

DATE: 3/25/94

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(Filing No. H- 935)

L.D. 1718

## JUDICIARY

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## STATE OF MAINE HOUSE OF REPRESENTATIVES 116TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "H" to H.P. 1274, L.D. 1718, Bill, "An Act to Protect Maine Children from Child Pornography Contraband"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 17 MRSA §2923, sub-§3, as enacted by PL 1977, c. 628, §1, is amended to read:

Penalty. Dissemination of sexually explicit materials is 3. 30 a Class C crime,-except-that-any-person-convicted-of-this-erime shall-be-sentenced-by-imprisonment-for-not-less-than-2-years. If 32 the State pleads and proves a prior conviction under this section, then the crime is a Class B crime,--except-that--any person--convicted--of--this--2nd--crime--shall--be--sentenced--by 34 imprisonment-for-not-less-than-5-years. The-court-shall-not 36 suspend-either-minimum-term-of-imprisonment-unless-it-sets-forth in-detail,--in-writing,-the-reasons-for-suspending-the-sentence-38 The--court-shall--consider-the-nature-and-circumstances-of-the erimer--tho--physical--and--mental--well-being--of--the--minor---the 40 history-and character-of-the-defendant, - and - shall-only - suspend the-minimum-term-if-it-is-of-the-opinion-that-the-exceptional features-of-the-case-justify-the-imposition-of-another-sentence. 42

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Sec. 2. 17 MRSA §2924 is enacted to read:

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# COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1274, L.D. 1718

| 2 | <u>§2924. Possession of sexually explicit materials</u>   |
|---|---|
| 4 | 1. Definitions. As used in this section, the term   |
| 6 | "sexually explicit conduct" means any of the following acts:  |
| 8 | <u>A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C;</u>   |
| 0 | B. Bestiality;  |
| 2 | C. Masturbation;  |
| 4 | D. Sadomasochistic abuse for the purpose of sexual stimulation;   |
| 5 | E. Lewd exhibition of the unclothed genitals, anus or pubic   |
|   | area of a person. An exhibition is considered lewd if the   |
|   | <u>depiction is designed for the purpose of eliciting or</u><br><u>attempting to elicit a sexual response in the intended</u><br><u>viewer; or</u>  |
|   |   |
|   | F. Conduct that creates the appearance of the acts in<br>paragraphs A to D and also exhibits any uncovered or covered<br>portions of the genitals, anus or pubic area.                      |
|   |   |
|   | 2. Offense. A person is guilty of possession of sexually<br>explicit material if that person intentionally or knowingly<br>transports, exhibits, purchases or possesses any book, magazine, |
|   | print, negative, slide, motion picture, videotape or other  |
|   | <u>mechanically reproduced visual material that the person knows or</u><br><u>should know depicts another person engaging in sexually explicit</u>  |
|   | conduct, and:   |
|   | A. The other person has not in fact attained the age of 14  |
|   | years; or   |
|   | B. The person knows or has reason to know that the other persons has not attained the age of 14 years.  |
|   | 3. Defense. It is a defense to a prosecution under this   |
|   | section that the person depicted was the spouse of the person   |
|   | possessing the sexually explicit material at the time the material was produced.  |
|   |   |
|   | <b>4. Age of person depicted.</b> The age of the person depicted may be reasonably inferred from the depiction. Competent medical   |
|   | evidence or other expert testimony may be used to establish the age of the person depicted.   |

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COMMITTEE AMENDMENT "H" to H.P. 1274, L.D. 1718

5. Penalty. Possession of sexually explicit material is a Class D crime. If the State pleads and proves a prior conviction under this section, the crime is a Class C crime.

**6. Contraband.** Any material that depicts a person who has not attained the age of 14 years engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.'

Further amend the bill by inserting at the end before the statement of fact the following:

#### **'FISCAL NOTE**

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### This bill establishes new Class D and Class C crimes.

Sentences imposed for Class D offenses must be served in a county jail. The average cost per sentence for a Class D crime is \$8,320, based upon an average length of stay of 119 days. The additional costs to the counties for the housing of each offender sentenced under this new crime are not reimbursed by the State.

Sentences of more than 9 months and, beginning January 1, 1995, more than 12 months imposed for Class C crimes must be served in a state correctional institution. The cost to the State per sentence is \$45,352, based upon an average length of stay of one year and 9 months. The State also must reimburse counties for sentences served in county jails of 9 months or less and, beginning January 1, 1995, 12 months or less for Class C crimes.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these 3.4 new crimes. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the 36 minimal number of new cases filed in the court system can be 38 absorbed within the budgeted resources of the Judicial Department's administrative account. The collection of additional fines may also increase General Fund revenues by minor 40 amounts.'

### STATEMENT OF FACT

46 This amendment replaces the original bill.

48 This amendment adds a special definition of "sexually explicit conduct" to cover possession. It differs from the 50 general definition in the Maine Revised Statutes, Title 17,

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# COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "H" to H.P. 1274, L.D. 1718

section 2921 by limiting the part of the definition relating to "lewd" exhibitions to include only unclothed genitals, anus or pubic areas. The definition also looks to the intended response in the viewer.

This amendment makes several changes to clarify and strengthen the bill.

First, the offense itself is amended in 2 ways.

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1. The person in possession of the sexually explicit 12 material must know or should know what the material contains.

14 2. The person in possession must know or have reason to know that the person depicted in the materials is under 14 years
16 of age. In the alternative, it is sufficient for the prosecution to prove that the person depicted was in fact under 14 years of
18 age at the time of production of the depiction.

20 Second, specific language is added to ensure that the age of the person depicted can be established without producing or identifying the person depicted. This provision will protect victims who are known, but also allow for the prosecution and 24 conviction of persons in possession of sexually explicit material in which the persons depicted are under 14 years of age but whose 26 identities are unknown.

Third, the Maine Revised Statutes, Title 17, section 2924, subsection 6, as enacted in this amendment declares these
 materials contraband to allow the seizure of the materials even when a conviction does not occur.

This amendment also repeals the mandatory minimum penalties for dissemination of sexually explicit material.

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This amendment also adds a fiscal note to the bill.