

MAINE STATE LEGISLATURE

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New Draft of S. P. 281, L. D. 894

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1861

S. P. 533

In Senate, June 6, 1977

Reported by 9 Members from Committee on Legal Affairs in Report "A".
Sent down for concurrence and ordered printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

An ACT Prohibiting the Dissemination of Obscene Matter to Minors.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17 MRSA c. 93, as amended, is repealed.

Sec. 2. 17 MRSA c. 93-A is enacted to read:

§ 2911. Dissemination of obscene matter to minors

1. Definitions. As used in this section, unless the context indicates otherwise, the following words shall have the following meanings.

A. "Distribute" means to transfer possession, whether with or without consideration.

B. "Exhibit" means to display for viewing by the public.

C. "Matter" means any printed or written material, any picture, photograph or other visual representation, excluding motion pictures.

D. "Obscene matter" means matter which:

(1) To the average individual, applying contemporary community standards, with respect to what is suitable material for minors, considered as a whole, appeals to the prurient interest;

(2) Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and

(3) Considered as a whole, lacks serious literary, artistic, political or scientific value.

2. **General rule.** A person is guilty of disseminating obscene matter to a minor if he knowingly distributes, or exhibits or offers to distribute or exhibit to a minor, any obscene matter declared obscene, in an action to which he was a party, pursuant to subsection 3.

A. This section shall not apply to any non-commercial distribution or exhibition for purely educational purposes by any library, museum, public school, private school or institution of learning.

B. It shall be a valid defense to any proceeding under this section that:

(1) The defendant was a parent or guardian of the minor; and

(2) The distribution or exhibition is exempt under paragraph A.

3. **Procedure for adjudicating obscenity.** Whenever the Attorney General, or any district attorney, reasonably believes a person is disseminating to minors matter which is obscene, he may petition the Superior Court to declare the matter obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General or district attorney may join all persons he reasonably believes to be disseminating that matter to minors as parties to the action. The hearing on such petition shall be held not more than 10 days from the filing of the petition.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others disseminating the same matter shall be freely allowed.

C. Determination by a court pursuant to this subsection that a matter is obscene shall not bar relitigation of that issue in a criminal prosecution under this section.

4. **Penalty.** Disseminating obscene matter to a minor is a Class D crime.

STATEMENT OF FACT

This new draft repeals the current outdated obscenity statutes in Title 17, chapter 93, and replaces them with a prohibition on the dissemination of obscene matter to minors consistent with recent Supreme Court guidelines. It eliminates the fair notice problem of the current law by providing for a declaratory judgment proceeding in which matter may be initially declared obscene prior to a criminal prosecution for disseminating obscene matter. Dissemination of obscene matter to minors is made a Class D crime.

The new draft does not include motion pictures. It provides exemptions for parents, guardians and certain educational institutions, libraries, and museums as currently existing for motion pictures.