

CHAPTER 12.1-27.2 SEXUAL PERFORMANCES BY CHILDREN

12.1-27.2-01. Definitions.

As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
2. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.
3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
4. "Sexual conduct" means actual or simulated:
 - a. Sexual intercourse;
 - b. Sodomy, as defined under section 12.1-27.1-01;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
 - f. Lewd exhibition of the buttocks, breasts, or genitals;
 - g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.
5. "Sexual performance" means any performance which includes sexual conduct by a minor.
6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

12.1-27.2-02. Use of a minor in a sexual performance.

1. A person is guilty of a class A felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.
2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or coerce a minor to engage in a sexual performance, the adult portrays the adult to be a minor.

12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class A felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

12.1-27.2-04. Promoting a sexual performance by a minor.

A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

12.1-27.2-04.1. Possession of certain materials prohibited.

A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

12.1-27.2-04.2. Sexual performance by a minor - Enhanced penalties.

1. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
 - a. For an individual, a fine not to exceed ten thousand dollars; or
 - b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
2. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter:
 - a. For an individual, a fine not to exceed fifty thousand dollars; or
 - b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older, if the minor was in fact fifteen years of age or older; or
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance.

12.1-27.2-06. Proof of age of minor.

When it becomes necessary under this chapter to determine whether a minor participated in a sexual performance, the trier of fact may base its determination on personal inspection of the minor, inspection of a photograph or motion picture of the sexual performance, testimony by a witness to the sexual performance as to the age of the minor based upon the minor's appearance, expert testimony based upon the appearance of the minor in the sexual performance, or any other method authorized by law or by rule.