

2021 South Dakota Legislature

Senate Bill 126**AMENDMENT 126B FOR THE INTRODUCED BILL**

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 ~~having features or resembling features of a minor that~~
23 is intentionally designed to resemble a prepubescent child and ~~that is intended for~~

1 ~~to entice sexual excitement, or intended for engagement to engage in prohibited~~
2 ~~sexual acts, or intended for simulation of any such act;~~

3 (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed
4 data processing device performing logical, arithmetic, or storage functions and
5 includes any data storage facility or communications facility directly related to or
6 operating in conjunction with such device, including wireless communication devices
7 such as cellular phones. The term also includes any on-line service, internet service,
8 or internet bulletin board;

9 (5) Deleted by SL 2005, ch 120, § 408

10 (6) "Digital media," any electronic storage device, including a floppy disk or other
11 magnetic storage device or any compact disc that has memory and the capacity to
12 store audio, video, or written materials;

13 (7) "Harmful to minors," any reproduction, imitation, characterization, description,
14 visual depiction, exhibition, presentation, or representation, of whatever kind or
15 form, depicting nudity, sexual conduct, or sexual excitement if it:

16 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
17 minors;

18 (b) Is patently offensive to prevailing standards in the adult community as a
19 whole with respect to what is suitable material for minors; and

20 (c) Taken as a whole, is without serious literary, artistic, political, or scientific
21 value for minors.

22 This term does not include a mother's breast-feeding of her baby;

23 (8) "Masochism," sexual gratification achieved by a person through, or the association
24 of sexual activity with, submission or subjection to physical pain, suffering,
25 humiliation, torture, or death;

26 (9) "Nudity," the showing or the simulated showing of the human male or female
27 genitals, pubic area, or buttocks with less than a fully opaque covering; or the
28 showing of the female breast with less than a fully opaque covering of any portion
29 thereof below the top of the nipple; or the depiction of covered male genitals in a
30 discernibly turgid state for the purpose of creating sexual excitement. This term
31 does not include a mother's breast-feeding of her baby irrespective of whether or
32 not the nipple is covered during or incidental to feeding;

33 (10) "Obscene," the status of material which:

34 (a) The average person, applying contemporary community standards, would
35 find, taken as a whole, appeals to the prurient interest;

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

1 animals, that exhibits uncovered human genitals or the pubic region in a lewd or
 2 lascivious manner, or that exhibits human male genitals in a discernibly turgid state,
 3 even if completely and opaquely covered;

4 (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this
 5 section that creates the appearance of such conduct and that exhibits any
 6 uncovered portion of the breasts, genitals, or anus;

7 (20) "Visual depiction," any developed and undeveloped film, photograph, slide and
 8 videotape, and any photocopy, drawing, printed or written material, ~~and child-like~~
 9 ~~sex doll,~~ and any data stored on computer disk, digital media, or by electronic
 10 means that are capable of conversion into a visual image.

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

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

13 **~~Felony~~Misdemeanor or felony--~~Assessment.~~**

14 It is a ~~Class 4 felony~~Class 1 misdemeanor for any person to knowingly purchase
 15 or possess a child-like sex doll.

16 If a person is convicted of a second or subsequent violation of this section within
 17 fifteen years of the prior conviction, the violation is a ~~Class 3~~Class 6 felony.

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

19 **22-24A-20. Exemption of publications with redeeming social value.**

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

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

26 **22-24B-1. Sex crimes determined.**

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

30 (1) Rape as set forth in § 22-22-1;

- 1 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
- 2 committed by an adult;
- 3 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 4 (4) Incest if committed by an adult;
- 5 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
- 6 24A-3;
- 7 (6) Sale of child pornography as set forth in § 22-24A-1;
- 8 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 9 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 10 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 11 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 12 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony
- 13 indecent exposure as set forth in § 22-24-1.2;
- 14 (12) Solicitation of a minor as set forth in § 22-24A-5;
- 15 (13) Felony indecent exposure as set forth in § 22-24-1.3;
- 16 (14) Bestiality as set forth in § 22-22-42;
- 17 (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this
- 18 section;
- 19 (16) Any crime, court martial offense, or tribal offense committed in a place other than
- 20 this state that constitutes a sex crime under this section if committed in this state;
- 21 (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex
- 22 crime under federal law;
- 23 (18) Any crime committed in another state if that state also requires anyone convicted
- 24 of that crime register as a sex offender in that state;
- 25 (19) If the victim is a minor:
- 26 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-
- 27 22-7.6;
- 28 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 29 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 30 (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- 31 (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- 32 (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution
- 33 of a minor; ~~or~~

- 1 (23) Felony use or dissemination of visual recording or photographic device without
2 consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-
3 21-4;
- 4 (24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or
5 (25) ~~Possessing-Felony conviction of purchasing or possessing~~ a child-like sex doll as
6 set forth in § 22-24A-3.1.

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

8 **22-22-1.3. Contents of presentence investigation report for person**
9 **convicted of sex crime.**

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