CHAPTER 15

Offenses Against Morality and Decency

CROSS REFERENCES

Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings, criminal background checks, see Section 43‑35‑240.

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.

HISTORY: 1962 Code Section 16‑401; 1952 Code Section 16‑401; 1942 Code Section 1434; 1932 Code Section 1434; Cr. C. ‘22 Section 374; Cr. C. ‘12 Section 381; Cr. C. ‘02 Section 289; G. S. 2587; R. S. 250; 1712 (2) 508; 1874 (15) 603.

CROSS REFERENCES

Bigamous marriages being void, see Section 20‑1‑80.

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Bigamy 1, 17.

Westlaw Topic No. 55.

C.J.S. Bigamy and Related Offenses Sections 1 to 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 4, English Act of 1604.

S.C. Jur. Bigamy Section 6, Overview.

S.C. Jur. Bigamy Section 8, Validity of First and Second Marriages.

S.C. Jur. Bigamy Section 17, Absence of Spouse for Seven Years.

S.C. Jur. Bigamy Section 18, Marriage Before Age of Consent.

S.C. Jur. Bigamy Section 19, Spouse Under Life Sentence.

S.C. Jur. Bigamy Section 20, Valid Annulment or Divorce.

S.C. Jur. Bigamy Section 25, Sentence, Punishment and Disabilities of Convicted Defendant.

S.C. Jur. Seduction Section 7, Seduction Distinguished from Breach of Promise to Marry.

LAW REVIEW AND JOURNAL COMMENTARIES

Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence. Elizabeth F. Emens, 29 N.Y.U.Rev.L. & Soc.Change 277 (2004).

NOTES OF DECISIONS

In general 1

1. In general

Declarations of the prisoner that he had married the first wife, and proof of long cohabitation, are sufficient to prove the first marriage. State v Britton (1827) 15 SCL 256. State v Hilton (1827) 37 SCL 434.

Prior marriage as the foundation of crime of bigamy, under this section [Code 1962 Section 16‑401], must be such as is recognized in the law. State v. Sellers (S.C. 1926) 140 S.C. 66, 134 S.E. 873. Marriage And Cohabitation 1171

A first marriage that is voidable, but not void, is sufficient foundation for crime of bigamy. State v. Sellers (S.C. 1926) 140 S.C. 66, 134 S.E. 873. Marriage And Cohabitation 1171

Where defendant’s first marriage was void because contracted with one who had previously entered into a marriage voidable for want of age, but never in fact annulled, it was insufficient to support a charge of bigamy. State v. Sellers (S.C. 1926) 140 S.C. 66, 134 S.E. 873. Marriage And Cohabitation 1171

In support of the proposition that a divorce decree rendered in a foreign state must be recognized in South Carolina, cited in Dawson v. Della Torre (S.C. 1921) 116 S.C. 338, 108 S.E. 101.

In a prosecution under this section [Code 1962 Section 16‑401], there is no presumption that a former marriage solemnized in due form was illegal at time of performance. Hallums v. Hallums (S.C. 1906) 74 S.C. 407, 54 S.E. 613.

**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.

HISTORY: 1962 Code Section 16‑402; 1952 Code Section 16‑402; 1942 Code Section 1440; 1932 Code Section 1440; Cr. C. ‘22 Section 381; Cr. C. ‘12 Section 388; Cr. C. ‘02 Section 295; R. S. 258; 1884 (19) 801.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Offender registry information available to public, see Section 23‑3‑490.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Placement of minor sex offenders, see Section 63‑7‑2360.

Prohibition of marriage of persons within certain degree of relationship, see Section 20‑1‑10.

Sexually Violent Predator Act, definitions, see Section 44‑48‑30.

Library References

Incest 3.

Westlaw Topic No. 207.

C.J.S. Incest Sections 8 to 20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 8, Incest.

Attorney General’s Opinions

The following would be classified as Tier III sexual offenses pursuant to the Sex Offender Registration and Notification Act requirements: spousal sexual battery; criminal sexual conduct, where the victim is a spouse; incest, where the victim is under 16 years of age; and sexual misconduct with an inmate, patient, or offender, depending on the sexual misconduct involved and the age of the victim. S.C. Op.Atty.Gen. (July 7, 2011) 2011 WL 3346429.

Among State code provisions which are included in term “sexual offense” are Sections 16‑3‑652 et seq., 16‑15‑130, 16‑15‑140 [repealed], and 16‑15‑20. 1985 Op.Atty.Gen., No 85‑22, p 75 (1985 WL 165992).

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

Constitutional issues 3

1. In general

Where defendant in 1882 married the daughter of his half‑sister when incest was not a crime, and such marriage was not void, but voidable, his cohabitation with her after this section [Code 1962 Section 16‑402] was enacted, making incest a crime, could not be punished as incest, for as to him the statute would be ex post facto. State v. Smith (S.C. 1915) 101 S.C. 293, 85 S.E. 958, Am.Ann.Cas. 1917C,149. Incest 2

The State may show that crime was committed seven years before the date alleged in the indictment. State v. Reynolds (S.C. 1897) 48 S.C. 384, 26 S.E. 679. Incest 11

2. Admissibility of evidence

Forensic psychologist’s expert testimony that defendant did not fit the diagnostic qualifications of a pedophile was irrelevant and, thus, inadmissible in defendant’s trial for homicide by child abuse and other charges; defendant was allegedly involved in incest, and there were significant differences in identification and diagnosis of incest abusers and pedophiles. State v. Jarrell (S.C.App. 2002) 350 S.C. 90, 564 S.E.2d 362, rehearing denied, certiorari denied, habeas corpus dismissed 2011 WL 1526816. Criminal Law 474.4(5)

3. Constitutional issues

Trial counsel’s failure to object to pediatrician’s testimony, that she believed victim was abused as improper bolstering, constituted deficient performance in trial for criminal sexual conduct (CSC) with a minor, lewd act upon a minor, and incest; although it was proper for pediatrician to opine that based on her examination, victim’s injuries were consistent with sexual abuse, testimony that pediatrician believed victim was abused implied that she found victim credible. Mangal v. State (S.C.App. 2015) 415 S.C. 310, 781 S.E.2d 732, rehearing denied, reversed 2017 WL 3045812. Criminal Law 1931

Trial counsel’s failure to object to pediatrician’s testimony, that she believed victim was abused as improper bolstering, was prejudicial to defendant in trial for criminal sexual conduct (CSC) with a minor, lewd act upon a minor, and incest; case lacked physical evidence and hinged on credibility, and pediatrician’s testimony was critical on that issue. Mangal v. State (S.C.App. 2015) 415 S.C. 310, 781 S.E.2d 732, rehearing denied, reversed 2017 WL 3045812. Criminal Law 1931

**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.

HISTORY: 1962 Code Section 16‑405; 1952 Code Section 16‑405; 1942 Code Section 1441; 1932 Code Section 1441; Cr. C. ‘22 Section 382; Cr. C. ‘12 Section 389; 1905 (24) 937; 1993 Act No. 184, Section 179.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Seduction 29, 53.

Westlaw Topic No. 350.

C.J.S. Rape Section 3.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Alienation of Affection Section 5, Parent’s Action for Alienation of Child’s Affection‑Generally.

S.C. Jur. Seduction Section 16, Seduction Under Promise of Marriage.

S.C. Jur. Seduction Section 18, Effect of Defendant’s Marriage to Seduced Woman.

S.C. Jur. Seduction Section 21, Corroboration of Prosecutrix’s Claim.

S.C. Jur. Seduction Section 23, Misdemeanor.

