



2021 South Dakota Legislature

Senate Bill 126

SENATE JUDICIARY ENGROSSED

Introduced by: **Senator** Castleberry

1 **An Act to establish the crime of possession, manufacturing, or distribution of**
 2 **obscene dolls.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **22-24A-1.1. Manufacturing or distributing child-like sex doll--Felony.**

6 It is a Class 4 felony for any person to:

7 (1) Create a child-like sex doll;

8 (2) Cause or knowingly permit the creation of a child-like sex doll; or

9 (3) Knowingly distribute, sell, or display for sale, or otherwise disseminate a child-like
 10 sex doll.

11 If a person is convicted of a second or subsequent violation of this section within
 12 fifteen years of the prior conviction, the violation is a Class 3 felony.

13 **Section 2.** That § 22-24A-2 be AMENDED.

14 **22-24A-2. Definitions.**

15 Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-
 16 14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

17 (1) "Adult," any person eighteen years of age or older;

18 (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited
 19 sexual acts;

20 (3) "Child" or "minor," any person under the age of eighteen years;

21 (3A) "Child-like sex doll," any obscene anatomical doll, obscene anatomical mannequin,
 22 or obscene anatomical robot that is intentionally designed to resemble a
 23 prepubescent child and either to entice sexual excitement or to engage in prohibited
 24 sexual acts;

- 1 (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed
2 data processing device performing logical, arithmetic, or storage functions and
3 includes any data storage facility or communications facility directly related to or
4 operating in conjunction with such device, including wireless communication devices
5 such as cellular phones. The term also includes any on-line service, internet service,
6 or internet bulletin board;
- 7 (5) Deleted by SL 2005, ch 120, § 408
- 8 (6) "Digital media," any electronic storage device, including a floppy disk or other
9 magnetic storage device or any compact disc that has memory and the capacity to
10 store audio, video, or written materials;
- 11 (7) "Harmful to minors," any reproduction, imitation, characterization, description,
12 visual depiction, exhibition, presentation, or representation, of whatever kind or
13 form, depicting nudity, sexual conduct, or sexual excitement if it:
- 14 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
15 minors;
- 16 (b) Is patently offensive to prevailing standards in the adult community as a
17 whole with respect to what is suitable material for minors; and
- 18 (c) Taken as a whole, is without serious literary, artistic, political, or scientific
19 value for minors.
- 20 This term does not include a mother's breast-feeding of her baby;
- 21 (8) "Masochism," sexual gratification achieved by a person through, or the association
22 of sexual activity with, submission or subjection to physical pain, suffering,
23 humiliation, torture, or death;
- 24 (9) "Nudity," the showing or the simulated showing of the human male or female
25 genitals, pubic area, or buttocks with less than a fully opaque covering; or the
26 showing of the female breast with less than a fully opaque covering of any portion
27 thereof below the top of the nipple; or the depiction of covered male genitals in a
28 discernibly turgid state for the purpose of creating sexual excitement. This term
29 does not include a mother's breast-feeding of her baby irrespective of whether or
30 not the nipple is covered during or incidental to feeding;
- 31 (10) "Obscene," the status of material which:
- 32 (a) The average person, applying contemporary community standards, would
33 find, taken as a whole, appeals to the prurient interest;
- 34 (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and
- 35 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

- 1 This term does not include a mother's breast-feeding of her baby;
- 2 (11) "Person," includes individuals, children, firms, associations, joint ventures,
3 partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations,
4 and all other groups or combinations;
- 5 (12) "Sadism," sexual gratification achieved through, or the association of sexual activity
6 with, the infliction of physical pain, suffering, humiliation, torture, or death;
- 7 (13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition
8 of being fettered, bound, or otherwise physically restrained, for the purpose of
9 deriving sexual satisfaction, or satisfaction brought about as a result of sadistic
10 violence, from inflicting harm on another or receiving such harm oneself;
- 11 (14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual
12 organ of another or the anal or vaginal penetration of another by any other object.
13 This term does not include an act done for a bona fide medical purpose;
- 14 (15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an
15 animal involving the sex organ of the one and the mouth, anus, or vagina of the
16 other;
- 17 (16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism,
18 sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or
19 simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine
20 breasts, in a lewd or lascivious manner; actual physical contact with a person's
21 clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female,
22 breast with the intent to arouse or gratify the sexual desire of either party;
23 defecation or urination for the purpose of creating sexual excitement in the viewer;
24 or any act or conduct which constitutes sexual battery or simulates that sexual
25 battery is being or will be committed. The term includes encouraging, aiding,
26 abetting or enticing any person to commit any such acts as provided in this
27 subdivision. The term does not include a mother's breast-feeding of her baby;
- 28 (17) "Sexual excitement," the condition of the human male or female genitals if in a
29 state of sexual stimulation or arousal;
- 30 (18) "Sexually oriented material," any book, article, magazine, publication, visual
31 depiction or written matter of any kind or any drawing, etching, painting,
32 photograph, motion picture film, or sound recording that depicts sexual activity,
33 actual or simulated, involving human beings or human beings and animals, that
34 exhibits uncovered human genitals or the pubic region in a lewd or lascivious

