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Title 16 - Crimes and Offenses

CHAPTER 15.

OFFENSES AGAINST MORALITY AND DECENCY

ARTICLE 1.

MISCELLANEOUS OFFENSES

SECTION 16-15-10. Bigamy.

Any person who is married who shall marry another person shall, unless:

- (1) His or her husband or wife has remained continually for seven years beyond the sea or continually absented himself or herself from such person for the space of seven years together, such person not knowing his or her wife or husband to be living within that time;
- (2) He or she was married before the age of consent;
- (3) His or her wife or husband is under sentence of imprisonment for life; or
- (4) His or her marriage has been annulled or he or she has been divorced by decree of a competent tribunal having jurisdiction both of the cause and the parties;

On conviction, be punished by imprisonment in the Penitentiary for not more than five years nor less than six months or by imprisonment in the jail for six months and by a fine of not less than five hundred dollars.

SECTION 16-15-20. Incest.

Any persons who shall have carnal intercourse with each other within the following degrees of relationship, to wit:

(1) A man with his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister; or

(2) A woman with her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother or mother's brother;

Shall be guilty of incest and shall be punished by a fine of not less than five hundred dollars or imprisonment not less than one year in the Penitentiary, or both such fine and imprisonment.

SECTION 16-15-50. Seduction under promise of marriage.

A male over the age of sixteen years who by means of deception and promise of marriage seduces an unmarried woman in this State is guilty of a misdemeanor and, upon conviction, must be fined at the discretion of the court or imprisoned not more than one year. There must not be a conviction under this section on the uncorroborated testimony of the woman upon whom the seduction is charged, and no conviction if at trial it is proved that the woman was at the time of the alleged offense lewd and unchaste. If the defendant in any action brought under this section contracts marriage with the woman, either before or after the conviction, further proceedings of this section are stayed.

SECTION 16-15-60. Adultery or fornication.

Any man or woman who shall be guilty of the crime of adultery or fornication shall be liable to indictment and, on conviction, shall be severally punished by a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment for not less than six months nor more than one year or by both fine and imprisonment, at the discretion of the court.

SECTION 16-15-70. "Adultery" defined.

"Adultery" is the living together and carnal intercourse with each other or habitual carnal intercourse with each other without living together of a man and woman when either is lawfully married to some other person.

SECTION 16-15-80. "Fornication" defined.

"Fornication" is the living together and carnal intercourse with each other or habitual carnal intercourse with each other without living together of a man and woman, both being unmarried.

SECTION 16-15-90. Prostitution; lewdness, assignation and prostitution generally.

It shall be unlawful to:

- (1) Engage in prostitution;
- (2) Aid or abet prostitution knowingly;
- (3) Procure or solicit for the purpose of prostitution;
- (4) Expose indecently the private person for the purpose of prostitution or other indecency;
- (5) Reside in, enter or remain in any place, structure, building, vehicle, trailer or conveyance for the purpose of lewdness, assignation or prostitution;
- (6) Keep or set up a house of ill fame, brothel or bawdyhouse;

- (7) Receive any person for purposes of lewdness, assignation or prostitution into any vehicle, conveyance, trailer, place, structure or building;
- (8) Permit any person to remain for the purpose of lewdness, assignation or prostitution in any vehicle, conveyance, trailer, place, structure or building;
- (9) Direct, take or transport, offer or agree to take or transport or aid or assist in transporting any person to any vehicle, conveyance, trailer, place, structure or building or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;
- (10) Lease or rent or contract to lease or rent any vehicle, conveyance, trailer, place, structure or building or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes herein prohibited; or
- (11) Aid, abet, or participate knowingly in the doing of any of the acts herein prohibited.

SECTION 16-15-100. Prostitution; further unlawful acts.

