**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4973**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Felder, Bernstein, Calhoon, Guffey, Taylor, Mitchell and Yow

Companion/Similar bill(s): 995, 4948

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Introduced in the House on January 30, 2024

Currently residing in the House

Summary: Sexual exploitation of a minor, morphed images of children

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/30/2024 House Introduced and read first time ([House Journal‑page 8](h:\hj\20240130.docx))

1/30/2024 House Referred to Committee on **Judiciary** ([House Journal‑page 8](h:\hj\20240130.docx))

2/6/2024 House Member(s) request name added as sponsor: Guffey,
Taylor

3/27/2024 House Member(s) request name added as sponsor: Mitchell, Yow

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**VERSIONS OF THIS BILL**

[01/30/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4973_20240130.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16‑15‑375, RELATING TO DEFINITIONS APPLICABLE TO CERTAIN OFFENSES AGAINST MINORS, SO AS TO AMEND THE DEFINITION OF “MATERIAL” AND TO DEFINE THE TERMS “IDENTIFIABLE MINOR” AND “MORPHED IMAGE”; BY AMENDING SECTION 16‑15‑395, RELATING TO FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR, BY AMENDING SECTION 16‑15‑405, RELATING TO SECOND DEGREE SEXUAL EXPLOITATION OF A MINOR, AND BY AMENDING SECTION 16‑15‑410, RELATING TO THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR, ALL SO AS TO INCORPORATE IDENTIFIABLE MINORS AND MORPHED IMAGES OF IDENTIFIABLE CHILDREN WITHIN THE PURVIEW OF THESE STATUTES; AND BY AMENDING SECTION 23‑3‑430, RELATING TO THE SEX OFFENDER REGISTRY AND OFFENSES FOR WHICH A CONVICTION REQUIRES REGISTRATION, SO AS TO ADD THE OFFENSES OF EXPLOITATION OF A MINOR IN THE FIRST, SECOND, AND THIRD DEGREES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑15‑375 of the S.C. Code is amended to read:

Section 16‑15‑375. The following definitions apply to Section 16‑15‑385, disseminating or exhibiting to minors harmful material or performances; Section 16‑15‑387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16‑15‑395, first degree sexual exploitation of a minor; Section 16‑15‑405, second degree sexual exploitation of a minor; Section 16‑15‑410, third degree sexual exploitation of a minor; Section 16‑15‑415, promoting prostitution of a minor; and Section 16‑15‑425, participating in prostitution of a minor.

(1) “Harmful to minors” means that quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

(a) the average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

(b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

(c) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) “Identifiable minor” means a person who:

(a)(1) was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and

(2) is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(b) This term shall not be construed to require proof of the actual identity of the identifiable minor.

(2)(3) “Material” means pictures, drawings, video recordings, films, digital electronic files, computer‑generated images or pictures, or other visual depictions or representations but not material consisting entirely of written words.

(3)(4) “Minor” means an individual who is less than eighteen years old.

(5) “Morphed image” means any visual depiction or representation, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where such visual depiction or representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct or sexually explicit activity or appearing in a state of sexually explicit nudity.

(4)(6) “Prostitution” means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5)(7) “Sexual activity” includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or an animal;

(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado‑masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person’s body, other than the male sexual organ, or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure.

(6)(8) “Sexually explicit nudity” means the showing of:

(a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

SECTION 2. Section 16‑15‑395(A) of the S.C. Code is amended to read:

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

(2) permits a minor under his custody or control to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor or a morphed image of an identifiable minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

SECTION 3. Section 16‑15‑405(A) of the S.C. Code is amended to read:

(A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor or a morphed image of an identifiable minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; or

(2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor or a morphed image of an identifiable minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

SECTION 4. Section 16‑15‑410(A) of the S.C. Code is amended to read:

(A) An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor or a morphed image of an identifiable minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

SECTION 5. Section 23‑3‑430(C)(2) of the S.C. Code is amended by adding subitems to read:

(i) sexual exploitation of a minor, first degree (Section 16‑15‑395);

(j) sexual exploitation of a minor, second degree (Section 16‑15‑405);

(k) sexual exploitation of a minor, third degree (Section 16‑15‑410).

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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