

## Disclaimer

We at the state library are not attorneys, and the material that follows should in no way be considered legal advice. This material is being provided for informational purposes only. For specific legal problems, please contact a licensed attorney for advice.

## Introduction

H.B. 1197 passed both chambers of the legislature with no resistance and was signed into law by Governor Noem. Representative Mike Stevens championed this bill as a compromise between the interests of concerned parents and groups looking to remove materials from libraries and the interests of librarians, trustees, and library supports.

## History

South Dakota added laws against the distribution of obscene materials to minors in the 1960s-1970s, which may be found in Codified Law 22-24. During that time South Dakota added Codified Law 22-24-31. This is the “Defenses for disseminating materials harmful to minors” or the affirmative defense law. It provided four possible defenses for disseminating materials harmful to minors. One, is that an individual had “reasonable cause to believe that the minor involved was eighteen years old” through an “official document or apparently official document.” Two, the minor is with a parent/guardian, or someone authorized to function as a guardian. Three, the person distributing the material is the parent/guardian of the minor. **Four, the distribution is made by a “school, college, university, museum, or public library,” or any employee acting on behalf of those organizations and “serving the educational purposes of” the organization.** This defense protects teachers, professor, and librarians from prosecution because a minor is shown or sees something considered obscene for educational purposes. For example, a minor is shown or sees David by Michelangelo as part of art or history class.

Codified Law 22-24-56 was also added in 1999. This law required public libraries with public access computers to develop a local policy to prevent minors from accessing obscene materials online. Like the school law, public libraries had to have policies in place by January 1, 2001.

The Children’s Internet Protection Act (CIPA) was passed and signed into federal law in 2000. It requires libraries and schools that receive federal funding of any kind to have “technological protection measures” in place to prevent minors from accessing obscene materials on library and school computers. The “technological protection measures” referred to in CIPA is internet filtering.

## What is obscene?

The definition is in Codified Law 22-24-27 (11). For something to be obscene it must meet three requirements.

One, the “dominant theme of which, taken as a whole, appeals to the prurient interest.” The definition of prurient interests is in 22-24-27 (12). Prurient interests are a “shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such

## Information on H.B. 1197 and Obscenity Law

audience or group.” So, the first requirement is that the whole work appeals to prurient interests as defined above.

Two, the work is “patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct.”

Three, the work “lacks serious literary, artistic, political, or scientific value.”

Again, materials must meet all three of these criteria to be considered obscene.

### **What does H.B. 1197 do?**

It changes the language in 22-24-56. The new language requires public libraries to have filters on public access computers or have filtered internet service and a policy in place to “restrict minors from accessing obscene matter or materials.” Public libraries will also be required to publish the policy on the website of the political subdivision that maintains the library or annually in a newspaper.

Schools and public libraries have until January 1, 2025, to develop and implement these policies.

### **Can you boil this down?**

- Public Libraries will need to have filtering software on public access computers or work with a service provider to have filtered internet service. The library will need to be able to turn the filtering software or filtered service off for adults to do legitimate research and resumed once the research is completed. There is also usually an option to “Whitelist” legitimate websites used for research that might otherwise be blocked.
- Library boards still have local control of policies that guide the purchase of materials for the library and set the process for material reconsideration. Library boards continue to have the authority to determine what is obscene or not based on the definition of obscenity in Codified Law 22-24-27 (11).
- Library boards will need to add a section to the collection development or service policy regarding how they will “restrict minors from accessing obscene matter or materials.”
- Public Libraries will need to publish their policies on the website of the political subdivision that maintains the library.

### **Statement Examples**

- The public library does not checkout obscene materials to individuals under the age of 18 without parental permission.
  - The definition of Obscene material is defined in South Dakota Codified Law 22-24-27 (11) "Obscene material," material: (a) The dominant theme of which, taken as a whole, appeals to the prurient interest; (b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and (c) Lacks serious literary, artistic, political, or scientific value.

### **Possible Procedures**

If the library has any materials in the adult area that would meet the definition of obscene materials as defined in 22-24-27 (11), please mark those materials for 18 and over. This can be physically or in the catalog or both. Create a procedure to prevent minors from checking out obscene materials. Create a procedure to have staff watch those materials so minors are not looking at those materials in the library. You may also create a form that allows parents/guardians to give permission for their minors to access materials deemed obscene. Make a note of the permission in the catalog.

### **Final Note**

The policies and procedures are local control issues. Either way, work with your board, administrators, and staff in determining what is best for your library. Please, remember all of this is based on the definition of obscene materials.

If you have any questions, please contact the state library. We can assist you in drafting a policy, developing a procedure, or helping you understand how this impacts your library.