- 1 manner, or that exhibits human male genitals in a discernibly turgid state, even if
 2 completely and opaquely covered;
- 3 (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this
 4 section that creates the appearance of such conduct and that exhibits any
 5 uncovered portion of the breasts, genitals, or anus;
- 6 (20) "Visual depiction," any developed and undeveloped film, photograph, slide and
 7 videotape, and any photocopy, drawing, printed or written material, and any data
 8 stored on computer disk, digital media, or by electronic means that are capable of
 9 conversion into a visual image.

10 **Section 3.** That a NEW SECTION be added:

11 **22-24A-3.1. Purchasing or possessing child-like sex doll--Misdemeanor or**
 12 **felony.**

13 It is a Class 1 misdemeanor for any person to knowingly purchase or possess a
 14 child-like sex doll.

15 If a person is convicted of a second or subsequent violation of this section within
 16 fifteen years of the prior conviction, the violation is a Class 6 felony.

17 **Section 4.** That § 22-24A-20 be AMENDED.

18 **22-24A-20. Exemption of publications with redeeming social value.**

19 The provisions of §§ 22-22-24.3, 22-24A-1, 22-24A-1.1, 22-24A-3, 22-24A-3.1,
 20 and 22-24A-5 do not apply to the selling, lending, distributing, exhibiting, giving away,
 21 showing, possessing, or making of films, photographs, or other materials involving only
 22 nudity, if the materials are made for and have a serious literary, artistic, educational, or
 23 scientific value.

24 **Section 5.** That § 22-24B-1 be AMENDED.

25 **22-24B-1. Sex crimes determined.**

26 For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the
 27 following crimes regardless of the date of the commission of the offense or the date of
 28 conviction:

- 29 (1) Rape as set forth in § 22-22-1;
 30 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
 31 committed by an adult;

- 1 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 2 (4) Incest if committed by an adult;
- 3 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
- 4 24A-3;
- 5 (6) Sale of child pornography as set forth in § 22-24A-1;
- 6 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 7 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 8 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 9 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 10 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony
- 11 indecent exposure as set forth in § 22-24-1.2;
- 12 (12) Solicitation of a minor as set forth in § 22-24A-5;
- 13 (13) Felony indecent exposure as set forth in § 22-24-1.3;
- 14 (14) Bestiality as set forth in § 22-22-42;
- 15 (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this
- 16 section;
- 17 (16) Any crime, court martial offense, or tribal offense committed in a place other than
- 18 this state that constitutes a sex crime under this section if committed in this state;
- 19 (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex
- 20 crime under federal law;
- 21 (18) Any crime committed in another state if that state also requires anyone convicted
- 22 of that crime register as a sex offender in that state;
- 23 (19) If the victim is a minor:
- 24 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-
- 25 22-7.6;
- 26 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 27 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 28 (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- 29 (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- 30 (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution
- 31 of a minor; ~~or~~
- 32 (23) Felony use or dissemination of visual recording or photographic device without
- 33 consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-
- 34 21-4;
- 35 (24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or

1 (25) Felony conviction of purchasing or possessing a child-like sex doll as set forth in
2 § 22-24A-3.1.

3 **Section 6.** That § 22-22-1.3 be AMENDED.

4 **22-22-1.3. Contents of presentence investigation report for person**
5 **convicted of sex crime.**

6 Any person convicted of a felony violation as provided in subdivisions 22-24B-1(1)
7 to (15), inclusive, and (19), (24) and (25), shall have included in the offender's
8 presentence investigation report a psycho-sexual assessment including the following
9 information: the offender's sexual history; an identification of precursor activities to sexual
10 offending; intellectual, adaptive and academic functioning; social and emotional
11 functioning; previous legal history; previous treatment history; victim selection and age;
12 risk to the community; and treatment options recommended. If a presentence
13 investigation is not prepared, the court shall order a psycho-sexual assessment which
14 shall be made available to the court prior to sentencing. If the offender is sentenced to
15 the state penitentiary, the psycho-sexual assessment shall be attached to the official
16 statement and supplied to the Board of Pardons and Paroles and the warden.