

Obscenity and Nudity Ordinance
Henrico County,
Virginia

ARTICLE IV. OBSCENITY AND NUDITY

Sec. 13-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Obscene means that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters, and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

(Code 1980, § 15-15)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 18.2-372.

Sec. 13-92. Penalty.

Unless otherwise provided, any person violating the provisions of this article shall be guilty of a class 1 misdemeanor.

(Code 1980, § 15-30)

State law reference—Similar provisions, Code of Virginia, § 18.2-389

*State law references Obscenity, Code of Virginia, § 18.2-372 et seq.; authority to prohibit obscenity, Code of Virginia, § 18.2-389.

Sec. 13-93. Exceptions to article

Nothing contained in this article shall be construed to apply to:

- (1) The purchase, distribution, exhibition or loan of any book, magazine or other printed or manuscript material by any library, school or institution of higher learning, supported by public appropriation.
- (2) The purchase, distribution, exhibition or loan of any work of art by any museum of fine arts, school or institution of higher learning, supported by public appropriation.
- (3) The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum of fine arts, school or institution of higher learning, supported by public appropriation.

(Code 1980, § 15-25)

State law reference—Similar provisions, Code of Virginia, § 18.2-383.

Sec. 13-94. Obscene items enumerated.

Obscene items shall include:

(1) Any obscene book;

(2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, drawing, bumper sticker, photograph, film, negative, slide, motion picture or videotape recording;
or

(3) Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words or sounds.

(Code 1980, § 15-16)

State law reference—Similar provisions, Code of Virginia, § 18.2-873

Sec. 13-95. Manufacture, sale or distribution of obscene items prohibited.

(a) It shall be unlawful for any person knowingly to:

(1) Prepare any obscene item for the purposes of sale or distribution;

(2) Print, copy, manufacture, produce or reproduce any obscene item for purposes of sale or distribution;

(3) Publish, sell, rent, lend, transport in intrastate commerce or distribute or exhibit any obscene item, or offer to do any of these things; or

(4) Have in his possession with intent to sell, rent, lend, transport or distribute any obscene item. Possession in public or in a public place of any obscene item shall be deemed prima facie evidence of a violation of this section.

(b) For the purposes of this section, the term "distribute" shall mean to deliver in person, by mail, by messenger or by any other means by which obscene items may pass from one person to another.

(Code 1980, § 15-17)

State law reference—Similar provisions, Code of Virginia, § 18.2-374.

Sec. 13-96. Obscene exhibitions and performances prohibited.

It shall be unlawful for any person knowingly to:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided that no employee of any person or legal entity operating a theater, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section if the employee is not the manager of the theater or an officer of such entity, and has no financial interest in such theater other than receiving salary and wages; or

(2) Own, lease or manage any theater, garden, building, structure, room or place and lease, let, lend or permit such theater, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the locality who is the manager of such theater, garden, building, structure, room or place.

(Code 1980, § 15-18)

State law reference—Similar provisions, Code of Virginia, § 18.2-375

Sec. 13-97. Distribution of advertisements for obscene items or performances.

It shall be unlawful for any person knowingly to prepare, print, publish or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item proscribed in section 13-94, or of any obscene performance or exhibition proscribed in section 13-96, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard.

(Code 1980, § 15-19)

State law reference—Similar provisions, Code of Virginia, § 18.2-376

Sec. 13-98. Posting obscene material; posting of advertisements for obscene items or performances.

It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing or picture which is obscene, or which advertises or promotes any obscene item proscribed in section 13-94, or any obscene exhibition or performance proscribed in section 13-96, or knowingly to permit such placard, writing or picture to be displayed on property belonging to or controlled by him.

(Code 1980, § 15-20)

State law reference—similar provisions, Code of Virginia, § 18.2-377

Sec. 13-99. Coercing acceptance of obscene articles or publications.

It shall be unlawful for any person, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication, to require that the purchaser or consignee receive for resale any other article, book or other publication which is obscene; 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 such articles, books or publications, or by reason of the return thereof.

(Code 1980, § 15-21)

State law reference—Similar provisions, Code of Virginia, § 18.2-378.

