

22-24-9, 22-24-10. Repealed by SL 1976, ch 158, § 24-11

22-24-11 to 22-24-24. Repealed by SL 1974, ch 165, § 24

22-24-25. Municipal and county power to regulate obscene materials or obscene live conduct not preempted.

Except as provided in § 22-24-37, nothing contained in this chapter limits any county or municipality from regulating obscene material or obscene live conduct within its jurisdiction.

Source: SL 1968, ch 29, § 14; SL 1974, ch 61, § 2; SL 1976, ch 158, § 24-2; SL 1978, ch 162; SL 1994, ch 167, § 1; SL 1998, ch 137, § 1.

22-24-25.1. County or municipal ordinance establishing contemporary community standards test.

Any county or municipality may provide, by ordinance, for a contemporary community standards test to regulate the sale, distribution, and use of obscene material and to regulate obscene live conduct in any commercial establishment or public place within its jurisdiction.

Source: SDCL, § 22-24-25 as added by SL 1978, ch 162; SL 1994, ch 167, § 2; SL 2004, ch 155, § 1; SL 2005, ch 120, § 302.

22-24-26. Obsolete

22-24-27. Definition of terms.

Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:

- (1) "Contemporary community standard," the contemporary community standard of the state in which the question of obscenity is to be tested, by the average person, of the state;
- (2) "Distributed," to transfer possession of, whether with or without consideration;
- (3) "Exhibit," to show or display;
- (4) "Harmful to minors," includes in its meaning the quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, if it:
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors; and
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (c) Is without serious literary, artistic, political, or scientific value;
- (5) "Magistrate," any circuit court or magistrate judge;
- (6) "Material," anything tangible which is harmful to minors, whether derived through the medium of reading, observation, or sound;
- (7) "Matter" or "material," any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or recording, transcription or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials;
- (8) "Minor," any person less than eighteen years of age;
- (9) "Nudity," within the meaning of subdivision (4) of this section, the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;
- (10) "Obscene live conduct," any physical human body activity, whether performed or engaged in alone or with other persons, including singing, speaking, dancing, acting, simulation, or pantomiming, where:
 - (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient interest;
 - (b) The conduct is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and
 - (c) The conduct is without serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct;
- (11) "Obscene material," material:

- (a) The dominant theme of which, taken as a whole, appeals to the prurient interest;
- (b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and
- (c) Lacks serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter;

- (12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group;
- (13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;
- (14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, the breast;
- (15) "Sexual excitement," the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Source: SL 1968, ch 29, § 1; SDCL Supp, § 22-24-11; SL 1974, ch 165, § 1; SL 1976, ch 158, §§ 24-3 to 24-5; SL 1994, ch 167, § 3; SL 2005, ch 120, § 303.

22-24-28. Disseminating material harmful to minors as misdemeanor.

Any person who disseminates material harmful to minors is guilty of a Class 1 misdemeanor.

Source: SL 1968, ch 29, §§ 3, 9 (b); SDCL Supp, §§ 22-24-13, 22-24-20; SL 1974, ch 165, § 18; SL 1976, ch 158, § 24-6.

22-24-29. Possession, sale, or loan as disseminating material harmful to minors.

A person is guilty of disseminating material harmful to minors if that person knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or if that person knowingly sells or loans to a minor for monetary consideration any material described in subdivision § 22-24-27(4).

Source: SL 1974, ch 165, § 18 (1); SL 2005, ch 120, § 304.

22-24-29.1. Publications containing obscene material to be wrapped and sealed while on display--Misdemeanor.

No person may knowingly distribute, display, sell, or exhibit for sale in any public place any magazine, book, or newsprint displaying or containing obscene material on its cover or material unless the magazine, book, or newsprint is wrapped and sealed so that no more than its title, name, price, or date is exposed to the public and the magazine, book, or newsprint cannot be viewed or examined without breaking the seal, wrapping, or covering. Any person who violates this section is guilty of a Class 1 misdemeanor.

Source: SL 1978, ch 161; SL 2005, ch 120, § 305.

22-24-30. Admission to show or exhibition as disseminating material harmful to minors.

A person is guilty of disseminating material harmful to minors if, with reference to a motion picture, show, or other presentation which depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors, that person knowingly:

- (1) Exhibits such motion picture, show, or other presentation to a minor;
- (2) Sells or gives to a minor an admission ticket or pass to premises whereon there is exhibited such motion picture, show, or other presentation; or
- (3) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show, or other presentation.

Source: SL 1974, ch 165, § 18 (2); SL 2005, ch 120, § 306.

22-24-31. Defenses for disseminating materials harmful to minors.

In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

- (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more. A draft card, driver's license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;
- (2) The minor involved was accompanied by a parent or guardian, or by an adult and the adult represented that he or she was the minor's parent or guardian or an adult and the adult signed a written statement to that effect;
- (3) The defendant was the parent or guardian of the minor involved; or
- (4) The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Source: SL 1974, ch 165, § 20; SL 1993, ch 213, § 107; SL 2005, ch 120, § 307.

22-24-32. Misrepresentation to obtain admission of minor--Misdemeanor.

A person is guilty of a Class 1 misdemeanor if that person knowingly misrepresents that he or she is a parent or guardian of a minor for the purpose of obtaining admission of any minor to any motion picture, show, or other presentation which is harmful to minors.

Source: SL 1974, ch 165, § 19 (1); SL 1976, ch 158, § 24-7; SL 2005, ch 120, § 308.

22-24-33. Misrepresentation of age by minor--Misdemeanor.

A minor is guilty of a Class 2 misdemeanor if that minor misrepresents his or her age for the purpose of obtaining admission to any motion picture, show, or other presentation which is harmful to minors.

Source: SL 1974, ch 165, § 19 (2); SL 1976, ch 158, § 24-8; SL 2005, ch 120, § 309.

22-24-34. Dissemination of separate articles as separate offenses.

If more than one article or item of material prohibited under §§ 22-24-27 to 22-24-37, inclusive, is sold, given, advertised for sale, distributed commercially, or promoted, by the same person, after a hearing and determination that probable cause exists to believe such article or material is harmful to minors, each such sale, gift, advertisement, distribution, or promotion constitutes a separate offense.

Source: SL 1974, ch 165, § 21; SL 2005, ch 120, § 310.

22-24-35. Repealed by SL 1976, ch 158, § 24-11

22-24-36. Repealed by SL 1998, ch 137, § 2

22-24-37. Activities and persons excepted.

The provisions of §§ 22-24-27 to 22-24-37, inclusive, do not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise proscribed by those sections, if such possession, distribution, or conduct occurs:

- (1) In the course of law enforcement and judicial activities;
- (2) In the course of bona fide school, college, university, museum, or public library activities or in the course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or
- (3) In the course of employment as a moving picture machine operator, or assistant operator, in a motion picture theater in connection with a motion picture film or show exhibited in such theater if such operator or assistant operator has no financial interest in the motion picture theater wherein that operator or assistant operator is so employed other than wages received or owed;

or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.

Source: SL 1973, ch 148; SDCL Supp, § 22-24-12.1; SL 1974, ch 165, § 2; SL 2005, ch 120, § 311.

22-24-38 to 22-24-51. Repealed by SL 1978, ch 178, § 577