

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1575

H.P. 1116

House of Representatives, March 2, 1999

An Act to Criminalize Internet Dissemination of Child Pornography.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SCHNEIDER of Durham.
Cosponsored by Senator LONGLEY of Waldo and
Representatives: BULL of Freeport, MADORE of Augusta, McALEVEY of Waterboro,
PLOWMAN of Hampden.

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

2
4 **Sec. 1. 17 MRSA §2921, sub-§2**, as enacted by PL 1977, c. 628, §1, is amended to read:

6 **2. Disseminate.** "Disseminate" means, ~~for consideration,~~ to manufacture, publish, send, promulgate, distribute, exhibit, ~~print issue,~~ furnish, sell or transfer possession or to attempt, offer or agree to do any of these acts.

10 **Sec. 2. 17 MRSA §2921, sub-§3**, as amended by PL 1983, c. 300, §8, is further amended to read:

14 **3. Minor.** "Minor" means a person or representation of a person under 18 years of age.

16 **Sec. 3. 17 MRSA §2921, sub-§4**, as enacted by PL 1977, c. 628, §1, is amended to read:

20 **4. Photograph.** "Photograph" means to make, capture, generate or save a print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material.

24 **Sec. 4. 17 MRSA §2921, sub-§5, ¶F**, as amended by PL 1987, c. 165, is further amended to read:

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

32 **Sec. 5. 17 MRSA §2921-A** is enacted to read:

34 **§2921-A. Determination of age**

36 For purposes of this chapter, the determination of the age of any person or representation of a person depicted in any visual image or material may be made by:

40 1. Personal testimony. The personal testimony of the person depicted in the visual image or material;

42 2. Observer testimony. The testimony of any other person who observed the visual image or material;

46 3. Medical testimony. Expert medical testimony based upon the physical appearance of the person or representation; or

48 4. Other method. Any other method authorized by law.

50

2 **Sec. 6. 17 MRSA §2923, sub-§1**, as repealed and replaced by PL
1983, c. 223, is amended to read:

4 **1. Offense.** A person is guilty of dissemination of
6 sexually explicit material if he the person intentionally or
knowingly disseminates or possesses with intent to disseminate
8 any book, magazine, print, negative, slide, motion picture,
videotape, computer data file or other mechanically,
10 electronically or chemically reproduced visual image or material
which that depicts any minor or representation of a minor, who
12 the person knows or has reason to know is a minor, engaging in
sexually explicit conduct.

14 **Sec. 7. 17 MRSA §2923, sub-§2**, as enacted by PL 1977, c. 628,
§1, is amended to read:

16 **2. Presumption.** For the purposes of this section,
18 possession of 10 or more copies of the same book, magazine,
newspaper, print, negative, slide, motion picture, videotape or
20 other mechanically, electronically or chemically reproduced
visual image or material ~~shall-give~~ gives rise to a presumption
22 that the person possesses those items with intent to disseminate.

24 **Sec. 8. 17 MRSA §2923, sub-§4**, is enacted to read:

26 **4. Defense.** It is an affirmative defense to a prosecution
under this section that:

28 A. The person depicted was the spouse of the person
30 disseminating the sexually explicit material at the time the
material was produced; or

32 B. The dissemination was for a bona fide scientific,
34 medical or law enforcement purpose.

36 **Sec. 9. 17 MRSA §2924, sub-§1, ¶F**, as enacted by PL 1993, c.
727, §2, is amended to read:

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

42 **Sec. 10. 17 MRSA §2924, sub-§2, ¶A**, as enacted by PL 1993, c.
44 727, §2, is amended to read:

46 A. The other person has not in fact attained the age of 14
48 18 years; or

50 **Sec. 11. 17 MRSA §2924, sub-§2, ¶B**, as corrected by RR 1993,
c. 2, §8, is amended to read:

2 B. The person knows or has reason to know that the other
3 person has not attained the age of 14 18 years.

4
5 **Sec. 12. 17 MRSA §2924, sub-§3**, as enacted by PL 1993, c. 727,
6 §2, is repealed and the following enacted in its place:

7 **3. Defense.** It is an affirmative defense to a prosecution
8 under this section that:

9
10 **A. The person depicted was the spouse of the person**
11 **possessing the sexually explicit material at the time the**
12 **material was produced; or**

13
14 **B. The possession was for a bona fide scientific, medical**
15 **or law enforcement purpose.**

16
17 **Sec. 13. 17 MRSA §2924, sub-§4**, as enacted by PL 1993, c. 727,
18 §2, is repealed.

