



2021 South Dakota Legislature
Senate Bill 126
ENROLLED

AN ACT

ENTITLED An Act to establish the crime of possession, manufacturing, or distribution of obscene dolls.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added:

22-24A-1.1. Manufacturing or distributing child-like sex doll--Felony.

It is a Class 4 felony for any person to:

- (1) Create a child-like sex doll;
- (2) Cause or knowingly permit the creation of a child-like sex doll; or
- (3) Knowingly distribute, sell, or display for sale, or otherwise disseminate a child-like sex doll.

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

Section 2. That § 22-24A-2 be AMENDED.

22-24A-2. Definitions.

Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," any person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (3A) "Child-like sex doll," any obscene anatomical doll, obscene anatomical mannequin, or obscene anatomical robot that is intentionally designed to resemble a prepubescent child and either to entice sexual excitement or to engage in prohibited sexual acts;

- (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) Deleted by SL 2005, ch 120, § 408
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
 - (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) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This term does not include a mother's breast-feeding of her baby;
- (8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;
- (9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully 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 male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;
- (10) "Obscene," the status of material which:
 - (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
 - (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and
 - (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

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

manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

- (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;
- (20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

Section 3. That a NEW SECTION be added:

22-24A-3.1. Purchasing or possessing child-like sex doll--Misdemeanor or felony.

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

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

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

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

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

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

22-24B-1. Sex crimes determined.

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

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;

- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this section;
- (16) Any crime, court martial offense, or tribal offense committed in a place other than this state that constitutes a sex crime under this section if committed in this state;
- (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires anyone convicted of that crime register as a sex offender in that state;
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor;
- (23) Felony use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-21-4;
- (24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or

- (25) Felony conviction of purchasing or possessing a child-like sex doll as set forth in § 22-24A-3.1.

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

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

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

An Act to establish the crime of possession, manufacturing, or distribution of obscene dolls.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 126

2021 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2021

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2021
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 126
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State