

Supp. 756 (W.D.N.C. 1985).

§ 14-190.5. Preparation of obscene photographs, slides and motion pictures.

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 the purpose of dissemination; or
- (2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for the purpose of dissemination,

shall be guilty of a Class 1 misdemeanor.

History.

1971, c. 405, s. 1; 1985, c. 703, s. 5; 1993, c. 539, s. 123; 1994, Ex. Sess., c. 24, s. 14(c).

The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

For note, "Assessing the Constitutionality of North Carolina's New Obscenity Law," see 65 N.C.L. Rev. 400 (1987).

Legal Periodicals.

For article, "Regulation of Pornography —

CASE NOTES

Constitutionality. — The federal district court would abstain from determining the constitutionality of North Carolina House Bill No. 1171 (Session Laws 1985, c. 703), enacted in 1985, which substantially amended this sec-

tion, until the parties could obtain a resolution of this issue in the North Carolina General Courts of Justice. *Floyd v. Thornburg*, 619 F. Supp. 756 (W.D.N.C. 1985).

§ 14-190.5A. Disclosure of private images.

(a) **Definitions.** — The following definitions apply in this section:

- (1) **Disclose.** — Transfer, publish, distribute, or reproduce.
- (2) **Image.** — A photograph, film, videotape, recording, live transmission, digital or computer-generated visual depiction, or any other reproduction that is made by electronic, mechanical, or other means.
- (3) **Intimate parts.** — Any of the following naked human parts: (i) male or female genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the nipple of a female over the age of 12.
- (4), (5) **Repealed by Session Laws 2017-93, s. 1, effective December 1, 2017, and applicable to offenses committed on or after that date.**
- (6) **Sexual conduct.** — Includes any of the following:
 - a. Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted.
 - b. Masturbation, excretory functions, or lewd exhibition of uncovered genitals.
 - c. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

(b) **Offense.** — A person is guilty of disclosure of private images if all of the following apply:

- (1) The person knowingly discloses an image of another person with the intent to do either of the following:
 - a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
- (2) The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
- (3) The depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct in the disclosed image.
- (4) The person discloses the image without the affirmative consent of the depicted person.
- (5) The person obtained the image without consent of the depicted person or under circumstances such that the person knew or should have known that the depicted person expected the images to remain private.

(c) **Penalty.** — A violation of this section shall be punishable as follows:

- (1) For an offense by a person who is 18 years of age or older at the time of the offense, the violation is a Class H felony.
- (2) For a first offense by a person who is under 18 years of age at the time of the offense, the violation is a Class 1 misdemeanor.
- (3) For a second or subsequent offense by a person who is under the age of 18 at the time of the offense, the violation is a Class H felony.

(d) **Exceptions.** — This section does not apply to any of the following:

- (1) Images involving voluntary exposure in public or commercial settings.
- (2) Disclosures made in the public interest, including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities.
- (3) Providers of an interactive computer service, as defined in 47 U.S.C. § 230(f), for images provided by another person.

(e) **Destruction of Image.** — In addition to any penalty or other damages, the court may award the destruction of any image made in violation of this section.

(f) **Other Sanctions or Remedies Not Precluded.** — A violation of this section is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(g) **Civil Action.** — In addition to any other remedies at law or in equity, including an order by the court to destroy any image disclosed in violation of this section, any person whose image is disclosed, or used, as described in subsection (b) of this section, has a civil cause of action against any person who discloses or uses the image and is entitled to recover from the other person any of the following:

- (1) Actual damages, but not less than liquidated damages, to be computed at the rate of one thousand dollars (\$1,000) per day for each day of the

violation or in the amount of ten thousand dollars (\$10,000), whichever is higher.

(2) Punitive damages.

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

The civil cause of action may be brought no more than one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure of the private image.

History.

2015-250, s. 1; 2017-93, s. 1.

Editor's Note.

Session Laws 2015-250, s. 3, made this section effective December 1, 2015, and applicable to offenses committed on or after that date and to actions initiated on or after that date.

Session Laws 2015-250, s. 1.5, provides: "The Joint Legislative Oversight Committee on Justice and Public Safety shall study the issue of improper disclosure of images of people superimposed onto other images exposing intimate parts or depicting sexual conduct. The study shall include whether any existing crimes or civil actions currently apply and whether G.S. 14-190.5A, as enacted by this act, should be amended to include superimposed images. The Joint Legislative Oversight Committee on Justice and Public Safety shall report its findings and any recommendations to the General Assembly by April 1, 2016."

Session Laws 2017-93, s. 2, provides: "The Joint Legislative Oversight Committee on Justice and Public Safety shall study the issue of improper disclosure of an image of a person superimposed onto another image of exposed intimate parts or depicting sexual conduct. The study shall include whether any existing crimes or civil actions currently apply and whether G.S. 14-190.5A, as enacted, should be

amended to include superimposed images. The Joint Legislative Oversight Committee on Justice and Public Safety shall report its findings and any recommendations to the General Assembly by April 1, 2018."

Session Laws 2017-93, s. 3, made the amendment to this section by Session Laws 2017-93, s. 1, effective December 1, 2017, and applicable to offenses committed on or after that date.

Effect of Amendments.

Session Laws 2017-93, s. 1, substituted "live transmission, digital or computer-generated visual depiction, or any other reproduction that is made by electronic, mechanical, or other means" for "digital, or other reproduction" in subdivision (a)(2); deleted subdivision (a)(4), which read: "Personal relationship. — As defined in G.S. 50B-1(b)"; deleted subdivision (a)(5), which read: "Reasonable expectation of privacy. — When a depicted person has consented to the disclosure of an image within the context of a personal relationship and the depicted person reasonably believes that the disclosure will not go beyond that relationship"; and rewrote subdivision (b)(5), which read: "The person discloses the image under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy." For effective date and applicability, see editor's note.

§ 14-190.6. Employing or permitting minor to assist in offense under Article.

Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a Class I felony.

History.

1971, c. 405, s. 1; 1983, c. 916, s. 2; 1985, c. 703, s. 6.

Legal Periodicals.

For article, "Regulation of Pornography — The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

For note, "Assessing the Constitutionality of North Carolina's New Obscenity Law," see 65 N.C.L. Rev. 400 (1987).

For comment, "Amy Jackson Law — A Look at the Constitutionality of North Carolina's Answer to Megan's Law," see 20 Campbell L. Rev. 347 (1998).