

O.C.G.A. § 16-12-103

Current through the 2023 Regular Session of the General Assembly.

- [Official Code of Georgia Annotated](#)
- [TITLE 16 Crimes and Offenses \(Chs. 1 — 17\)](#)
- [CHAPTER 12 Offenses Against Public Health and Morals \(Arts. 1 — 9\)](#)
- [Article 3 Obscenity and Related Offenses \(Pts. 1 — 3\)](#)
- [PART 3 Sale or Distribution of Harmful Materials to Minors \(§§ 16-12-101 — 16-12-113\)](#)

16-12-103. Selling, loaning, distributing, or exhibiting; duties of video game retailers.

(a) It shall be unlawful for any person knowingly to sell or loan for monetary consideration or otherwise furnish or disseminate to a **minor**:

(1) Any picture, photograph, 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 minors**; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (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 minors**.

(b)

(1) It shall be unlawful for any person knowingly to sell or furnish to a **minor** an admission ticket or pass or knowingly to admit a **minor** 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 minors** or 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 **minors** not admitted to any such premises.

(2) It shall be unlawful for any person knowingly to sell or to furnish to a person under the age of 21 an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is **harmful to minors** and which, in whole or in part, consists of sexually explicit nudity on the part of one or more live performers; sexual conduct on the part of one or more live performers; or sadomasochistic abuse on the part of one or more live performers.

(c) It shall be unlawful for any person to falsely represent his or her age to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent with the intent to unlawfully procure any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(d) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent that he or she is the parent or guardian of any **minor** or knowingly to make a false representation with respect to the age of another person with the intent to unlawfully procure for such other person any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such other person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(e) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment or at any other public place frequented by **minors** or where **minors** are or may be invited as part of the general public:

(1) Any picture, photograph, 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 minors**; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (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 minors**.

(f)

(1) As used in this subsection, the term:

(A) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(B) "Video game retailer" means a person who sells or rents video games to the public.

(2) Every video game retailer shall post a sign providing information to consumers about any video game rating system which appears on a video game offered by such retailer. The sign shall be posted in a conspicuous place within the portion of the establishment dedicated to the display or advertisement of video games. Each video game retailer shall make available to consumers, upon request, written information explaining each such rating system.

(3) A person violating the provisions of this subsection shall be punished with a civil fine in an amount not less than \$250.00 and not more than \$500.00 for each violation. Each day in violation of this subsection shall constitute a separate offense.

History

Code 1981, §§ 16-12-103, 16-12-104, enacted by Ga. L. 1983, p. 1437, § 2; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1495, § 3; Ga. L. 1996, p. 273, § 2; Ga. L. 2005, p. 1261, § 1/SB 106.

▼ Annotations

Notes

Editor's notes.

The provisions of the subsection (b) added by the second 1984 amendment were derived in great part from the provisions of former Code Section 16-12-104. See Editor's notes to that Code section.

Ga. L. 1996, p. 273, § 3, not codified by the General Assembly, provides for severability.

JUDICIAL DECISIONS

Constitutionality. —

O.C.G.A. § 16-12-103 produces only a slight burden on adults' access to protected material and fully comports with the First Amendment. *American Booksellers v. Webb*, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

O.C.G.A. § 16-12-103(b)(2) is unconstitutional as an infringement on free speech rights without proof of a compelling state interest justifying such restriction applying to persons between 18 and 21 years of age. *State v. Cafe Erotica, Inc.*, 269 Ga. 486, 500 S.E.2d 574, 1998 Ga. LEXIS 561 (1998).

Prosecution for exhibition or definition violations. —

State is not prohibited from prosecuting a defendant for violating the exhibition and definition components of O.C.G.A. § 16-12-103, even though the display provision (subsection (e)) has been declared unconstitutional. *Windom v. State*, 187 Ga. App. 18, 369 S.E.2d 311, 1988 Ga. App. LEXIS 586 (1988).

