

MAINE STATE LEGISLATURE

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DATE: 3/25/94

(Filing No. H- 935)

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

COMMITTEE AMENDMENT "A" 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:

3. **Penalty.** Dissemination of sexually explicit materials is a Class C crime, ~~except that any person convicted of this crime shall be sentenced by imprisonment for not less than 2 years. If 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 imprisonment for not less than 5 years. The court shall not suspend either minimum term of imprisonment unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor, the 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.~~

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

COMMITTEE AMENDMENT

§2924. Possession of sexually explicit materials

1. Definitions. As used in this section, the term "sexually explicit conduct" means any of the following acts:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C;

B. Bestiality;

C. Masturbation;

D. Sadomasochistic abuse for the purpose of sexual stimulation;

E. Lewd exhibition of the unclothed genitals, anus or pubic area of a person. An exhibition is considered lewd if the depiction is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or

F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.

2. Offense. A person is guilty of possession of sexually explicit material if that person intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts another person engaging in sexually explicit 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.

4. Age of person depicted. 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 "A" 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.

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

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

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 conviction of persons in possession of sexually explicit material in which the persons depicted are under 14 years of age but whose 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.

This amendment also adds a fiscal note to the bill.