It shall further be unlawful to:

- (1) Procure a female inmate for a house of prostitution;
- (2) Cause, induce, persuade or encourage by promise, threat, violence or by any scheme or device a female to become a prostitute or to remain an inmate of a house of prostitution;
- (3) Induce, persuade or encourage a female to come into or leave this State for the purpose of prostitution or to become an inmate in a house of prostitution;
- (4) Receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any female to become a prostitute or an inmate in a house of prostitution;
- (5) Accept or receive knowingly any money or other thing of value without consideration from a prostitute; or
- (6) Aid, abet or participate knowingly in the doing of any of the acts herein prohibited.

SECTION 16-15-110. Prostitution; violations.

Any person violating any provision of Sections 16-15-90 and 16-15-100 must, upon conviction, be punished as follows:

- (1) for the first offense, a fine not exceeding two hundred dollars or confinement in prison for a period of not more than thirty days;
- (2) for the second offense, a fine not exceeding one thousand dollars or imprisonment for not exceeding six months, or both;
- (3) for the third or any subsequent offense, a fine not exceeding three thousand dollars or imprisonment for not less than one year, or both.

SECTION 16-15-120. Buggery.

Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be guilty of felony and shall be imprisoned in the Penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court.

SECTION 16-15-130. Indecent exposure; breastfeeding.

(A)(1) It is unlawful for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway.

(2) This subsection does not apply to a woman who breastfeeds her own child in a public place, on property of others, to the view of any person on a street or highway, or any other place where a woman and her child are authorized to be.

(B) A person who violates the provisions of subsection (A)(1) is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

SECTION 16-15-140. Committing or attempting lewd act upon child under sixteen.

It is unlawful for a person over the age of fourteen years to wilfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.

A person violating the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

SECTION 16-15-250. Communicating obscene messages to other persons without consent.

It is unlawful for a person to anonymously write, print, telephone, transmit a digital electronic file, or by other manner or means communicate, send, or deliver to another person within this State, without that person's consent, any obscene, profane, indecent, vulgar, suggestive, or immoral message.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

ARTICLE 3.

OBSCENITY, MATERIAL HARMFUL TO MINORS, CHILD EXPLOITATION, AND CHILD PROSTITUTION

SECTION 16-15-305. Disseminating, procuring or promoting obscenity unlawful; definitions; penalties; obscene material designated contraband.

(A) It is unlawful for any person knowingly to disseminate obscenity. A person disseminates obscenity within the meaning of this article if he:

- (1) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, digital electronic file, or other representation or description of the obscene;
- (2) presents or directs an obscene play, dance, or other performance, or participates directly in that portion thereof which makes it obscene;
- (3) publishes, exhibits, or otherwise makes available anything obscene to any group or individual; or
- (4) exhibits, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, present, rent, or to provide: any motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, video tapes and recordings, or any matter or material of whatever form which is a representation, description, performance, or publication of the obscene.

(B) For purposes of this article any material is obscene if:

- (1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section;
- (2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex;
- (3) to a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value; and
- (4) the material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.

(C) As used in this article:

- (1) "sexual conduct" means:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;

(b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;

(c) an act or condition that depicts actual or simulated bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(2) "patently offensive" means obviously and clearly disagreeable, objectionable, repugnant, displeasing, distasteful, or obnoxious to contemporary standards of decency and propriety within the community.

(3) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion and is reflective of an arousal of lewd and lascivious desires and thoughts.

(4) "person" means any individual, corporation, partnership, association, firm, club, or other legal or commercial entity.

(5) "knowingly" means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

(D) Obscenity must be judged with reference to ordinary adults except that it must be judged with reference to children or other especially susceptible audiences or clearly defined deviant sexual groups if it appears from the character of the material or the circumstances of its dissemination to be especially for or directed to children or such audiences or groups.

(E) As used in this article, "community standards" used in determining prurient appeal and patent offensiveness are the standards of the area from which the jury is drawn.

(F) It is unlawful for any person knowingly to create, buy, procure, or process obscene material with the purpose and intent of disseminating it.

(G) It is unlawful for a person to advertise or otherwise promote the sale of material represented or held out by them as obscene.

(H) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(I) Obscene material disseminated, procured, or promoted in violation of this section is contraband and may be seized by appropriate law enforcement authorities.

