

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

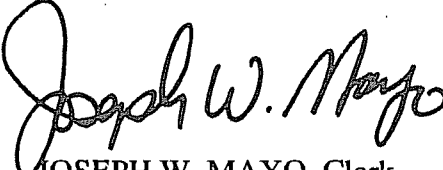
No. 1718

H.P. 1274

House of Representatives, January 13, 1994

An Act to Protect Maine Children from Child Pornography Contraband.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Senator ESTY of Cumberland and
Representatives: KILKELLY of Wiscasset, ROWE of Portland, Senator: CAHILL of Sagadahoc.

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

2
4 Sec. 1. 17 MRSA §2924 is enacted to read:

6 §2924. Possession of sexually explicit materials

8 1. Offense. A person is guilty of possession of sexually
10 explicit material if that person intentionally or knowingly
12 transports, exhibits, purchases or possesses any book, magazine,
14 print, negative, slide, motion picture, videotape or other
mechanically reproduced visual material that depicts another
person who has not in fact attained the age of 14 years engaging
in sexually explicit conduct.

16 2. Defense. It is a defense to a prosecution under this
18 section that the person depicted was the actor's spouse at the
time the material was produced.

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

24 4. Contraband. Any sexually explicit material possessed in
26 violation of this section is declared to be contraband and may be
seized by the State.

28 STATEMENT OF FACT

30 This bill extends the prohibition on sexually exploiting
32 minors to the possession of materials depicting children under
34 the age of 14 engaging in sexually explicit conduct. It is
36 currently a Class B crime to produce materials depicting a minor
38 under the age of 18 engaging in sexually explicit conduct and a
40 Class C crime to distribute these materials. This bill takes the
next step and makes possession of materials a Class D crime for
the first offense and a Class C crime for any subsequent
offenses. This prohibition applies only to sexually explicit
conduct as defined in current law.

42 The purpose of this bill is to eliminate the market for and
44 use of materials depicting young children engaging in sexually
46 explicit conduct. These materials are often used to persuade
other children to engage in similar conduct. The United States
Supreme Court upheld a statute outlawing possession of child
pornography. Osborne v. Ohio, 495 U.S. 103 (1990). This bill is
narrowly drawn to fall well within the Osborne standards.

48 The existing crimes concerning sexually explicit materials
50 focus on minors under the age of 18. In order to put persons on

2 notice as to what materials are covered by this new provision,
3 this bill applies only to children under 14 years of age. The
4 age of 14 was chosen to coordinate with the age for statutory
5 rape. In setting this age at 14 the State has determined that
6 persons are able to recognize the physical immaturity of a person
7 under the age 14; the same can not always be said for the
8 depiction of a 17-year-old. The bill seeks to protect immature
9 people from the predators who seek out these children as victims
10 because of their physical immaturity. By stating that the
11 prohibition applies to persons who have not "in fact" attained
12 the age of 14 years means that there is strict liability for that
13 element of the crime. The prosecution does not have to prove
14 that the defendant knew that the person depicted in the materials
15 was under the age of 14, but only that the person depicted
16 actually was under the age of 14 at the time the materials were
17 produced.

18 This bill provides a defense for spouses. This is a very
19 limited defense, but, again, it parallels the statutory rape
20 laws. This is a narrow defense because it applies only to the
21 person who is in possession of the materials. If the person who
22 possesses the materials was not the spouse of the person under
23 the age of 14 depicted in the materials at the time the
24 materials were produced, the possessor is in violation of the law
25 and can not use the spousal defense.

26 This bill declares sexually explicit materials depicting
27 persons under the age of 14 to be contraband and provides that
28 the materials can be seized by the State.

30

32

34

36

38

This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.