

238.30 EXHIBITING A HARMFUL PERFORMANCE TO MINORS.  
MISDEMEANOR.

The defendant has been charged with exhibiting a harmful performance to minors.

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

First, that the defendant allowed a minor<sup>1</sup> to view a love performance that was harmful to minors. A live performance is harmful to minors if it depicts [sexually explicit nudity<sup>2</sup>] [sexual activity<sup>3</sup>] and taken as a whole: and taken as a whole:

- a. the average adult person applying contemporary community standards would find that it has a predominant tendency to appeal to a prurient interest of minors in sex; and
- b. the average adult person applying contemporary community standards could find the depiction of [sexually explicit nudity] [sexual activity] in the material is potentially offensive to prevailing standards in the adult community concerning what is suitable for minors; and
- c. it lacks serious literary, artistic, political or scientific value for minors.<sup>4</sup>

And Second, that the defendant knew the [character] [content] of the performance.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant allowed a minor to view a live performance that was harmful to minors and that the defendant knew the [character] [content] of the live performance, 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.

*NOTE WELL: G.S. 14-190.15(c) provides that it is an affirmative defense to a prosecution under G.S. 14-190.15(b) that:*

- (1) The defendant was a parent or legal guardian of the minor.*
- (2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.*
- (3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least eighteen (18) years old, and the defendant reasonably believed the minor was at least eighteen (18) years old.*
- (4) The dissemination was made with the prior consent of a parent or guardian of the recipient.*

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1. G.S. 14-190.13(3) defines minor as "an individual who is less than eighteen (18) years old and is not married or judicially emancipated."

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

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

4. G.S. 14-190.13(1) sets out the requirements contained in a, b, and c. It does not matter whether the material was disseminated with or without consideration. G.S. 14-190.15(a).