

MAINE STATE LEGISLATURE

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STATE OF MAINE
 SENATE
 110TH LEGISLATURE
 FIRST REGULAR SESSION

(Filing No. S-191)

COMMITTEE AMENDMENT "B" to S.P. 243, L.D. 698, Bill, "AN ACT to Prohibit the Dissemination of Obscene Material."

Amend the Bill in the title by striking out the word "Dissemination" and inserting in its place the word 'Exhibition' Further Amend the Bill by striking out everything after the enacting clause and inserting in its place the following:

'17 MRSA c. 93-C is enacted to read:

CHAPTER 93-C

EXHIBITION OF OBSCENE MATERIAL

§2931. Definitions

As used in this chapter, unless the context otherwise indicates the following terms have the following meanings.

1. Material. "Material" means:

- A. Any visual representation, including motion picture films, pictures and photographs;
- B. Objects, figures or statues; or
- C. Live performances, plays or dances.

2. Obscene. Material is "obscene" if, considered as a whole, to the average person:

- A. When applying contemporary community standards, its predominant appeal is to the prurient interest in sex;
- B. It depicts or describes sexual conduct in a manner which, when applying contemporary community standards, is patently offensive; and
- C. It lacks serious literary, artistic, political or scientific value.

← The fact that material is advertised, suggested or represented to appeal to an erotic interest may be considered in determining whether material is obscene under this chapter.

3. Public way. "Public way" means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, or way under the control of park commissioners or a body having like powers.

4. Sexual conduct. "Sexual conduct" means:

A. Human masturbation or excretion;

B. Sexual intercourse, as defined in Title 17-A, section 251, subsection 1, (←) paragraph B, whether actual or simulated;

C. Any act of sexual gratification, actual or simulated, which involves direct physical contact between the sex organs of one person and the mouth or anus of another, or direct physical contact between the sex organs of one and the sex organs of another, or direct physical contact between the sex organs of one and an instrument or device manipulated by another;

D. Lewd exhibition of the genitals;

E. Flagellation, torture or other acts of sadomasochistic abuse in the context of a sexual relationship; or

F. An act of sexual gratification performed with an animal that would be sexual intercourse or sexual act if performed with a person.

5. Simulated. "Simulated" means giving the direct appearance of immediate or imminent and impending completion of the act.

§2932. Exhibition of obscene material

1. Offense. A person is guilty of exhibition of obscene material if he intentionally or knowingly:

A. On or in clear view from a public way, displays any material which is obscene, and the obscenity is clearly visible to the general public; or

B. Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene.

2. Penalty. Exhibition of obscene material is a Class D crime.

§2933. Preliminary hearing

Whenever the Attorney General or any district attorney has probable cause to believe that a person is exhibiting obscene material, 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 exhibiting that matter as parties to the action.

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

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

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

Statement of Fact

The amendment does the following things:

1. It retains the present law regarding dissemination of
← obscene matter to minors. That law would be repealed by the
← original bill;

2. It makes it a Class D crime to exhibit obscene materials
← along a public way, such as in store display windows or on
← sidewalk newsstands; and

3. It makes it a Class D crime to present or participate
in so-called "live sex acts."

Reported in Report "B" by the Committee on Legal Affairs.
Reproduced and distributed pursuant to Senate Rule 11-A.
May 11, 1981 (Filing No. S-191)