19
20 **Sec. 14. 17 MRSA §2924, sub-§6**, as enacted by PL 1993, c. 727,
21 §2, is amended to read:

22
23 **6. Contraband.** Any material that depicts a person who has
24 not attained the age of 14 18 years engaging in sexually explicit
25 conduct is declared to be contraband and may be seized by the
26 State.

27
28 **Sec. 15. 17 MRSA §§2925 and 2926** are enacted to read:

29
30 **§2925. Aggravated dissemination of sexually explicit materials**

31
32 **1. Offense.** A person is guilty of aggravated dissemination
33 of sexually explicit materials if the person violates section
34 2923 and the person disseminates to another who the person
35 believes, knows or has reason to know to be a minor.

36
37 **2. Penalty.** Aggravated dissemination is a Class B crime.

38
39 **§2926. Forfeiture of equipment used to facilitate violations**

40
41 **1. Motion; notice.** Upon a finding of guilt of any
42 violation of this chapter, but prior to sentencing, an attorney
43 for the State may, in writing, move the court for an order
44 requiring the forfeiture to the State of any equipment, including
45 computers, that may have facilitated the commission of the
46 offense. Notice of the motion may be made by the State to the
47 defendant and any party of interest by registered mail.

2 2. Burden of proof. The court, upon evidence of notice to
3 the defendant and any other party of interest, shall, if
4 contested, hold a hearing at which the State has both the initial
5 and final burden of proving by a preponderance of the evidence
6 that the equipment was used in violation of this chapter.

7 3. Order of forfeiture; distribution. Upon a finding by a
8 preponderance of the evidence that the equipment was used to
9 facilitate the commission of a violation of this chapter, the
10 court shall order the equipment forfeited and may, upon the
11 written recommendation of the attorney for the State, provide in
12 its order for the disposition or use of the equipment by any
13 state, county or municipal law enforcement agency that made a
14 substantial contribution to the investigation or prosecution of
15 the case. Any equipment forfeited that is not transferred to an
16 investigating or prosecuting agency must be sold and the proceeds
17 deposited in the General Fund.

18 4. Rules. The Attorney General may adopt by rule
19 guidelines regulating the disposition and use of property
20 forfeited or sought for forfeiture under this section. Rules
21 adopted under this section are routine technical rules as defined
22 in Title 5, chapter 375, subchapter II-A.
23

26 SUMMARY

27 The purpose of this bill is to deter child predators from
28 the use of the Internet. This bill clarifies the definition of
29 "disseminate" to make clear that the dissemination of sexually
30 explicit materials via computer is covered by the laws regulating
31 sexual exploitation of minors and does not, in fact, require
32 receipt by another as a precondition to the completion of the act
33 of dissemination. The bill clarifies that representations of
34 person who do not in fact exist but who are depicted to be under
35 18 years of age are within the scope of the prohibition and that
36 any person actually viewing the visual image or material,
37 including jurors, may render an opinion as to the age of the
38 representation or person depicted. The bill clarifies the
39 modality of reproducing visual images or material to include, in
40 addition to mechanical, electronic or chemical reproduction.

41 This bill makes it an affirmative defense that the person
42 depicted was the spouse of any actor and adds affirmative
43 defenses for medical, scientific or law enforcement purposes.
44

45 The bill modifies the existing prohibitions from covering
46 persons under 14 years of age to persons under 18 years of age in
47 conformity with the laws of the United States and neighboring
48 jurisdictions, such as Massachusetts.
49
50

2 The bill creates a new crime of aggravated dissemination,
which is a Class B crime, and prohibits the dissemination of
4 sexually explicit visual images or materials to persons the
offender believes or knows to be a minor. This section would
6 encompass as an aggravated offense the dissemination of sexually
explicit visual images or material to a person the offender
8 believes to be a minor, but who is, in fact, an adult law
enforcement officer acting undercover.

10

 This bill allows for a simple criminal forfeiture procedure
12 for equipment used to facilitate a violation of the sexual
exploitation of minors laws.