. – The Department of Public Instruction  
14 shall provide technical assistance or information to any public school to aid the school  
15 in evaluating available and developing technologies that may be used to comply with  
16 the provisions of this section."

17       **SECTION 3.** G.S. 14-190.1 reads as rewritten:

18 **"§ 14-190.1. Obscene literature and exhibitions.**

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

- 22       (1) ~~Sells, delivers or provides~~ delivers, makes accessible to another person  
23 by computer, or provides or offers or agrees to sell, deliver or  
24 ~~provided~~ deliver, make accessible to another person by computer, or  
25 provide any obscene writing, picture, record or other representation or  
26 embodiment of the obscene; or  
27       (2) Presents or directs an obscene play, dance or other performance or  
28 participates directly in that portion thereof which makes it obscene; or  
29       (3) Publishes, exhibits or otherwise makes available anything obscene; or  
30       (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees  
31 to exhibit, present, rent or to provide: any obscene still or motion  
32 picture, film, filmstrip, or projection slide, or sound recording, sound  
33 tape, or sound track, or any matter or material of whatever form which  
34 is a representation, embodiment, performance, or publication of the  
35 obscene.

36       (b) For purposes of this Article any material is obscene if:

- 37       (1) The material depicts or describes in a patently offensive way sexual  
38 conduct specifically defined by subsection (c) of this section; and  
39       (2) The average person applying contemporary community standards  
40 relating to the depiction or description of sexual matters would find  
41 that the material taken as a whole appeals to the prurient interest in  
42 sex; and

- 1 (3) The material lacks serious literary, artistic, political, or scientific  
2 value; and
- 3 (4) The material as used is not protected or privileged under the  
4 Constitution of the United States or the Constitution of North Carolina.
- 5 (c) As used in this Article, "sexual conduct" means:
- 6 (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal  
7 or perverted; or
- 8 (2) Masturbation, excretory functions, or lewd exhibition of uncovered  
9 genitals; or
- 10 (3) An act or condition that depicts torture, physical restraint by being  
11 fettered or bound, or flagellation of or by a nude person or a person  
12 clad in undergarments or in revealing or bizarre costume.
- 13 (d) Obscenity shall be judged with reference to ordinary adults except that it shall  
14 be judged with reference to children or other especially susceptible audiences if it  
15 appears from the character of the material or the circumstances of its dissemination to  
16 be especially designed for or directed to such children or audiences.
- 17 (e) It ~~shall be~~ is unlawful for any ~~person, firm or corporation~~ person to  
18 knowingly and intentionally create, buy, procure or possess obscene material with the  
19 purpose and intent of disseminating it unlawfully.
- 20 (f) It ~~shall be~~ is unlawful for a ~~person, firm or corporation~~ person to advertise or  
21 otherwise promote the sale of material represented or held out by said person, firm or  
22 corporation as obscene.
- 23 (g) Violation of this section is a Class ~~I~~ H felony.
- 24 (h) Obscene material disseminated, procured, or promoted in violation of this  
25 section is contraband.
- 26 (i) Nothing in this section shall be deemed to preempt local government  
27 regulation of the location or operation of sexually oriented businesses to the extent  
28 consistent with the constitutional protection afforded free speech.
- 29 (j) For purposes of this Article, the term "person" means an individual, a firm, a  
30 partnership, an association, a corporation, or any other organization or group acting as a  
31 unit."

32 **SECTION 4.** G.S. 14-190.6 reads as rewritten:

33 **"§ 14-190.6. Employing or permitting minor to assist in offense under Article.**

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

39 **SECTION 5.** G.S. 14-190.7 reads as rewritten:

40 **"§ 14-190.7. Dissemination to minors under the age of 16 years.**

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

4 **SECTION 6.** G.S. 14-190.8 reads as rewritten:

5 "**§ 14-190.8. Dissemination to minors under the age of 13 years.**

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

10 **SECTION 7.** G.S. 14-190.13 reads as rewritten:

11 "**§ 14-190.13. Definitions for certain offenses concerning minors.**

12 The following definitions apply to G.S. 14-190.14, displaying material harmful to  
13 minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or  
14 performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S.  
15 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree  
16 sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and  
17 G.S. 14-190.19, participating in prostitution of a minor.