SECTION 16-15-315. Condition on certain sales for resale or on franchising rights that obscene material be received for resale prohibited; penalties.

No person shall, as a condition to any sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, digital electronic file require that the purchaser or consignee receive for resale any other article, book, publication, or digital electronic file which is obscene within the meaning of Section 16-15-305 nor shall any person deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept the articles, books, publications, or digital electronic files, or by reason of the return thereof. A

person who violates this section is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than one thousand dollars, or both.

SECTION 16-15-325. Participation in preparation of obscene material prohibited; penalties.

Any individual who knowingly:

- (a) photographs himself or any other individual or animal for purposes of preparing an obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination; or
- (b) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year and fined not more than one thousand dollars.

SECTION 16-15-335. Permitting minor to engage in any act constituting violation of this article prohibited; penalties.

An individual eighteen years of age or older who, in any manner, knowingly hires, employs, uses, or permits a person under the age of eighteen years to do or assist in doing an act or thing constituting an offense pursuant to this article and involving any material, act, or thing he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

SECTION 16-15-342. Criminal solicitation of a minor; defenses; penalties.

(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

(B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.

(C) Consent is not a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is under the age of sixteen.

(D) It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

SECTION 16-15-345. Disseminating obscene material to person under age eighteen prohibited; penalties.

An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

SECTION 16-15-355. Disseminating obscene material to minor twelve years of age or younger prohibited; penalties.

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

SECTION 16-15-365. Exposure of private parts in lewd and lascivious manner, aiding or procuring person to perform such act, or permitting use of premises for such act prohibited; penalties.

Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets any such act, or who procures another to perform such act, or any person, who as owner, manager, lessee, director, promoter, or agent, or in any other capacity knowingly hires, leases, or permits the land, building, or premises of which he is owner, lessee, or tenant, or over which he has control, to be used for purposes of any such act, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

SECTION 16-15-375. Definitions applicable to Sections 16-15-385 through 16-15-425.

The following definitions apply to Section 16-15-385, disseminating or exhibiting to minors harmful material or performances; Section 16-15-387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16-15-395, first degree sexual exploitation of a minor; Section 16-15-405, second degree sexual exploitation of a minor; Section 16-15-410, third degree sexual exploitation of a minor; Section 16-15-415, promoting prostitution of a minor; and Section 16-15-425, participating in prostitution of a minor.

(1) "Harmful to minors" means that quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

(a) the average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

(b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

(c) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) "Material" means pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations but not material consisting entirely of written words.

(3) "Minor" means an individual who is less than eighteen years old.

(4) "Prostitution" means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) "Sexual activity" includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or an animal;

(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) "Sexually explicit nudity" means the showing of:

(a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

SECTION 16-15-385. Disseminating harmful material to minors and exhibiting harmful performance to minor defined; defenses; penalties.

(A) A person commits the offense of disseminating harmful material to minors if, knowing the character or content of the material, he:

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

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

A person does not commit an offense under this subsection when he employs a minor to work in a theater if the minor's parent or guardian consents to the employment and if the minor is not allowed in the viewing area when material harmful to minors is shown.

(B) A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance which is harmful to minors.

(C) Except as provided in item (3) of this subsection, mistake of age is not a defense to a prosecution under this section. It is an affirmative defense under this section that:

(1) the defendant was a parent or legal guardian of a minor, but this item does not apply when the parent or legal guardian exhibits or disseminates the harmful material for the sexual gratification of the parent, guardian, or minor.

(2) the defendant was a school, church, museum, public, school, college, or university library, government agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

(3) before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least eighteen years old, and the defendant reasonably believed the minor was at least eighteen years old.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

SECTION 16-15-387. Employment of person under eighteen to appear in public in state of sexually explicit nudity; mistake of age; penalties.

(A) It is unlawful for a person to employ a person under the age of eighteen years to appear in a state of sexually explicit nudity, as defined in Section 16-15-375(6), in a public place.