Forms

Am. Jur. Pl. & Pr. Forms Seduction Section 1 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Corroboration 3

Presumptions and burden of proof 4

Sentence and punishment 5

1. In general

To authorize conviction for seduction under this section [Code 1962 Section 16‑405], defendant’s promise to marry need not have been immediate inducement to coition, but yielding upon faith of previous promise is sufficient. State v. Smith (S.C. 1928) 147 S.C. 485, 145 S.E. 287.

This section [Code 1962 Section 16‑405] providing that any male person over 16, who shall, by any means of deception and promise of marriage, seduce any unmarried woman shall be deemed guilty, must be construed as if it read “any means of deception by promise of marriage.” State v. Heath (S.C. 1925) 133 S.C. 147, 130 S.E. 513.

Sexual intercourse which comes about by the artifice of the defendant upon his promise to marry a woman constitutes seduction. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Seduction 34

Where a girl consents to sexual intercourse on the condition that the man will marry her if she becomes pregnant, the promise will not support a prosecution for seduction. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Seduction 34

Where a chaste girl had intercourse under a promise of marriage, the seduction was complete, and it is no defense that she abandoned herself freely, lewdly and habitually to the will and lust of her seducer after she found she had been betrayed. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Seduction 36

An unexpected offer of marriage does not come within the saving clause of this section [Code 1962 Section 16‑405], which provides that, if the defendant shall contract marriage, further proceedings thereunder shall be stayed. State v. Whitaker (S.C. 1916) 103 S.C. 210, 87 S.E. 1001, Am.Ann.Cas. 1918E,467. Seduction 36

That a marriage was contracted under the saving clause of this section [Code 1962 Section 16‑405] is no defense to a prosecution of the husband under Code 1962 Section 20‑303 for desertion. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721.

2. Constitutional issues

A marriage resulting under the proviso of this section [Code 1962 Section 16‑405] penalizing seduction under promise of marriage, but permitting seducer to escape the penalty of his wrong by marrying his victim, is valid. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721. Marriage And Cohabitation 245

3. Corroboration

The exhibition to the jury of the child of the alleged seduction is relevant and competent, not merely to corroborate prosecutrix’s testimony that she was seduced by someone, but for purpose of showing child’s resemblance to defendant, thereby corroborating her testimony that defendant seduced her. State v Heavener (1928) 146 SC 138, 143 SE 674. State v Teal (1918) 108 SC 455, 95 SE 69.

The objection, in a seduction trial, that evidence deduced from resemblance of immature child to defendant is too vague, uncertain and fanciful to be submitted to jury, goes to the weight, rather than the relevancy, thereof. State v. Heavener (S.C. 1928) 146 S.C. 138, 143 S.E. 674. Criminal Law 404.45

Where the court submitted a seduction case to the jury and there was corroborating evidence, it would be idle to reverse because the court did not expressly hold that there was corroborating evidence, as the submission of the issue to the jury was an implied holding that there was corroborating evidence. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Criminal Law 1175

A confession, birth of a child and defendant’s letter are proper evidence to corroborate prosecutrix in a seduction case. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Seduction 40

“To corroborate” as used in this section [Code 1962 Section 16‑405] means to strengthen or add weight or credibility to a thing. State v. Griffin (S.C. 1917) 106 S.C. 283, 91 S.E. 318.

In a prosecution for seduction under promise to marry, the testimony of the mother in regard to statements by defendant before and after the event to the effect that he would marry the girl, are sufficient to corroborate the testimony of the girl. State v. Griffin (S.C. 1917) 106 S.C. 283, 91 S.E. 318. Seduction 46

In a seduction trial, an instruction: “The question of whether or not there is any corroborative testimony is a question that is addressed to the court. If there is no corroborative testimony, then the case would never get to you; it would be my duty to withhold it from you. If the case gets to you, it is for you to say whether from all of the testimony the State has established its case. If there had been no corroborative testimony, the case would never have gotten to you;” was not erroneous as instructing as to the weight of corroborating evidence. State v. Livingston (S.C. 1916) 105 S.C. 251, 89 S.E. 550.

4. Presumptions and burden of proof

The chastity of prosecutrix is presumed in a prosecution for seduction, and such presumption will support conviction, unless defendant proves that she was lewd and unchaste. State v Heavener (1928) 146 SC 138, 143 SE 674. State v Turner (1909) 82 SC 278, 64 SE 424.

5. Sentence and punishment

A sentence of three years’ imprisonment for seduction of innocent and chaste country girl is not a cruel and unusual punishment. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Sentencing And Punishment 1504

Under Code 1962 Section 17‑557, providing that circuit judges shall have the power and authority, in their discretion, to suspend sentences imposed by them upon such terms and upon such conditions as in their judgment may be fit and proper, the court has the power to suspend part of a sentence of imprisonment in a seduction case on condition that defendant pay a specified amount toward the support of the child of the seduced girl. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69.

**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.

HISTORY: 1962 Code Section 16‑406; 1952 Code Section 16‑406; 1942 Code Section 1435; 1932 Code Section 1435; Cr. C. ‘22 Section 375; Cr. C. ‘12 Section 382; Cr. C. ‘02 Section 290; G. S. 2588; R. S. 251; 1880 (17) 328.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Adultery 1, 16.

Criminal Law 45.40.

Westlaw Topic Nos. 19, 110.

C.J.S. Adultery Sections 1 to 10.

C.J.S. Criminal Law Section 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Conversation Section 2, Historical Background.

S.C. Jur. Criminal Sexual Conduct Section 7, Adultery and Fornication.

Treatises and Practice Aids

Restatement (2d) of Property, Don. Trans. Section 6.1, Restraints on Any First Marriage.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Domestic law. 43 S.C. L. Rev. 69 (Autumn 1991).

South Carolina’s sexual conduct laws after Lawrence v. Texas. Marghretta Adeline Hagood, 61 S.C. L. Rev. 799 (Summer 2010).

Attorney General’s Opinions

The State of South Carolina, through the family planning services offered by DHEC, is not permitted to base the receipt of family planning services upon the fact that an individual is married. Thus, family planning services must be offered to unmarried persons, notwithstanding that Section 16‑15‑60 of the Code in effect proscribes extramarital sexual intercourse. Because of federal regulations which this State must observe, the State does have a legally defensible position in giving contraceptives to unmarried persons. 1987 Op.Atty.Gen., No 87‑26, p 80 (1987 WL 245435).

NOTES OF DECISIONS

In general 1

1. In general

It is legally proper for persons facing criminal prosecution for adultery to invoke privilege against self‑incrimination. Griffith v. Griffith (S.C.App. 1998) 332 S.C. 630, 506 S.E.2d 526. Witnesses 297(10)

The jurisdiction under this section [Code 1962 Section 16‑406] depends on place where the crime is committed. State v. Williams (S.C. 1909) 84 S.C. 21, 65 S.E. 982.

A void foreign divorce is no defense in a prosecution under this section [Code 1962 Section 16‑406]. State v. Westmoreland (S.C. 1907) 76 S.C. 145, 56 S.E. 673.

The absence of an intention to violate this section [Code 1962 Section 16‑406] is not a defense. State v. Westmoreland (S.C. 1907) 76 S.C. 145, 56 S.E. 673. Criminal Law 21

Under this section [Code 1962 Section 16‑406] and Code 1962 Section 16‑408, defining “fornication” as “intercourse with each other,” and providing that any person guilty of it shall be liable to indictment, either party to the crime may be separately indicted. State v. Sauls (S.C. 1905) 70 S.C. 393, 50 S.E. 17. Criminal Law 45.40

As to proof of marriage in prosecution for adultery, see State v. Still (S.C. 1903) 68 S.C. 37, 46 S.E. 524, 102 Am.St.Rep. 657.

