

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1862

S. P. 534

In Senate, June 6, 1977

Reported by 2 Members from Committee on Legal Affairs in Report "B".

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Sec. 1. 8 MRSA c. 26, as enacted by PL 1969, c. 575, § 1, and as amended, is repealed.

Sec. 2. 15, MRSA § 1256, as amended by PL 1973, c. 567, § 20, is further amended by inserting at the end the following new paragraph:

The grand jury shall determine the obscenity vel non of any matter brought to its attention in accordance with Title 17, chapter 93.

Sec. 3. 17 MRSA § 2901, as amended by PL 1969, c. 575, § 2, is repealed.

Sec. 4. 17 MRSA § 2902 is repealed.

Sec. 5. 17 MRSA § 2903 is repealed and the following enacted in its place:
§ 2903. Dissemination of obscene matter to minors

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

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, motion picture or other visual representation, any live conduct, any

recording, mechanical or electrical production, or any other articles, equipment, machines or materials.

D. "Obscene matter" means matter which:

(1) To the average individual, applying contemporary community standards, 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 by grand jury action pursuant to subsection 3.

3. Grand jury declaration of obscenity. Whenever the Attorney General or any district attorney receives a complaint that a person is disseminating to minors matter which is obscene, he may present that material to the grand jury for that county.

A. The grand jury shall determine if the matter is obscene. If 12 or more members of the grand jury present and voting determine that the matter is obscene, that matter shall be declared obscene for that county and the district attorney shall cause notice of the declaration of obscenity to be published in a newspaper of general circulation in that county.

B. Determination by the grand jury pursuant to this subsection that a matter is obscene shall not bar relitigation of that issue in any subsequent proceeding.

4. Penalty. Disseminating obscene matter to a minor is a civil violation for which a forfeiture of not more than \$200 may be adjudged.

Sec. 6. 17 MRSA § 2904 is repealed.

Sec. 7. 17 MRSA § 2905 is repealed.

STATEMENT OF FACT

The purpose of this new draft is to prohibit the dissemination of obscene matter to minors. The standard which requires that the disseminator "knowingly" distributes the obscene material to a minor would prevent prosecution of those disseminating obscene matter to individuals believed to be adults. Initial determination of the obscene nature of the material would be made by the grand jury for that county, thus providing "community" standards as required by the Constitution.