Sec. 13-100. Employing or permitting minor to assist in offense.

It shall be unlawful for any person knowingly to hire, employ, use or permit any minor to do or assist in doing any act or thing constituting an offense under this article.

(Code 1980, § 15-22)

State law reference—Similar provisions, Code of Virginia, § 18.2-379.

Sec. 13-101. Penalty for first conviction under sections 13-94 through 13100. Any person convicted for the first time of an offense under sections 13-94 through 13-100 shall be guilty of a class 1 misdemeanor.

(Code 1980, § 15-23)

State law references Punishment for first offense, Code of Virginia, §18.2-380; subsequent offense constitutes felony, Code of Virginia, § 18 2-381.

Sec. 13-102. Production of obscene photographs or motion pictures.

Every person who knowingly:

(1) Photographs himself or any other person for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or

(2) Models, poses, acts or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; shall be guilty of a class 3 misdemeanor.

(Code 1980, § 15-24)

State law reference—Similar provisions, Code of Virginia, § 18.2-382.

Sec. 13-103. Proceeding against book alleged to be obscene.

(a) Whenever he has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book, any citizen or the commonwealth's

attorney of the county may institute a proceeding in the circuit court of the county for adjudication of the obscenity of the book.

(b) The proceeding shall be instituted by filing with the court a petition:

(1) Directed against the book by name or description;

(2) Alleging the obscene nature of the book; and

(3) Listing the names and addresses, if known, of the author, publisher and all other persons interested in its sale or commercial distribution.

(c) Upon the filing of a petition pursuant to this section, the court in term or in vacation shall forthwith examine the book alleged to be obscene. If the court finds no probable cause to believe the book obscene, the judge thereof shall dismiss the petition. If the court finds probable cause to believe the book obscene, the judge thereof shall issue an order to show cause why the book should not be adjudicated obscene.

(d) The order to show cause shall be:

(1) Directed against the book by name or description;

(2) Published once a week for two successive weeks in a newspaper of general circulation within the county;

(3) If their names and addresses are known, served by registered mail upon the author, publisher and all other persons interested in the sale or commercial distribution of the book; and

(4) Be returnable 21 days after its service by registered mail or the commencement of its publication, whichever is later.

(e) When an order to show cause is issued pursuant to this section, and upon four days' notice to be given to the persons and in the manner prescribed by the court, the court may issue a temporary restraining order against the sale or distribution of the book alleged to be obscene.

(f) On or before the return date specified in the order to show cause, the author, publisher and any person interested in the sale or commercial distribution of the book may appear and file an answer. The court may by order permit any other person to appear and file an answer amicus curiae.

(g) If no one appears and files an answer on or before the return date specified in the order to show cause, the court, upon being satisfied that the book is obscene, shall order the clerk of court to enter judgment that the book is obscene, but the court in its

discretion may except from its judgment a restricted category of persons to whom the book is not obscene.

(h) If an appearance is entered and an answer filed, the court shall order the proceeding set on the calendar for a prompt hearing. The court shall conduct the hearing in accordance with the rules of civil procedure applicable to the trial of cases by the court without a jury. At the hearing, the court shall receive evidence, including the testimony of experts, if such evidence be offered, pertaining to:

(1) The artistic, literary, medical, scientific, cultural and educational values, if any, of the book considered as a whole;

(2) The degree of public acceptance of the book, or books of similar character, within the county;

(3) The intent of the author and publisher of the book;

(4) The reputation of the author and publisher;

(5) The advertising, promotion and other circumstances relating to the sale of the book;

(6) The nature of classes of persons, including scholars, scientists and physicians, for whom the book may not have prurient appeal, and who may be subject to exception pursuant to subsection (g) of this section.

(i) In making a decision on the obscenity of the book, the court shall consider, among other things, the evidence offered pursuant to subsection (h) of this section, if any, and shall make a written determination upon every such consideration relied upon in the proceeding in the court's findings of fact and conclusions of law or in a memorandum accompanying them.

(j) If the court finds the book not obscene, the court shall order the clerk of court to enter judgment accordingly. If the court finds the book obscene, the court shall order the clerk of court to enter judgment that the book is obscene, but the court, in its discretion, may except from its judgment a restricted category of persons to whom the book is not obscene.