Adultery was not indictable at common law, and was not an indictable offense in this State in 1831. State v. Brunson (S.C. 1831). Marriage And Cohabitation 1141; Marriage And Cohabitation 1161

**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.

HISTORY: 1962 Code Section 16‑407; 1952 Code Section 16‑407; 1942 Code Section 1436; 1932 Code Section 1436; Cr. C. ‘22 Section 376; Cr. C. ‘12 Section 383; Cr. C. ‘02 Section 291; G. S. 2589; R. S. 252; 1880 (17) 328.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adultery and Fornication Section 3, Criminal Adultery and Fornication: S16‑15‑60.

S.C. Jur. Adultery and Fornication Section 4, Adultery Defined: S16‑15‑70.

S.C. Jur. Adultery and Fornication Section 11, Either Married to Some Other Person.

S.C. Jur. Criminal Sexual Conduct Section 7, Adultery and Fornication.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Domestic law. 43 S.C. L. Rev. 69 (Autumn 1991).

South Carolina’s sexual conduct laws after Lawrence v. Texas. Marghretta Adeline Hagood, 61 S.C. L. Rev. 799 (Summer 2010).

NOTES OF DECISIONS

In general 1

1. In general

The omission of the words “without living together” does not vitiate an indictment under this section [Code 1962 Section 16‑407]. State v. Carroll (S.C. 1889) 30 S.C. 85, 8 S.E. 433, 14 Am.St.Rep. 883.

On the trial of an indictment under this section [Code 1962 Section 16‑407], the court may properly charge that to constitute the offense the carnal intercourse must be habitual, “that is, frequent, occasional acts will not be sufficient,” leaving to the jury how frequently it must be committed to make it “habitual.” State v. Carroll (S.C. 1889) 30 S.C. 85, 8 S.E. 433, 14 Am.St.Rep. 883.

**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.

HISTORY: 1962 Code Section 16‑408; 1952 Code Section 16‑408; 1942 Code Section 1437; 1932 Code Section 1437; Cr. C. ‘22 Section 277; Cr. C. ‘12 Section 384; Cr. C. ‘02 Section 292; G. S. 2590; R. S. 253; 1880 (17) 328.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

RESEARCH REFERENCES

Encyclopedias

Am. Jur. 2d Adultery and Fornication Section 5, Fornication Defined.

S.C. Jur. Adultery and Fornication Section 5, Fornication Defined: S16‑15‑80.

S.C. Jur. Criminal Sexual Conduct Section 7, Adultery and Fornication.

LAW REVIEW AND JOURNAL COMMENTARIES

South Carolina’s sexual conduct laws after Lawrence v. Texas. Marghretta Adeline Hagood, 61 S.C. L. Rev. 799 (Summer 2010).

**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.

HISTORY: 1962 Code Section 16‑409; 1952 Code Section 16‑409; 1942 (42) 1734.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Proceedings to abate buildings used for lewdness, etc., see Section 15‑43‑10 et seq.

Requirement that a person convicted of a violation of this section be tested for the Human Immunodeficiency Virus, see Section 16‑3‑740.

Library References

Obscenity 124.

Prostitution 10, 15 to 20.

Westlaw Topic Nos. 281, 315H.

C.J.S. Prostitution and Related Offenses Sections 1, 4 to 11, 19 to 20, 24 to 33, 41 to 42, 49 to 67.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 54, Aids Testing of Convicted Sex Offenders.

Attorney General’s Opinions

Offenses described in Sections 16‑15‑90, 16‑15‑350, 16‑15‑360, and 16‑15‑380 constitute sexual offenses for purposes of defining “harm” to child’s health or welfare as used in Section 20‑7‑490(c). 1985 Op.Atty.Gen., No 85‑22, p 75 (1985 WL 165992).

NOTES OF DECISIONS

In general 1

1. In general

Prosecution under municipal ordinances for keeping bawdyhouses. See State v Sanders (1904) 68 SC 192, 47 SE 55. Union v Hampton (1909) 83 SC 46, 64 SE 1017.

Neither a city ordinance requiring a “steam bath” enterprise to obtain a license, nor the provisions of Section 16‑15‑90(5), (7), (8), or (10), are overbroad, void for vagueness, or indefinite and confusing, on their face or as applied, nor do they fail to provide notice of what constitutes criminal conduct; thus they do not violate the due process clauses of the United States and South Carolina constitutions. City of Columbia v. Moser (S.C. 1983) 280 S.C. 134, 311 S.E.2d 920.

**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.

HISTORY: 1962 Code Section 16‑410; 1952 Code Section 16‑410; 1942 (42) 1734.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Prostitution 15 to 20.

Westlaw Topic No. 315H.

C.J.S. Prostitution and Related Offenses Sections 4 to 11, 19 to 20, 24 to 33, 41 to 42, 49 to 67.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 54, Aids Testing of Convicted Sex Offenders.

**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.

HISTORY: 1962 Code Section 16‑411; 1952 Code Section 16‑411; 1942 (42) 1734; 1979 Act No. 74; 1986 Act No. 534.

Library References

Prostitution 33.

Westlaw Topic No. 315H.

C.J.S. Prostitution and Related Offenses Sections 17 to 18, 40, 52, 65 to 66.

**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.

HISTORY: 1962 Code Section 16‑412; 1952 Code Section 16‑412; 1942 Code Section 1439; 1932 Code Section 1439; Cr. C. ‘22 Section 380; Cr. C. ‘12 Section 387; Cr. C. ‘02 Section 294; G. S. 2591; R. S. 254; 25 H. 8, c. 1 (2) 465.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Offender registry information available to public, see Section 23‑3‑490.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Placement of minor sex offenders, see Section 63‑7‑2360.

Requirement that a person convicted of a violation of this section be tested for the Human Immunodeficiency Virus, see Section 16‑3‑740.

Sexually Violent Predator Act, definitions, see Section 44‑48‑30.

Library References

Sodomy 1, 8.

Westlaw Topic No. 357.

C.J.S. Rape Section 3.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adultery and Fornication Section 6, Buggery and Sodomy Distinguished.

S.C. Jur. Criminal Sexual Conduct Section 54, Aids Testing of Convicted Sex Offenders.

LAW REVIEW AND JOURNAL COMMENTARIES

South Carolina’s sexual conduct laws after Lawrence v. Texas. Marghretta Adeline Hagood, 61 S.C. L. Rev. 799 (Summer 2010).

**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.

HISTORY: 1962 Code Section 16‑413; 1952 Code Section 16‑413; 1942 Code Section 1442; 1932 Code Section 1442; Cr. C. ‘22 Section 383; Cr. C. ‘12 Section 390; 1906 (25) 84; 1965 (54) 577; 1993 Act No. 184, Section 180; 2006 Act No. 269, Section 2, eff May 2, 2006.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Offender registry information available to public, see Section 23‑3‑490.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Permitting lewd, immoral, or improper entertainment, conduct, or practices prohibited to holder of permit authorizing sale of beer or wine, see Section 61‑4‑580.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Library References

Obscenity 125, 252.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 17.1, Nude and Semi‑Nude Public Dancing.

Attorney General’s Opinions

Indecent exposure is a crime of moral turpitude. SC Op.Atty.Gen. (January 27, 1998) 1998 WL 61843.

The regulation of topless dancing. SC Op.Atty.Gen. (May 10, 1995) 1995 WL 803561.

Among State code provisions which are included in term “sexual offense” are Sections 16‑3‑652 et seq., 16‑15‑130, 16‑15‑140 [repealed], and 16‑15‑20. 1985 Op.Atty.Gen., No 85‑22, p 75 (1985 WL 165992).

