

CHAPTER 15

OBSCENITY

- Art. I. In General, §§15-1--15-22
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ARTICLE I. IN GENERAL

SECTION 15-1. "OBSCENE" DEFINED.

The word "obscene," where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

State Law Reference--Similar provisions, Code of Virginia, §18.2-372.

SECTION 15-2. OBSCENE ITEMS ENUMERATED.

For the purposes of this article, obscene items shall include:

1. Any obscene book; or
2. Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, bumper sticker, drawing, photograph, film, negative, slide, motion picture or videotape recording; or
3. Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words or sounds.

State Law Reference--Similar provisions, Code of Virginia, §18.2-373.

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SECTION 15-3. PRODUCTION, PUBLICATION, SALE, POSSESSION, ETC., OF OBSCENE ITEMS.

- (a) It shall be unlawful for any person to knowingly:
1. Prepare any obscene item for the purpose of sale or distribution; or
 2. Print, copy, manufacture, produce or reproduce any obscene item for purposes of sale or distribution; or
 3. Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item, or offer to do any of these things; or
 4. Have in his possession with intent to sell, rent, lend, transport or distribute any obscene item.

Possession in public or in a public place of any obscene item shall be deemed prima facie evidence of a violation of this section.

- (b) For the purposes of this section, "distribute" shall mean delivery in person, by mail, messenger or by any other means by which obscene items may pass from one person to another.(Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-374; Authority of council to adopt ordinances, Code of Virginia, §18.2-389.

SECTION 15-4. OBSCENE EXHIBITIONS AND PERFORMANCES GENERALLY.

It shall be unlawful for any person knowingly to:

1. Produce, promote, prepare, present, manage, direct, carry on or participate in any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theatre, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section if the employee is not the manager of the theatre or an officer of such entity, and has no financial interest in such theatre other than receiving salary and wages; or
2. Own, lease or manage any theatre, garden, building, structure, room or place and lease, let, lend or permit such theatre, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the

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locality who is the manager of such theatre, garden, building, structure, room or place.

State Law Reference--Similar provisions, Code of Virginia, §18.2-375.

SECTION 15-5. ADVERTISING OBSCENE ITEMS, EXHIBITIONS OR PERFORMANCES GENERALLY.

It shall be unlawful for any person to knowingly prepare, print, publish or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item referred to in §15-2 or of any obscene performance or exhibition referred to in §15-4, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard.

State Law Reference--Similar provisions, Code of Virginia, §18.2-376.

SECTION 15-6. OBSCENE PLACARDS, POSTERS, BILLS, ETC.

Every person who knowingly exposes, places, displays, posts, exhibits, paints, prints or marks, or causes to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing or picture which is obscene, or who advertises or promotes any obscene item referred to in §15-2 or any obscene exhibition or performance referred to in §15-4, or who knowingly permits the same to be displayed on property belonging to or controlled by him, shall be guilty of a Class 1 misdemeanor.

State Law Reference--Similar provisions, Code of Virginia, §18.2-377.

SECTION 15-7. COERCING ACCEPTANCE OF OBSCENE ARTICLES OR PUBLICATIONS.

No person shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication, require that the purchaser or consignee receive for resale any other article, book or other publication which is obscene; 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 such articles, books or publications, or by reason of the return thereof.

State Law Reference--Similar provisions, Code of Virginia, §18.2-378.

SECTION 15-8. PHOTOGRAPHS, SLIDES AND MOTION PICTURES.

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Every person who knowingly:

1. Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or
2. Models, poses, acts or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; shall be guilty of a Class 3 misdemeanor.

State Law Reference--Similar provisions, Code of Virginia, §18.2-382.

SECTION 15-9. INDECENT EXPOSURE.

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. (Code 1959, §16-12)

State Law Reference--Similar provisions, Code of Virginia, §18.2-387.

SECTION 15-10. EMPLOYING OR PERMITTING MINOR TO ASSIST IN OFFENSE UNDER ARTICLE.

Every person who knowingly, hires, employs, uses or permits any minor to do or assist in doing any act or thing constituting an offense under this article shall be guilty of a Class 1 misdemeanor.

State Law Reference--Similar provisions, Code of Virginia, §18.2-379.

SECTION 15-11. EXCEPTIONS FROM ARTICLE.

Nothing contained in this article shall be construed to apply to:

1. The purchase, distribution, exhibition or loan of any book, magazine or other printed or manuscript material by any library, school or institution of higher learning supported by public appropriation.
2. The purchase, distribution, exhibition or loan of any work of art by any museum of fine arts, school or institution of higher learning, supported by public appropriation.

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3. The exhibition or performance of any play, drama, tableau or motion picture by any theatre, museum of fine arts, school or institution of higher learning, supported by public appropriation.

State Law Reference--Similar provisions, Code of Virginia, §18.2-383.

SECTION 15-12. VIOLATIONS.

Violation of any provision of this article shall constitute a Class 1 misdemeanor, unless otherwise stated. (Ord. No. 049-95, 10-17-95)

SECTIONS 15-13 - 15-22. RESERVED.

ARTICLE II. OFFENSES RELATING TO JUVENILES

SECTION 15-23. DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Harmful to juveniles: That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of juveniles; and
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles; and
3. Is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

Juvenile: A person less than eighteen (18) years of age.

Knowingly: Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant; and

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2. The age of the juvenile; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

Nudity: A state of undress so as to expose 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 fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernably turgid state.

Sadomasochistic abuse: Actual or explicitly simulated 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 so clothed.

Sexual conduct: Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

Sexual excitement: The condition of human male or female genitals when in a state of sexual stimulation or arousal. (Code 1959, §16-12.1)

State Law Reference--Similar provisions, Code of Virginia, §18.2-390.

SECTION 15-24. UNLAWFUL SALES OR LOANS TO JUVENILES GENERALLY.

It shall be unlawful for any person to knowingly sell, rent or loan to a juvenile;

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles; or
2. Any book, pamphlet, magazine, printed matter however reproduced or sound recording which contains any matter enumerated in (1) above, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles. (Code 1959, §16-12.2)(Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(a).

SECTION 15-25. ADMITTING JUVENILES TO PREMISES EXHIBITING OBSCENE FILMS OR OTHER PRESENTATIONS.

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It shall be unlawful for any person to knowingly sell to a juvenile an admission ticket or pass, or to knowingly admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises. (Code 1959, §16-12.2)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(b).

SECTION 15-26. MISREPRESENTATIONS AS TO JUVENILE'S AGE, ETC.

- (a) It shall be unlawful for any juvenile to falsely represent to any person mentioned in §15-24 or §15-25, or to his agent, that such juvenile is eighteen (18) years of age or older, with the intent to procure any material set forth in §15-24, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in §15-25.
- (b) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in §15-24 or §15-25, or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is eighteen (18) years of age or older, with the intent to procure any material set forth in §15-24, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in §15-25. (Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(c) and (d).

SECTION 15-27. EXCEPTIONS FROM ARTICLE.

Nothing contained in this article shall be construed to apply to:

- 1. The purchase, distribution, exhibition or loan of any work of art, book, magazine or other printed or manuscript material by any accredited museum, library, school or institution of higher learning.
- 2. The exhibition or performance of any play, drama, tableau or motion picture by any theatre, museums, school or institution of higher learning, either supported by public appropriation or which is an accredited institution supported by private funds.

State Law Reference--Similar provisions, Code of Virginia, §18.2-391.1.

SECTION 15-28. VIOLATIONS.

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Violation of any provision of this section shall constitute a Class 1 misdemeanor.
(Ord. No. 049-95, 10-17-95)