

238.18 DISPLAYING MATERIAL HARMFUL TO MINORS. MISDEMEANOR.

The defendant has been charged with displaying material harmful to minors.

For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant displayed material¹ that was harmful to minors.² Material is harmful to minors when judged with reference to the average adult person:

- a. applying contemporary community standards the material has a predominant tendency to appeal to a prurient interest of minors in sex; and
- b. applying contemporary community standards the depiction of [sexually explicit nudity³] [sexual activity⁴] in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and the [material] [performance) lacks serious literary, artistic, political or scientific value for minors.⁵

Second, that this material was displayed at a commercial establishment.

Third, that the material was displayed⁶ so that it was open to view by minors as part of the invited general public.

Fourth, that the material was displayed⁶ by the defendant who had [custody] [control] [supervision] of the commercial establishment.

And Fifth, that the defendant knew the material's [character] [content].

If you find from the evidence beyond a reasonable doubt that on or

about the alleged date, the defendant displayed material that was harmful to minors at a commercial establishment which was under his [custody] [control] [supervision] and that the material was displayed so that it was open to view by minors as part of the invited general public and that the defendant knew the [character] [content] of the material, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. G.S. 14-190.13(2) defines material as "pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words."

2. G.S. 14-190.13(3) defines minor as "an individual who is less than eighteen years old and is not married or judicially emancipated."

3. G.S. 14-190.13(6) defines sexually explicit nudity.

4. G.S. 14-190.13(5) defines sexual activity.

5. G.S. 14-190.13(1) sets out the requirements contained in a, b, and c.

6. G.S. 14-190.14 states that "material is not considered displayed...if the material is placed behind 'blinder racks' that cover the lower two-thirds of the material, is wrapped, is placed behind the counter, or is otherwise covered or located so that the portion that is harmful to minors is not open to the view of minors."