Any female appearing “topless” as a waitress in a restaurant, club or other place to which the public is invited, whether the same is designated “private” or otherwise, thereby resulting in total exposure of the female breasts or similar appearance, is contrary to the customary standards of decency within the State of South Carolina and thus in violation of this section [Code 1962 Section 16‑413]. 1970‑71 Op.Atty.Gen., No 3165, p 127 (1971 WL 17540).

NOTES OF DECISIONS

In general 1

1. In general

State laws governing nudity do not prohibit nude dancing per se (e.g., Sections 16‑15‑130, 16‑15‑365); thus, a town exceeded its power in enacting an ordinance prohibiting nude and semi‑nude dancing where alcoholic beverages are served, since such conduct was not unlawful under state law. Connor v. Town of Hilton Head Island (S.C. 1994) 314 S.C. 251, 442 S.E.2d 608.

The element of taking indecent liberties with a female is not necessary in the charge of indecent exposure. State v. Rouse (S.C. 1974) 262 S.C. 581, 206 S.E.2d 873.

Assault and battery of a high and aggravated nature, as distinguished from the offense of indecent exposure, involves the element of taking indecent liberties with a female, while the latter consists of the exposure of private parts of the person to the public view, thus each offense involves elements not necessary to the proof of the other. State v. Rouse (S.C. 1974) 262 S.C. 581, 206 S.E.2d 873. Obscenity 126; Sex Offenses 15

**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.

HISTORY: 1962 Code Section 16‑552; 1952 Code Section 16‑552; 1943 (43) 26; 1967 (55) 626; 1993 Act No. 184, Section 181; 2001 Act No. 81, Section 6.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Obscenity 156, 163.

Westlaw Topic No. 281.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Section 16‑15‑250, which criminalizes the communication of an obscene, profane, indecent, vulgar, suggestive, or immoral message to a female, violates the equal protection clause of the Fourteenth Amendment since such statute is based on “old notions” that females should be afforded special protection from “rough talk” because of their perceived “special sensitivities.” In Interest of Joseph T. (S.C. 1993) 312 S.C. 15, 430 S.E.2d 523, rehearing denied.

ARTICLE 3

Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution

CROSS REFERENCES

Jurisdiction of state grand jury, see Section 14‑7‑1630.

Offender registry information available to public, see Section 23‑3‑490.

State grand jury system, legislative findings and intent, see Section 14‑7‑1610.

**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.

HISTORY: 1987 Act No. 168 Section 3; 1995 Act No. 7, Part I Section 13; 2001 Act No. 81, Section 7.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Obscene or indecent material on billboards prohibited, see Section 57‑25‑20.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Obscenity 165, 258.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

55 Am. Jur. Proof of Facts 3d 249, Proof that Motion Picture is Obscene or Harmful to Minors.

61 Am. Jur. Proof of Facts 3d 51, Cyberporn: Transmission of Images by Computer as Obscene, Harmful to Minors or Child Pornography.

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 5, Terms of Art.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 6, General Obscenity Statute.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 7, Scope of Section 16‑15‑305.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 8, Comparison Between United States Supreme Court Precedent and the South Carolina Statute.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 12, Codification of “Average Person” Precedent.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 15, State Versus County Community Standards.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 19, Disseminating and Pandering.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 24, Procedure for Search and Arrest Warrants.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 25, Equipment Subject to Seizure.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 17.1, Nude and Semi‑Nude Public Dancing.

LAW REVIEW AND JOURNAL COMMENTARIES

Dirty dancing: The South Carolina Supreme Court rejects local authority to ban nude dancing by fast‑stepping around the plain meaning of the South Carolina Constitution, 49 S.C. L. Rev. 1025 (Summer 1998).

Don’t come around here no more: The regulation of adult businesses—zoning or entitlements, 49 S.C. L. Rev. 1007 (Summer 1998).

United States Supreme Court Annotations

Due process, vagueness challenge; freedom of speech, obscenity and pornography, overbreadth doctrine; statute criminalizing pandering or solicitation of child pornography, see U.S. v. Williams, 2008, 128 S.Ct. 1830, 553 U.S. 285, 170 L.Ed.2d 650, on remand 534 F.3d 1371.

Supreme Court’s development, since Roth v United States, of standards and principles determining concept of obscenity in context of right of free speech and press, 41 L Ed 2d 1257.

Attorney General’s Opinions

Act which makes it unlawful to display obscene or indecent bumper stickers or decals on motor vehicle in South Carolina would most probably pass constitutional muster. 1990 Op.Atty.Gen., No 90‑36 (1990 WL 482423).

Inasmuch as present statutes may prohibit the display of certain bumper stickers which are obscene, as defined by State law, consideration may be given to utilizing the statutes already enacted to prevent the display of offensive bumper stickers attached to motor vehicles. 1989 Op.Atty.Gen., No 89‑1, p 18 (1989 WL 406091).

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

State laws governing nudity do not prohibit nude dancing per se (e.g., Sections 16‑15‑130, 16‑15‑365); thus, a town exceeded its power in enacting an ordinance prohibiting nude and semi‑nude dancing where alcoholic beverages are served, since such conduct was not unlawful under state law. Connor v. Town of Hilton Head Island (S.C. 1994) 314 S.C. 251, 442 S.E.2d 608.

2. Sufficiency of evidence

There was sufficient evidence that defendant “knowingly” disseminated obscene materials for case to go to jury; sign on store described it as “adult store,” patrons were made to show identification to enter and to attest that they were over 21 years of age to make purchase, and defendant, in making sale to officer, handled tape which had words and photographs indicating nature of tape’s contents. State v. Brouwer (S.C.App. 2001) 346 S.C. 375, 550 S.E.2d 915. Obscenity 210(8)

**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.

HISTORY: 1987 Act No. 168 Section 3, eff October 1, 1987; 2001 Act No. 81, Section 8.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Obscenity 165, 258.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 24, Procedure for Search and Arrest Warrants.

**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.

HISTORY: 1987 Act No. 168 Section 3; 2001 Act No. 81, Section 9.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Obscenity 151, 158.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 24, Procedure for Search and Arrest Warrants.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

**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.

HISTORY: 1987 Act No. 168 Section 3; 2004 Act No. 208, Section 3, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1587, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

State was permitted under First Amendment to ban possession and viewing of child pornography because state did not rely on paternalistic interest in regulating person’s mind but sought to serve compelling state interest in protecting victims of child pornography, and it was reasonable for state to conclude that such proscriptions were necessary to decrease production of child pornography; statute as construed by state Supreme Court to include elements of scienter and lewd exhibition was not constitutionally overbroad, and state Supreme Court properly applied its narrowed construction of statute to accused’s conduct; but it was necessary to remand case for new trial to insure that conviction stemmed from finding that prosecution had proved each of elements of offense. Osborne v. Ohio, 04‑18‑1990, 110 S.Ct. 1691, 495 U.S. 103, 109 L.Ed.2d 98.

**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.

HISTORY: 2004 Act No. 208, Section 4, eff April 26, 2004.

CROSS REFERENCES

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Sexually Violent Predator Act, definitions, see Section 44‑48‑30.