"Obscene" work viewed "as a whole." —

When the O.C.G.A. § 16-12-103(a)(1) charge against the defendant was based on defendant's exhibiting to a **minor** an allegedly pornographic motion picture, and the jury was allowed to view a videotape of this motion picture, which was found during a search of defendant's home, but at some point during the showing of this film, defense counsel stipulated that the film was sexually explicit, and the remainder of the film was not shown to the jury, as a result of this truncation of the jury's view of the film, there was insufficient evidence under which the jury could have found defendant guilty of this charge since, in order to be adjudged obscene under O.C.G.A. § 16-12-103(a)(1), the work must depict sexually explicit nudity and be **harmful to minors**; in order to be adjudged **harmful to minors**, the work must meet the three-part test set out in O.C.G.A. § 16-12-102(1)(A), (B), and (C), and in order to determine whether the work meets the tests set out in subparagraphs (A) and (C) the work must be viewed "as a whole." *Hunter v. State*, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

Private or noncommercial exhibition to **minors**. —

Charging a defendant with showing an obscene film to a **minor** does not constitute an unconstitutional intrusion into defendant's right of personal privacy within the private and noncommercial boundaries of defendant's home. *Hunter v. State*, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

Distribution of text message by cell phone. —

Sexually explicit text message sent to a **minor** via a cellular phone constitutes "printed matter however reproduced" under O.C.G.A. § 16-12-103(a)(2). *Frix v. State*, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

As a person of ordinary intelligence would have fair notice that sending a sexually explicit text message to a **minor** via a cellular phone was unlawful under O.C.G.A. § 16-12-103, prosecuting the defendant for distribution of **harmful** materials to a **minor** based on such conduct did not violate due process. *Frix v. State*, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

Placing material “**harmful to minors**” behind “**blinder racks**” or shelves which cover at least the lower two-thirds of material that would otherwise be exposed to view does not impose a “substantially overbroad” regulation on “conduct plus speech,” where adults may peruse and purchase the material without restriction. *American Booksellers v. Webb*, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

Admission of challenged evidence deemed harmless error. —

In a prosecution against the defendant for child molestation, enticing a child for indecent purposes, and exhibiting pornography to a **minor**, even if the appeals court assumed that the word “catheter” should have been redacted from what the defendant apparently conceded was an otherwise relevant list of items found in a search, the trial court’s failure to do so was harmless error because it was highly improbable that such failure contributed to the verdict given the overwhelming evidence of the defendant’s guilt. *Goldey v. State*, 289 Ga. App. 198, 656 S.E.2d 549, 2008 Ga. App. LEXIS 37 (2008).

Rule of lenity did not apply. —

There was no merit to a defendant’s contention that the defendant’s conviction and felony sentence for child molestation were improper because the alleged conduct also violated O.C.G.A. § 16-12-103(a)(1), which makes it a misdemeanor of a high and aggravated nature to furnish or disseminate **harmful** material to a **minor** and, therefore, the defendant could only be prosecuted for the misdemeanor offense as the rule of lenity did not apply because the two offenses at issue required different conduct. Namely, the crime of child molestation required, among other things, proof of the intent to arouse or satisfy the sexual desires of either the child or the perpetrator, which was not a required element of the crime of furnishing or disseminating **harmful** material to a **minor**. *Metts v. State*, 297 Ga. App. 330, 677 S.E.2d 377, 2009 Ga. App. LEXIS 431 (2009).

Research References & Practice Aids

Law reviews.

For review of 1996 offenses against public health and morals legislation, see 13 Ga. St. U.L. Rev. 116 (1996).

For article on 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 57 (2005).

For note, “Balancing the First Amendment and Child Protection Goals in Legal Approaches to Restricting Children’s Access to Violent Video Games: A Comparison of Germany and the United States,” see 34 Ga. J. Int’l & Comp. L. 743 (2006).

For article, “‘Sexting’ to **Minors** in a Rapidly Evolving Digital Age: *Frix v. State* Establishes the Applicability of Georgia’s Obscenity Statutes to Text Messages,” see 61 Mercer L. Rev. 1283 (2010).

RESEARCH REFERENCES

ALR.

Obscenity prosecution: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials, 13 A.L.R.5th 567.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

Hierarchy Notes:

O.C.G.A. Title 16

O.C.G.A. Title 16, Ch. 12

O.C.G.A. Title 16, Ch. 12, Art. 3

O.C.G.A. Title 16, Ch. 12, Art. 3, Pt. 3

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