

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 51

H.P. 44

House of Representatives, January 11, 2011

An Act Regarding Access to Sexually Explicit Material

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative HASKELL of Portland.
Cosponsored by Senator HOBBS of York and
Representatives: CAREY of Lewiston, DILL of Cape Elizabeth, MALONEY of Augusta,
WATERHOUSE of Bridgton, Senator: DIAMOND of Cumberland.

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

2 **Sec. 1. 15 MRSA c. 107** is enacted to read:

3 **CHAPTER 107**

4 **CUSTODY AND EXAMINATION OF SEXUALLY EXPLICIT MATERIAL**

5 **§1121. Limitations on examination of sexually explicit material**

6 **1. Sexually explicit material.** For purposes of this section, "sexually explicit
7 material" means the property or material described in Title 17-A, chapter 12.

8 **2. Custody of sexually explicit material.** Sexually explicit material subject to a
9 criminal investigation or proceeding must remain in the care, custody and control of the
10 attorney for the State or the court. Notwithstanding provisions of the Maine Rules of
11 Criminal Procedure, Rule 16 to the contrary, in any criminal proceeding the attorney for
12 the State may not release to the defendant a copy, photograph, duplicate or any other
13 reproduction of any sexually explicit material, as long as the attorney for the State makes
14 the sexually explicit material reasonably available to the defendant.

15 **3. Reasonably available.** For purposes of this section, sexually explicit material is
16 determined to be reasonably available to the defendant if the attorney for the State
17 provides ample opportunity for inspection, viewing and examination of the sexually
18 explicit material at a location within the control of the attorney for the State by the
19 defendant, the defendant's attorney or any person whom the defendant may seek to
20 qualify to furnish expert testimony at trial.

21 **SUMMARY**

22 This bill creates new guidelines for access to sexually explicit material in a criminal
23 investigation or proceeding. This material is now accessible to defendants pursuant to
24 Maine Rules of Criminal Procedure, Rule 16, which permits copying or photographing.
25 This bill authorizes reasonable access for inspection of the sexually explicit material but
26 prohibits any reproduction of the material and requires that it be inspected in a facility
27 under the control of the attorney for the State. The custody, control and care of the
28 material must remain with the attorney for the State or the court. This bill is consistent
29 with the federal requirements of custody and treatment of evidence of child pornography
30 pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-
31 248.