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

- 21 a. The average adult person applying contemporary community  
22 standards would find that the material or performance has a  
23 predominant tendency to appeal to a prurient interest of minors  
24 in sex; and  
25 b. The average adult person applying contemporary community  
26 standards would find that the depiction of sexually explicit  
27 nudity or sexual activity in the material or performance is  
28 patently offensive to prevailing standards in the adult  
29 community concerning what is suitable for minors; and  
30 c. The material or performance lacks serious literary, artistic,  
31 political, or scientific value for minors.

32 (2) Material. – Pictures, drawings, video recordings, ~~films~~ films, digital  
33 images made accessible to another person by computer, or other visual  
34 depictions or representations but not material consisting entirely of  
35 written words.

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

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

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

- 41 a. Masturbation, whether done alone or with another human or an  
42 animal.

- 1           b.     Vaginal, anal, or oral intercourse, whether done with another  
2           human or with an animal.
- 3           c.     Touching, in an act of apparent sexual stimulation or sexual  
4           abuse, of the clothed or unclothed genitals, pubic area, or  
5           buttocks of another person or the clothed or unclothed breasts  
6           of a human female.
- 7           d.     An act or condition that depicts torture, physical restraint by  
8           being fettered or bound, or flagellation of or by a person clad in  
9           undergarments or in revealing or bizarre costume.
- 10          e.     Excretory functions; provided, however, that this  
11          sub-subdivision shall not apply to G.S. 14-190.17A.
- 12          f.     The insertion of any part of a person's body, other than the male  
13          sexual organ, or of any object into another person's anus or  
14          vagina, except when done as part of a recognized medical  
15          procedure.
- 16          (6)    Sexually Explicit Nudity. – The showing of:
- 17              a.     Uncovered, or less than opaquely covered, human genitals,  
18              pubic area, or buttocks, or the nipple or any portion of the  
19              areola of the human female breast, except as provided in G.S.  
20              14-190.9(b); or
- 21              b.     Covered human male genitals in a discernibly turgid state."

22           **SECTION 8.** G.S. 14-190.14(b) reads as rewritten:

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

25           **SECTION 9.** G.S. 14-190.15 reads as rewritten:

26           "**§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful**  
27           **performances to minors.**

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

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

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

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

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

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

- 1 (2) The defendant was a school, church, museum, public library,  
2 governmental agency, medical clinic, or hospital carrying out its  
3 legitimate function; or an employee or agent of such an organization  
4 acting in that capacity and carrying out a legitimate duty of ~~his~~the  
5 employee's or agent's employment.
- 6 (3) Before disseminating or exhibiting the harmful material or  
7 performance, the defendant requested and received a ~~driver's~~drivers  
8 license, student identification card, or other official governmental or  
9 educational identification card or paper indicating that the minor to  
10 whom the material or performance was disseminated or exhibited was  
11 at least 18 years old, and the defendant reasonably believed the minor  
12 was at least 18 years old.
- 13 (3a) The material made accessible to another person by computer:
- 14 a. Included on the first page of the text set out from surrounding  
15 written or graphical material so as to be conspicuous the  
16 following statement: 'Warning: Viewer discretion and parental  
17 guidance is advised. These materials may be harmful to  
18 minors.'; and
- 19 b. Is located at a registered web site with a domain address  
20 assigned only to adult-oriented sites in compliance with the  
21 policies established by the Internet Corporation for Assigned  
22 Names and Numbers (ICANN), the United States Department  
23 of Commerce, or any other entity approved by the federal  
24 government to assign domain names.
- 25 (4) The dissemination was made with the prior consent of a parent or  
26 guardian of the recipient.
- 27 (d) Punishment. – Violation of this section is a Class 1 misdemeanor."
- 28 **SECTION 10.** G.S. 14-190.16(d) reads as rewritten:
- 29 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~D~~C  
30 felony."
- 31 **SECTION 11.** G.S. 14-190.17(d) reads as rewritten:
- 32 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~F~~E felony."
- 33 **SECTION 12.** G.S. 14-190.17A(d) reads as rewritten:
- 34 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~I~~H  
35 felony."
- 36 **SECTION 13.** Article 26 of Chapter 14 of the General Statutes is amended  
37 by adding the following new section:
- 38 **§ 14-202.5. Unlawful to access or disseminate obscenities on a governmental**  
39 **computer.**
- 40 (a) The following definitions apply in this section:

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

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

6           (3) Government computer. – A computer used for government purposes  
7           that is owned or leased in whole or in part or is otherwise under the  
8           control and general management of the State or any agency or political  
9           subdivision of the State.

10       (b) Except to the extent required in conjunction with a bona fide government-  
11 approved research project or other government-approved undertaking, no person shall  
12 utilize a government computer to access, download, print, or store any information,  
13 infrastructure files, or services having obscene content. The approval for the research  
14 project or undertaking shall be in writing and signed by the appropriate governmental  
15 official.

16       (c) A violation of this section is a Class 1 misdemeanor and is also grounds for  
17 disciplinary action."

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

19       "**§ 14-196. Using profane, indecent or threatening language to any person ~~over~~**  
20 **~~telephone;~~ by electronic communications; annoying or harassing by**  
21 **~~repeated telephoning~~ electronic communications or making false**  
22 **~~statements over telephone.~~ by electronic communications.**

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

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

27           (2) To use in ~~telephonic~~ electronic communications any words or language  
28           threatening to inflict bodily harm to any person or to that person's  
29           child, sibling, spouse, or dependent or physical injury to the property  
30           of any person, or for the purpose of extorting money or other things of  
31           value from any person;

32           (3) To ~~telephone~~ electronically communicate with another repeatedly,  
33           whether or not conversation ensues, for the purpose of abusing,  
34           annoying, threatening, terrifying, harassing or embarrassing any  
35           person at the called ~~number;~~ phone number or electronic address;

36           (4) To ~~make a telephone call~~ electronically communicate and fail to hang  
37           up or disengage the connection with the intent to disrupt the service of  
38           another;

39           (5) To ~~telephone~~ electronically communicate with another and to  
40           knowingly make any false statement concerning death, injury, illness,  
41           disfigurement, indecent conduct or criminal conduct of the person  
42           ~~telephoned~~ electronically contacted or of any member of ~~his~~ the

1            person's family or household with the intent to abuse, annoy, threaten,  
2            terrify, harass, or embarrass;

3            (6) To knowingly permit any ~~telephone~~ electronic communication device  
4            under ~~his~~ the person's control to be used for any purpose prohibited by  
5            this section.

6            (b) Any of the above offenses may be deemed to have been committed at either  
7            the place at which the ~~telephone call or calls were made~~ electronic communication  
8            originated or at the place where the ~~telephone call or calls were~~ electronic  
9            communication was received. For purposes of this section, ~~the term "telephonic~~  
10           ~~communications"~~ shall include the terms 'electronic communications', 'electronically  
11           communicated', and 'electronically contacted' include communications made or received  
12           by way of a telephone answering machine or recorder, telefacsimile machine, ~~or~~  
13           ~~computer modem~~ modem, electronic mail, and all of the following as defined in G.S.  
14           14-453: computer, computer network, computer program, computer software, and  
15           computer system.

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

18            **SECTION 15.** By January 1, 2002, the Department of Administration shall  
19            adopt rules governing the use of State computers, the Internet, and electronic mail by  
20            State employees to implement this act.

21            **SECTION 16.** If any provision of this act or its application is held invalid,  
22            the invalidity does not affect other provisions or applications of this act that can be  
23            given effect without the invalid provisions or application, and to this end the provisions  
24            of this act are severable.

25            **SECTION 17.** Sections 1, 2, 15, 16, and 17 of this act are effective when it  
26            becomes law. The remainder of this act becomes effective December 1, 2001, and  
27            applies to offenses committed on or after that date.