Library References

Infants 1591, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 4, Assault With Intent to Commit Criminal Sexual Conduct.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

NOTES OF DECISIONS

In general 2

Admissibility of evidence 4

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Validity 1

1. Validity

The criminal solicitation of a minor statute was sufficiently precise to provide fair notice to those whom the statute applied, and thus was not void for vagueness; statute identified its elements as a defendant who was 18 years of age or older, who knowingly contacted or communicated with, or attempted to contact or communicate with a person who was under 18, or a person reasonably believed to be under 18, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity or a violent crime, with the intent to perform a sexual activity in the presence of the person under the age of 18. State v. Green (S.C. 2012) 397 S.C. 268, 724 S.E.2d 664, rehearing denied. Constitutional Law 1132(51); Constitutional Law 1132(52); Infants 1006(12)

The criminal solicitation of a minor statute was narrowly tailored to achieve the interest for which it was intended, and thus statute was not overbroad and did not violate the First Amendment free speech clause; statute affected only those individuals who ‘knowingly” targeted minors for the purpose of engaging or participating in sexual activity or a violent crime. State v. Green (S.C. 2012) 397 S.C. 268, 724 S.E.2d 664, rehearing denied. Constitutional Law 1816; Constitutional Law 2247; Infants 1006(12)

2. In general

The offense of criminal solicitation of a minor is complete when the defendant knowingly contacts or communicates with the minor, or a person he believes to be a minor, with the intent to entice her to engage in sexual activity. State v. Harris (S.C. 2015) 413 S.C. 454, 776 S.E.2d 365. Infants 1591

Statute establishing the offense of criminal solicitation of a minor requires no overt act in furtherance of the criminal solicitation. State v. Gaines (S.C. 2008) 380 S.C. 23, 667 S.E.2d 728. Infants 1591

3. Defenses

The defense of legal impossibility was not available to allow defendant to dismiss charges of criminal solicitation of a minor and attempted criminal sexual contact, even though the alleged victim was a member of law enforcement; the solicitation statute specifically provided that the fact that the person reasonably believed to be under the age of 18 was a law enforcement agent was not a defense to the charge, and for the charge of attempted criminal sexual contact the intended victim was not an actual minor was irrelevant as the State was only required to prove defendant had the specific intent to commit a sexual battery on a victim between the ages of 11 and 14 years old coupled with some overt act toward the commission of the offense. State v. Green (S.C. 2012) 397 S.C. 268, 724 S.E.2d 664, rehearing denied. Criminal Law 31

4. Admissibility of evidence

Defendant’s age was element of charged crime of criminal solicitation of a minor, such that trial court could not take judicial notice of age based on certified copies of records from Department of Motor Vehicles (DMV). State v. Odom (S.C. 2015) 412 S.C. 253, 772 S.E.2d 149, rehearing denied, habeas corpus denied 2016 WL 5933972. Criminal Law 304(1); Infants 1591

Trial court’s error in taking judicial notice of defendant’s age was harmless, in prosecution for criminal solicitation of a minor, even though defendant’s age was element of charged offense; defendant repeatedly acknowledged in underlying internet chats that he was over age of eighteen, claiming to be 40 and emphasizing the vast age difference between himself and purported minor, whom he believed to be 14 years old, describing himself as “a lot older” than the minor. State v. Odom (S.C. 2015) 412 S.C. 253, 772 S.E.2d 149, rehearing denied, habeas corpus denied 2016 WL 5933972. Criminal Law 1168(1)

That most of defendant’s online chats with a person who he believed to be a 12‑year‑old girl in Pennsylvania occurred before effective date of South Carolina statute establishing offense of criminal solicitation of a minor did not render evidence of those chats inadmissible under other‑crimes rule at trial for criminal solicitation of a minor based on defendant’s communications with a person who he believed to be a 13‑year‑old girl in South Carolina; chats with person in Pennsylvania were at all times illegal under Pennsylvania law, and, further, defendant was not indicted for his chats with person in Pennsylvania. State v. Gaines (S.C. 2008) 380 S.C. 23, 667 S.E.2d 728. Criminal Law 368.29; Criminal Law 373.28

5. Justiciability

Defendant lacked standing to challenge the criminal solicitation of a minor statute for vagueness; defendant, who was 27 years old at the time of the offense, knowingly initiated an online chat with a female he reasonably believed was 14 years old, and defendant’s sexually explicit conversation was intended for no other purpose than to persuade the victim to engage in sexual activity. State v. Green (S.C. 2012) 397 S.C. 268, 724 S.E.2d 664, rehearing denied. Constitutional Law 739; Infants 1006(12); Telecommunications 1350

6. Instructions

Jury instruction on law of bonding was not warranted in prosecution for criminal solicitation of a minor premised on internet exchanges between defendant and undercover officer posing as 14‑year‑old girl, despite defendant’s claim that officer was required to have bond to be acting in his official capacity in order to preclude defendant from asserting officer’s status as person who was not actually under eighteen as defense to charge; there was no evidence that officer was not bonded, and officer was not required to have bond, given that officer was municipal police officer with city police department for which state law did not mandate bonding. State v. Odom (S.C. 2015) 412 S.C. 253, 772 S.E.2d 149, rehearing denied, habeas corpus denied 2016 WL 5933972. Infants 1666(2); Municipal Corporations 184(2); Public Employment 1071; Telecommunications 1351

7. Civil actions

Defendant failed to prove that vindictiveness played any role in decision to prosecute him on charges of criminal solicitation of a minor in second county following mistrial in first county on related charges, as required for vindictive prosecution claim; while prosecutor admitted that she was irritated with defense counsel for serving subpoenas that she did not believe he had authority to pursue, she testified that her decision to seek indictments in second county ultimately came down to change in trial strategy. State v. Odom (S.C. 2015) 412 S.C. 253, 772 S.E.2d 149, rehearing denied, habeas corpus denied 2016 WL 5933972. Criminal Law 37.15(2)

8. Constitutional issues

Statute governing crime of criminal solicitation of a minor did not violate defendant’s rights to equal protection and free speech. State v. Odom (S.C. 2015) 412 S.C. 253, 772 S.E.2d 149, rehearing denied, habeas corpus denied 2016 WL 5933972. Constitutional Law 2247; Constitutional Law 3781; Infants 1006(12)

9. Sufficiency of evidence

Evidence was sufficient to support criminal solicitation of a minor conviction; although defendant asserted that he only meant to teach the victim “a lesson,” there was evidence that defendant communicated with a person whom he believed to be a minor with the intent of enticing her to participate in sexual activity. State v. Harris (S.C. 2015) 413 S.C. 454, 776 S.E.2d 365. Infants 1746; Infants 1751; Sex Offenses 270; Sex Offenses 290

**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.

HISTORY: 1987 Act No. 168 Section 3; 2004 Act No. 208, Section 5, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1586, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

Encyclopedias

55 Am. Jur. Proof of Facts 3d 249, Proof that Motion Picture is Obscene or Harmful to Minors.

61 Am. Jur. Proof of Facts 3d 51, Cyberporn: Transmission of Images by Computer as Obscene, Harmful to Minors or Child Pornography.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

NOTES OF DECISIONS

Admissibility of evidence 1

1. Admissibility of evidence

In a prosecution for disseminating sexually oriented material to a minor, any error in admitting into evidence the defendant’s prior arrest for rape, for the purpose of impeaching the defendant’s character, was harmless where the defendant did not dispute that he possessed a pornographic video and sexual devices and he admitted that he did not discontinue playing the video when others, even minors, were in his home. State v. Reeves (S.C. 1990) 301 S.C. 191, 391 S.E.2d 241. Criminal Law 1170.5(1)

**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.

HISTORY: 1987 Act No. 168 Section 3; 2004 Act No. 208, Section 6, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1586, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

**SECTION 16‑15‑365.** Exposure of private parts in lewd and lascivious manner, aiding or procuring person to perform an act, or permitting use of premises for an 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.

HISTORY: 1987 Act No. 168 Section 3.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Obscenity 125, 251.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 6, 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.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 17.1, Nude and Semi‑Nude Public Dancing.

Attorney General’s Opinions

Regardless of the Probation Judge’s order modifying Defendant’s requirement to register as a sex offender as a condition of probation, the South Carolina Sex Offender Registry Act separately requires Defendant to register as a sex offender. S.C. Op.Atty.Gen. (Feb. 14, 2012) 2012 WL 605706.