(B) Mistake of age is not a defense to a prosecution pursuant to this section. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

SECTION 16-15-395. First degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

(2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(B) In a prosecution under this section, the trier of fact may infer that a participant in a sexual activity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

(C) Mistake of age is not a defense to a prosecution under this section.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than twenty years. No part of the minimum sentence of imprisonment may be suspended nor is the individual convicted eligible for parole until he has served the minimum term of imprisonment. Sentences imposed pursuant to this section must run consecutively with and commence at the expiration of another sentence being served by the person sentenced.

SECTION 16-15-405. Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

(A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity; or

(2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

(B) In a prosecution under this section, the trier of fact may infer that a participant in sexual activity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

(C) Mistake of age is not a defense to a prosecution under this section.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than ten years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.

SECTION 16-15-410. Third degree sexual exploitation of a minor defined; penalties; exception.

(A) An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity depicted as a minor through its title, text, visual representation, or otherwise is a minor.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

(D) This section does not apply to an employee of a law enforcement agency, including the State Law Enforcement Division, a prosecuting agency, including the South Carolina Attorney General's Office, or the South Carolina Department of Corrections who, while acting within the employee's official capacity in the course of an investigation or criminal proceeding, is in possession of material that contains a visual representation of a minor engaging in sexual activity.

SECTION 16-15-415. Promoting prostitution of a minor defined; defenses; penalties.

(A) An individual commits the offense of promoting prostitution of a minor if he knowingly:

(1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or

(2) supervises, supports, advises, or promotes the prostitution of or by a minor.

(B) Mistake of age is not a defense to a prosecution under this section.

(C) An individual who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than twenty years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence. Sentences imposed pursuant to this section must run consecutively with and must commence at the expiration of another sentence being served by the individual sentenced.

SECTION 16-15-425. Participating in prostitution of a minor defined; defenses; penalties.

(A) An individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, "patronizing a minor prostitute" means:

(1) soliciting or requesting a minor to participate in prostitution;

(2) paying or agreeing to pay a minor, either directly or through the minor's agent, to participate in prostitution; or

(3) paying a minor, or the minor's agent, for having participated in prostitution, pursuant to a prior agreement.

(B) Mistake of age is not a defense to a prosecution under this section.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.

SECTION 16-15-435. Circuit solicitor to request search and arrest warrants for violations of Sections 16-15-305 through 16-15-325; hearing on obscenity issue.

(A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

(B) Following seizure of allegedly obscene property pursuant to a warrant requested by a solicitor, and issued by a neutral and detached magistrate based on supporting affidavits, any interested party may request and the court having appropriate jurisdiction must promptly conduct an adversarial hearing for the purpose of obtaining a judicial determination, based on a preponderance of the evidence, of the obscenity issue.

SECTION 16-15-445. Seizure and forfeiture of equipment used in committing violation; hearing; disposition of forfeited property; allocation of sale proceeds.

(A) All equipment used directly by a person in committing a violation of Sections 16-15-305, 16-15-342, 16-15-395, 16-15-405, or 16-15-410, including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.

(B) Prior to entering a forfeiture order, the court must conduct a hearing to determine ownership and the rights of innocent third parties with respect to the property, and notice of the hearing must be given to all interested parties. The court must incorporate into its forfeiture order provisions necessary to protect the interests of innocent third parties.

(C) Subject to the limitations of subsection (B), property forfeited pursuant to court order must be destroyed by the arresting law enforcement agency, unless that law enforcement agency can show good cause for retaining the property. Ownership of property so retained vests in the arresting law enforcement agency which may use the property in the performance of its duties, destroy it, or sell it at public auction. Retained property may be sold at public auction after giving notice, in a newspaper of general circulation in the county, of the date, time, and place of the auction and a description of the property to be auctioned. After payment of the expenses of the auction, one-half of the net proceeds may be retained by the arresting law enforcement agency, and one-half must be remitted to the State Treasurer for deposit to the credit of the Victim's Compensation Fund.

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