(k) While a temporary restraining order made pursuant to subsection (e) of this section is in effect, or after the entry of a judgment pursuant to subsection (g) of this section, or after the entry of judgment pursuant to subsection (j) of this section, any person who publishes, sells, rents, lends, transports in intrastate commerce, or commercially distributes or exhibits the book, or has the book in his possession with intent to publish, sell, rent, lend, transport in intrastate commerce, or commercially distribute or exhibit the book, is presumed to have knowledge that the book is obscene under sections 13-91 through 13-100.

(l) Any party to the proceeding, including the petitioner, may appeal from the judgment of the court to the supreme court of the state, as otherwise provided by law.

(m) It is expressly provided that the petition and proceeding authorized under this section relating to books alleged to be obscene shall be intended only to establish scienter in cases where the establishment of such scienter is thought to be useful or desirable by the petitioner, and the provisions of this section shall not be construed to be a necessary prerequisite to the filing of criminal charges under this article.

(Code 1980, § 15-26)

State law reference—Similar provisions, Code of Virginia, § 18.2-384.

Sec. 13-104. Proceeding against motion picture alleged to be obscene.

The provisions of section 13-103 shall apply mutatis mutandis in the case of motion picture film.

(Code 1980, § 15-27)

State law reference—Similar provisions, Code of Virginia, § 18.2-385.

Sec. 13-105. Showing previews of certain motion pictures.

It shall be unlawful for any person to exhibit any trailer or preview of any motion picture which has a motion picture industry rating which would not permit persons in the audience viewing the feature motion picture to see the complete motion picture from which the trailer or preview is taken. Persons violating the provisions of this section shall be guilty of a class 1 misdemeanor.

(Code 1980, § 15-28)

State law reference—Similar provisions, Code of Virginia, § 18.2-386.

Sec. 13-106. Indecent exposure.

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(Code 1980, § 15-29)

State law reference—Similar provisions, Code of Virginia, § 18.2-387.

Sec. 13-107. Public nudity.

(a) As used in this section, the term "State of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks or to cover any of

them with less than a fully opaque covering, or the showing of the female breast or any portion thereof below the top of the nipple, or the covering of the breast or any portion thereof below the top of the nipple with less than a fully opaque covering.

(b) Every person who knowingly, voluntarily and intentionally appears in public or in a public place or in a place open to the public or open to public view in a state of nudity, or employs, encourages or procures another person so to appear, shall be guilty of a misdemeanor punishable by confinement in jail for not more than six months or a fine of not more than \$500.00, or both.

(c) Nothing contained in this section shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama.

(Code 1980, § 15-33)

State law references Indecent exposure, Code of Virginia, § 18.2-387; definition of nudity, Code of Virginia, § 18.2-390.

Sec. 13-108. Unlawful acts relating to juveniles.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) Juvenile means a person less than 18 years of age.

(2) Nudity means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

(3) Sexual conduct means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is female, breast.

(4) Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) Sadoomasochistic abuse means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) Harmful to juveniles means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

- a. Predominantly appeals to the prurient, shameful or morbid interest;
- b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles; and
- c. Is utterly without redeeming social importance for juveniles.

(7) Knowingly means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- a. The character and content of any material described in this section which is reasonably susceptible of examination by the defendant; and
- b. The age of the juvenile; provided, however, that an honest mistake shall constitute an excuse from liability under this section if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(b) It shall be unlawful for any person knowingly to sell, rent or loan to a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

(1) Any picture, photography, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subsection (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(c) it shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass to or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

(d) It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection (b) of this section or subsection (c) of this section, or to his agent, that such

juvenile is 18 years of age or older, with the intent to procure any material set forth in subsection (b) of this section, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection (c) of this section.

(e) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (b) or subsection (c) of this section, or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in subsection (b) of this section, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection (c) of this section.

(f) Violation of any provision of this section shall constitute a class 1 misdemeanor.

(Code 1980, §§ 15-31, 15-32)

State law reference—Similar provisions, Code of Virginia, §§ 18.2-390, 18.2-391.

Secs. 13-109-13-130. Reserved.