The regulation of topless dancing. SC Op.Atty.Gen. (May 10, 1995) 1995 WL 803561.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Nude dancing per se is not illegal under statute prohibiting lewd and lascivious behavior; only obscene dancing violates statute. State v. Bean (S.C.App. 1997) 327 S.C. 589, 490 S.E.2d 16, rehearing denied, certiorari denied. Obscenity 126

State failed to present evidence that owners of nightclub featuring nude dancing knowingly permitted lewd and lascivious conduct on premises, thus precluding convictions for lewd and lascivious behavior; videotape of dancers bending over to allow audience ample view of their bodies was not made while owners were present, there was no evidence that videotaped conduct had occurred previously, and there was no evidence that officers warned owners that dancers were bending over and that such acts could be considered lewd and lascivious. State v. Bean (S.C.App. 1997) 327 S.C. 589, 490 S.E.2d 16, rehearing denied, certiorari denied. Obscenity 210(5)

State laws governing nudity do not prohibit nude dancing per se (e.g., Sections 16‑15‑130, 16‑15‑365); thus, a town exceeded its power in enacting an ordinance prohibiting nude and semi‑nude dancing where alcoholic beverages are served, since such conduct was not unlawful under state law. Connor v. Town of Hilton Head Island (S.C. 1994) 314 S.C. 251, 442 S.E.2d 608.

2. Constitutional issues

Statute prohibiting exposure of private parts in lewd and lascivious manner does not prohibit constitutionally protected speech, even assuming it addresses certain expressive conduct, as statute prohibits obscenity, which is not protected by First Amendment. State v. Bouye (S.C. 1997) 325 S.C. 260, 484 S.E.2d 461.

Statute prohibiting exposure of one’s private parts in lewd and lascivious manner was not overbroad on basis of not expressly limiting its application to conduct in public places; there was no realistic danger that statute would be applied to conduct of people in the privacy of their homes, and language of statute showed legislature’s clear intent to limit application to public conduct. State v. Bouye (S.C. 1997) 325 S.C. 260, 484 S.E.2d 461.

Statute prohibiting exposure of one’s private parts in lewd and lascivious manner would be overbroad if it were not limited to exposure in public places, as prosecution for such conduct in privacy of one’s home would infringe on constitutionally protected right to privacy. State v. Bouye (S.C. 1997) 325 S.C. 260, 484 S.E.2d 461.

Statute prohibiting willfully and knowingly exposing one’s private parts in lewd and lascivious manner in presence of another person, procuring another person to perform such act, or allowing premises over which one has control to be used for such purposes was not unconstitutional as applied to owner and manager of topless dancing establishment where dancers brought private parts into physical contact with customers; even if owner and manager were not actively engaging in prohibited conduct, they had no constitutionally protected right to procure or knowingly permit others to perform illegal conduct on premises. State v. Bouye (S.C. 1997) 325 S.C. 260, 484 S.E.2d 461.

**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.

HISTORY: 1987 Act No. 168 Section 3; 1991 Act No. 73, Section 2; 1994 Act No. 421, Section 2; 2001 Act No. 81, Section 10.

CROSS REFERENCES

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Sexually Violent Predator Act, definitions, see Section 44‑48‑30.

RESEARCH REFERENCES

Encyclopedias

61 Am. Jur. Proof of Facts 3d 51, Cyberporn: Transmission of Images by Computer as Obscene, Harmful to Minors or Child Pornography.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

LAW REVIEW AND JOURNAL COMMENTARIES

Protecting Speech v. Protecting Children: An Examination of the Judicial Refusal to Allow Legislative Action in the Realm of Minors and Internet Pornography, 57 S.C. L. Rev. 489 (Spring 2006).

United States Supreme Court Annotations

Supreme Court’s development, since Roth v United States, of standards and principles determining concept of obscenity in context of right of free speech and press, 41 L Ed 2d 1257.

Attorney General’s Opinions

The constitutionality of the “harmful to minors” statute. SC Op.Atty.Gen. (March 18, 1996) 1996 WL 190749.

NOTES OF DECISIONS

Validity 1

1. Validity

South Carolina statute imposing criminal liability for dissemination of materials harmful to minors over internet was not narrowly tailored to serve state’s compelling interest in protecting minors from sexually explicit materials, as required to survive strict scrutiny under First Amendment, despite state’s claims that verification and labeling were effective means of achieving state’s ends; age verification would deter lawful users from accessing speech they were entitled to receive, age verification system would pose significant costs for internet speakers who had to segregate harmful and non‑harmful material, equally effective and less restrictive alternatives, such as user‑based blocking and filtering software, were available, and statute did nothing to curtail flow of sexually‑explicit materials from abroad. Southeast Booksellers Ass’n v. McMaster, 2005, 371 F.Supp.2d 773. Constitutional Law 2259; Infants 1006(12); Telecommunications 1314

**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.

HISTORY: 1987 Act No. 168 Section 3; 1990 Act No. 358, Sections 1, 2; 1993 Act No. 184, Section 34; 2004 Act No. 208, Section 7, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1552, 1586, 1635, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Evidence Section 380.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

ALR Library

98 ALR 5th 167 , Validity of State Statutes and Administrative Regulations Regulating Internet Communications Under Commerce Clause and First Amendment of Federal Constitution.

93 ALR 3rd 297 , Validity, Construction, and Effect of Statutes or Ordinances Prohibiting the Sale of Obscene Materials to Minors.

Encyclopedias

55 Am. Jur. Proof of Facts 3d 249, Proof that Motion Picture is Obscene or Harmful to Minors.

61 Am. Jur. Proof of Facts 3d 51, Cyberporn: Transmission of Images by Computer as Obscene, Harmful to Minors or Child Pornography.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

Treatises and Practice Aids

Employment Coordinator Compensation Section 25:84, Prohibitions.

LAW REVIEW AND JOURNAL COMMENTARIES

Protecting Speech v. Protecting Children: An Examination of the Judicial Refusal to Allow Legislative Action in the Realm of Minors and Internet Pornography, 57 S.C. L. Rev. 489 (Spring 2006).

United States Supreme Court Annotations

Supreme Court’s development, since Roth v United States, of standards and principles determining concept of obscenity in context of right of free speech and press. 41 L Ed 2d 1257.

Attorney General’s Opinions

Public libraries and public school libraries fall in the same category as college libraries with respect to the law dealing with distributing offensive or harmful material to minors. SC Op.Atty.Gen. (June 22, 1998) 1998 WL 746008.

The constitutionality of the “harmful to minors” statute. SC Op.Atty.Gen. (March 18, 1996) 1996 WL 190749.

This section would be a constitutionally valid means to prohibit the distribution of harmful material to a minor. SC Op.Atty.Gen. (Feb. 12, 1996) 1996 WL 94011.

