

## 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 22-24-55 was added in 1999. This law required schools to provide filtering on school computers and/or establish a policy to prevent minors from accessing obscene materials on school computers. Schools that opted to do a policy in lieu of filtering had to have a policy in place by January 1, 2001.

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,

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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 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?**

H.B. 1197 changes the language of 22-24-55. The new language requires schools to have filters or filtered internet service and a policy in place to "restrict minors from accessing obscene matter or materials." Schools will also be required to publish the policy on their website or annually in a newspaper.

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

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

- Schools should have filtering software on all computers or equipment that students use to access the internet or work with a service provider to have filtered internet service.
- School boards still have local control of policies that guide the purchase of materials for the library and set the process for material reconsideration. School 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).
- School boards will need to add a section to the school policies regarding how they will "restrict minors from accessing obscene matter or materials."
- Schools will need to publish policies on their official website.

### **Statement Examples**

- The school 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.

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### **Possible Procedures**

Do not purchase obscene materials for the library. You may have a procedure in place for parents/guardians to opt their minors out of specific books in the library or give permission for their minors to read specific books.

### **Final Note**

The policies and procedures are local control issues. Either way, work with your administration 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.