NOTES OF DECISIONS

Constitutional issues 2

Federal courts 3

Validity 1

1. Validity

South Carolina statute imposing criminal liability for dissemination of materials harmful to minors over internet placed undue burden on interstate commerce by regulating commerce occurring wholly outside of South Carolina, in violation of Commerce Clause, where internet speakers had no practical, reliable means of determining geographic location of recipients of their online communications. Southeast Booksellers Ass’n v. McMaster, 2005, 371 F.Supp.2d 773. Commerce 82; Infants 1006(12); Telecommunications 1314

South Carolina statute imposing criminal liability for dissemination of materials harmful to minors over internet was not narrowly tailored to serve state’s compelling interest in protecting minors from sexually explicit materials, as required to survive strict scrutiny under First Amendment, despite state’s claims that verification and labeling were effective means of achieving state’s ends; age verification would deter lawful users from accessing speech they were entitled to receive, age verification system would pose significant costs for internet speakers who had to segregate harmful and non‑harmful material, equally effective and less restrictive alternatives, such as user‑based blocking and filtering software, were available, and statute did nothing to curtail flow of sexually‑explicit materials from abroad. Southeast Booksellers Ass’n v. McMaster, 2005, 371 F.Supp.2d 773. Constitutional Law 2259; Infants 1006(12); Telecommunications 1314

2. Constitutional issues

South Carolina statute criminalizing dissemination of obscene materials to minors over Internet was content based restriction on speech requiring strict scrutiny evaluation, despite claim that no obscene speech was involved, due to statute’s incorporation of United States Supreme Court’s Miller case definition of obscene speech not protected by First Amendment; speech which might be obscene if received by minors might be protected when received by adults, creating possibility of encroachment on protected speech. Southeast Booksellers Ass’n v. McMaster, 2003, 282 F.Supp.2d 389. Constitutional Law 2259

3. Federal courts

Court considering whether statute criminalizing Internet dissemination of obscene materials to minors violated Commerce Clause and First Amendment would not certify to Supreme Court of South Carolina, questions regarding meaning of term “digital electronic files,” whether there was scienter requirement, whether term “harmful to minors” set standards based upon youngest Internet users, and what was meant by term “community,” used in defining obscenity; response to questions would not materially aid court in determination of constitutional issues. Southeast Booksellers Ass’n v. McMaster, 2003, 282 F.Supp.2d 389. Federal Courts 3107

Federal court would not abstain, on Pullman abstention grounds, from considering suit claiming that South Carolina statute criminalizing dissemination of obscene materials to minors over Internet violated Commerce Clause and First Amendment, in order to allow for state court considerations of uncertainties in state law and possible state court constructions obviating need for constitutional adjudication by federal court; there were no uncertainties or issues that would benefit from state court consideration. Southeast Booksellers Ass’n v. McMaster, 2003, 282 F.Supp.2d 389. Federal Courts 2641; Federal Courts 2646

Associations of booksellers, publishers and families opposed to limitations on Internet materials stated claim that First Amendment rights of their members were violated by South Carolina statute criminalizing dissemination of obscene materials to minors over Internet; statute restricted content of speech and it was possible to prove set of facts under which right of adults to receive materials in question was violated. Southeast Booksellers Ass’n v. McMaster, 2003, 282 F.Supp.2d 389. Constitutional Law 2259; Obscenity 112(7); Telecommunications 1314

Organizations representing booksellers, publishers and families wishing to maximize Internet content had standing to sue state, challenging on First Amendment grounds statute allowing for prosecution of persons disseminating obscene materials to minors by means of “digital electronic files, or other visual depictions or representations;” members could sue on their own behalf, free speech interests organizations were furthering were germane to their organizational purposes, and members shared same interests in protecting speech. U.S.C.A. Const.Amend. 1; Southeast Booksellers Ass’n v. McMaster, 2003, 282 F.Supp.2d 389. Constitutional Law 859

**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.

HISTORY: 1994 Act No. 421, Section 1; 2004 Act No. 208, Section 8, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1587, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

**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 or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

 (2) permits a minor under his custody or control to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

 (3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; 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 or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in a sexual activity or a state of sexually explicit nudity 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 pursuant to 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.

HISTORY: 1987 Act No. 168 Section 3; 2001 Act No. 81, Section 11; 2004 Act No. 208, Section 9, eff April 26, 2004; 2014 Act No. 269 (H.3959), Section 1, eff June 9, 2014.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Violent crimes defined, see Section 16‑1‑60.

Library References

Infants 1587, 1668, 1722.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 210 to 211, 218.

C.J.S. Rape Sections 62 to 65, 68 to 69, 120 to 122.

C.J.S. Sodomy Sections 8 to 12, 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

NOTES OF DECISIONS

Admissibility of evidence 2

Sentence and punishment 1

1. Sentence and punishment

Administrative Law Court, not Supreme Court, was appropriate court in which to appeal decision of state Department of Corrections (DOC) that sentence for first‑degree sexual exploitation of a minor ran consecutively to sentences for two counts of second‑degree criminal sexual conduct (CSC). Treece v. State (S.C. 2005) 365 S.C. 134, 616 S.E.2d 424. Prisons 293; Prisons 296

Sentence for first‑degree sexual exploitation of a minor was required to run consecutively to sentences imposed for two counts of second‑degree criminal sexual conduct (CSC). Treece v. State (S.C. 2005) 365 S.C. 134, 616 S.E.2d 424. Sentencing And Punishment 561

2. Admissibility of evidence

Testimony of state’s expert on child abuse dynamics and delayed disclosures regarding general behavioral characteristics of child sex abuse victims was not inadmissible as being within ordinary knowledge of jury, in child sex abuse trial; expert’s specialized knowledge of behavioral characteristics of child sex abuse victims was relevant and crucial in assisting jury’s understanding of why children might delay disclosing sexual abuse, and why recollections may have become clearer each time they discussed instances of abuse. State v. Brown (S.C.App. 2015) 411 S.C. 332, 768 S.E.2d 246, certiorari denied. Criminal Law 474.4(4)

The unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror with no prior experience, either directly or indirectly, with sexual abuse, and therefore, the general behavioral characteristics of child sex abuse victims are more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims’ testimony. State v. Brown (S.C.App. 2015) 411 S.C. 332, 768 S.E.2d 246, certiorari denied. Criminal Law 474.4(4)

Testimony of state’s expert on child abuse dynamics and delayed disclosure regarding general behavioral characteristics of alleged child sex abuse victims did not improperly bolster testimony of alleged victims in child sex abuse trial, where expert testified in broad terms regarding various reasons sex abuse victims may delay disclosure and how the disclosure process progresses, and expert did not testify as forensic interviewer, never interviewed alleged victims, did not prepare report for her testimony, did not express opinion or belief regarding credibility of alleged victims’ allegations, and did not express opinion regarding credibility of victims. State v. Brown (S.C.App. 2015) 411 S.C. 332, 768 S.E.2d 246, certiorari denied. Criminal Law 474.4(4)

Testimony of state’s expert on child abuse dynamics and delayed disclosures regarding general behavioral characteristics of child sex abuse victims did not improperly corroborate testimony of, and therefore was not cumulative of, alleged victims’ testimony in child sex abuse trial, for purposes of rule governing exclusion of relevant evidence, where expert did not interview victims prior to testifying at trial, expert’s knowledge of case was limited to discussions with solicitor, and expert did not express opinion on credibility of alleged victims. State v. Brown (S.C.App. 2015) 411 S.C. 332, 768 S.E.2d 246, certiorari denied. Criminal Law 474.4(4)

Probative value of testimony of state’s expert on child abuse dynamics and delayed disclosures regarding general behavioral characteristics of child sex abuse victims outweighed any prejudicial effect on defendant in child sex abuse trial, since expert was not qualified as forensic interviewer and thus concerns that jury would give undue weight to testimony of forensic interviewer who interviewed victim and expressed opinion as to alleged victims’ credibility was not present, testimony was relevant to help jury understand various aspects of alleged victims’ behavior and provided insight into often strange demeanors of sexually abused children, testimony assisted in explaining psychological effects of sexual abuse on child victims’ behavior, and testimony was crucial in explaining to jury why child sex abuse victims are often unable to effectively relay incidents of criminal sexual abuse. State v. Brown (S.C.App. 2015) 411 S.C. 332, 768 S.E.2d 246, certiorari denied. Criminal Law 474.4(4)

**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 appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; or

 (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity 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 pursuant to 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.

HISTORY: 1987 Act No. 168 Section 3; 1993 Act No. 184, Section 182; 2001 Act No. 81, Section 12; 2004 Act No. 208, Section 10, eff April 26, 2004; 2014 Act No. 269 (H.3959), Section 2, eff June 9, 2014.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Violent crimes defined, see Section 16‑1‑60.

Library References

Infants 1587, 1668, 1722.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 210 to 211, 218.

C.J.S. Rape Sections 62 to 65, 68 to 69, 120 to 122.

C.J.S. Sodomy Sections 8 to 12, 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

NOTES OF DECISIONS

Constitutional issues 1

Nature and elements of offense 2

1. Constitutional issues

State was permitted under First Amendment to ban possession and viewing of child pornography because state did not rely on paternalistic interest in regulating person’s mind but sought to serve compelling state interest in protecting victims of child pornography, and it was reasonable for state to conclude that such proscriptions were necessary to decrease production of child pornography; statute as construed by state Supreme Court to include elements of scienter and lewd exhibition was not constitutionally overbroad, and state Supreme Court properly applied its narrowed construction of statute to accused’s conduct; but it was necessary to remand case for new trial to insure that conviction stemmed from finding that prosecution had proved each of elements of offense. Osborne v. Ohio, 04‑18‑1990, 110 S.Ct. 1691, 495 U.S. 103, 109 L.Ed.2d 98.

2. Nature and elements of offense

In prosecution of defendant under sexual exploitation of minor statute, making it unlawful to knowingly distribute or exchange pictures or videos of minors engaged in sexual acts, issue of whether defendant possessed the requisite intent at the time the crime was committed was typically a question for the jury because, without an actual statement of intent by the defendant, proof of intent had to be determined by inferences from conduct. State v. Land (S.C.App. 2016) 419 S.C. 191, 797 S.E.2d 48, rehearing denied. Obscenity 210(10)

No transmission requirement exists under sexual exploitation of minor statute, making it unlawful to knowingly distribute or exchange pictures or videos of minors engaged in sexual acts. State v. Land (S.C.App. 2016) 419 S.C. 191, 797 S.E.2d 48, rehearing denied. Obscenity 213(9)

Sexual exploitation of minor statute, making it unlawful to knowingly distribute or exchange pictures or videos of minors engaged in sexual acts, requires only that the State prove that defendant solicited or received or distributed child pornography, not that he did all three. State v. Land (S.C.App. 2016) 419 S.C. 191, 797 S.E.2d 48, rehearing denied. Obscenity 171(1)

Evidence was sufficient to show that defendant knowingly distributed or exchanged pictures or videos of a minor engaged in a sexual act so as to support defendant’s conviction for second degree sexual exploitation of minor; in addition to the evidence found on his computer, defendant’s own statements established that he solicited the child pornography by using such terms as “pre‑teen” and “Lolita” in conjunction with file sharing network to find pornographic images and videos of minors, evidence, including defendant’s own admissions, established that defendant knew how file sharing network worked and knew that the child pornography he downloaded would be available for others to download and view, and he admitted to soliciting and downloading multiple pornographic files. State v. Land (S.C.App. 2016) 419 S.C. 191, 797 S.E.2d 48, rehearing denied. Obscenity 166

Evidence was sufficient to show that defendant knowingly distributed or exchanged pictures or videos of a minor engaged in a sexual act, so as to support conviction for second degree sexual exploitation of minor; in addition to the evidence found on his computer, defendant’s own statements established that he solicited the child pornography by using such terms as “pre‑teen” and “Lolita” in conjunction with file sharing network to find pornographic images and videos of minors, evidence, including defendant’s own admissions, established that defendant knew how file sharing network worked and knew that the child pornography he downloaded would be available for others to download and view, and he admitted to soliciting and downloading multiple pornographic files. State v. Land (S.C.App. 2016) 419 S.C. 191, 797 S.E.2d 48, rehearing denied. Obscenity 166

**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 or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity 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 or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

HISTORY: 1991 Act No. 73, Section 1, eff May 22, 1991; 2004 Act No. 208, Section 11, eff April 26, 2004; 2008 Act No. 226, Section 1, eff May 14, 2008; 2014 Act No. 269 (H.3959), Section 3, eff June 9, 2014.

CROSS REFERENCES

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement may not be made with person convicted of, or who has pled guilty or nolo contendere to, Offense Against Morality or Decency as provided for in this Chapter, see Section 63‑7‑2340.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Library References

Infants 1587, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 17, of Another.

S.C. Jur. Homicide Section 14, Definition of Murder.

S.C. Jur. Homicide Section 22, The Felony Murder Rule.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 10, Obscene or Harmful Material Directed or Disseminated to Children.

S.C. Jur. Sports Law Section 43, South Carolina Legislation.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

NOTES OF DECISIONS

Admissibility of evidence 1

1. Admissibility of evidence

Testimony regarding prior sexual conduct between victim and defendant constituted common scheme or plan for purposes of admissibility in prosecution for criminal sexual conduct with a minor; defendant’s prior acts occurred over approximately 10 month span with same victim and always when victim’s mother was at work, conduct began with inappropriate touching, removal of victim’s clothes, and finally escalated to sexual intercourse, defendant also told victim to “keep this a secret between me and you” and that he would “buy her things” to keep her quiet, and these acts constituted continued illicit intercourse between same parties. State v. Edwards (S.C.App. 2007) 373 S.C. 230, 644 S.E.2d 66, rehearing denied, certiorari granted, affirmed as modified 383 S.C. 66, 678 S.E.2d 405. Criminal Law 373.10; Criminal Law 373.14; Criminal Law 373.15

**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.

HISTORY: 1987 Act No. 168 Section 3; 2004 Act No. 208, Section 12, eff April 26, 2004.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Violent crimes defined, see Section 16‑1‑60.

Library References

Infants 1588, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Evidence Section 380.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 120 to 122.

C.J.S. Sodomy Sections 14 to 15.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

**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.

HISTORY: 1987 Act No. 168 Section 3; 1993 Act No. 184, Section 183.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Foster care placement with certain persons prohibited, see Section 63‑7‑2350.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Violent crimes defined, see Section 16‑1‑60.

Library References

Infants 1588, 1613, 1668.

Westlaw Topic No. 211.

C.J.S. Assault Section 163.

C.J.S. Evidence Section 380.

C.J.S. Infants Sections 193, 218.

C.J.S. Rape Sections 13, 120 to 122.

C.J.S. Sodomy Sections 6, 14 to 15.

Attorney General’s Opinions

Offenses categorized by the Attorney General as tier 3 offenders as defined by the Federal Sex Offender Registration and Notification Act. SC Op.Atty.Gen. (May 30, 2008) 2008 WL 2324820.

**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.

HISTORY: 1987 Act No. 168 Section 3.

Library References

Obscenity 279.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 24, Procedure for Search and Arrest Warrants.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 26, Adversarial Hearing.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, constitutional law. 40 S.C. L. Rev. 29 (Autumn 1988).

**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 Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.

HISTORY: 1987 Act No. 168 Section 3; 2004 Act No. 208, Section 13, eff April 26, 2004; 2017 Act No. 96 (S.289), Section 9, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 9, in (C), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund” for “Victim’s Compensation Fund”.

Library References

Obscenity 270 to 294, 300.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 25, Sentence, Punishment and Disabilities of Convicted Defendant.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 5, Terms of Art.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 25, Equipment Subject to Seizure.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 26, Adversarial Hearing.

S.C. Jur. Obscene and Sexually‑Oriented Matters Section 27, Disposal of Forfeited Property.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.