

MASSACHUSETTS STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

ALM GL ch. 272, § 29.

§ 29. Obscene Matter -- Dissemination or Possession with Intent.

Whoever disseminates any matter which is **obscene**, knowing it to be **obscene**, or whoever has in his possession any matter which is **obscene**, knowing it to be **obscene**, with the intent to disseminate the same, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars for the first offense, not less than five thousand nor more than twenty thousand dollars for the second offense, or not less than ten thousand nor more than thirty thousand dollars for the third and subsequent offenses, or by both such fine and imprisonment. A prosecution commenced under this section shall not be continued without a finding nor placed on file. It shall be a defense under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

§ 29A. Child Pornography -- Enticement, Solicitation, Employment of Children.

- **(a)** Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, and with lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.
- **(b)** Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.
- **(c)** In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.
- **(d)** For the purposes of this section, the determination whether the person in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such person, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, or by expert medical testimony as to the age of the person based upon the person's physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

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§ 29B. Child Pornography -- Dissemination.

- **(a)** Whoever, with lascivious intent, disseminates any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.
- **(b)** Whoever with lascivious intent disseminates any visual material that contains a representation or reproduction of any act that depicts, describes, or represents sexual conduct participated or engaged in by a child who is under eighteen years of age, knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or whoever has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.
- **(c)** For the purposes of this section, the determination whether the child in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such child, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, by testimony of a person who observed the visual material, or by expert medical testimony as to the age of the child based upon the child's physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.
- **(d)** In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.
- **(e)** Pursuant to this section, proof that dissemination of any visual material that contains a representation or reproduction of sexual conduct or of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age was for a bona fide scientific, medical, or educational purpose for a bona fide school, museum, or library may be considered as evidence of a lack of lascivious intent.

§ 29C. Child Pornography -- Purchase or Possession.

- Whoever knowingly purchases or possesses a negative, slide, book, magazine, film, videotape, photograph or other similar visual reproduction, or depiction by computer, of any child whom the person knows or reasonably should know to be under the age of 18 years of age and such child is:
 - **(i)** actually or by simulation engaged in any act of sexual intercourse with any person or animal;

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- **(ii)** actually or by simulation engaged in any act of sexual contact involving the sex organs of the child and the mouth, anus or sex organs of the child and the sex organs of another person or animal;
- **(iii)** actually or by simulation engaged in any act of masturbation;
- **(iv)** actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;
- **(v)** actually or by simulation engaged in any act of excretion or urination within a sexual context;
- **(vi)** actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
- **(vii)** depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment for the first offense, not less than five years in a state prison or by a fine of not less than \$5,000 nor more than \$20,000, or by both such fine and imprisonment for the second offense, not less than 10 years in a state prison or by a fine of not less than \$10,000 nor more than \$30,000, or by both such fine and imprisonment for the third and subsequent offenses.
- A prosecution commenced under this section shall not be continued without a finding nor placed on file.
- The provisions of this section shall not apply to a law enforcement officer, licensed physician, licensed psychologist, attorney or officer of the court who is in possession of such materials in the lawful performance of his official duty. Nor shall the provisions of this section apply to an employee of a bona fide enterprise, the purpose of which enterprise is to filter or otherwise restrict access to such materials, who possesses examples of computer depictions of such material for the purposes of furthering the legitimate goals of such enterprise.

§ 31. Obscene Material/Acts -- Definitions.

- As used in sections twenty-eight, twenty-eight C, twenty-eight D, twenty-eight E, twenty-nine, twenty-nine A, twenty-nine B, thirty and thirty D, the following words shall, unless the context requires otherwise, have the following meanings:--
- "Disseminate", to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.
- "Harmful to minors", matter is harmful to minors if it is obscene or, if taken as a whole, it (1) describes or represents nudity, sexual conduct or sexual excitement, so as to appeal predominantly to the prurient interest of minors; (2) is patently contrary to prevailing standards of adults in the county where the offense was committed as to suitable material for such minors; and (3) lacks serious literary, artistic, political or scientific value for minors.
- "Knowing", a general awareness of the character of the matter.

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- "Lascivious intent", a state of mind in which the sexual gratification or arousal of any person is an objective. For the purposes of prosecution under this chapter, proof of lascivious intent may include, but shall not be limited to, the following:
 - **(1)** whether the circumstances include sexual behavior, sexual relations, infamous conduct of a lustful or obscene nature, deviation from accepted customs and manners, or sexually oriented displays;
 - **(2)** whether the focal point of a visual depiction is the child's genitalia, pubic area, or breast area of a female child;
 - **(3)** whether the setting or pose of a visual depiction is generally associated with sexual activity;
 - **(4)** whether the child is depicted in an unnatural pose or inappropriate attire, considering the child's age;
 - **(5)** whether the depiction denotes sexual suggestiveness or a willingness to engage in sexual activity;
 - **(6)** whether the depiction is of a child engaging in or being engaged in sexual conduct, including, but not limited to, sexual intercourse, unnatural sexual intercourse, bestiality, masturbation, sado-masochistic behavior, or lewd exhibition of the genitals.
 - "Minor", a person under eighteen years of age.
 - "Nudity", uncovered or less than opaquely covered human genitalia, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitalia in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.
 - "Matter", any handwritten or printed material, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances, or any electronic communication including, but not limited to, electronic mail, instant messages, text messages, and any other communication created by means of use of the Internet or wireless network, whether by computer, telephone, or any other device or by any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.
 - "Performance", any play, dance, exhibit, or such similar activity performed before one or more persons.
 - "Obscene", matter is obscene if taken as a whole it
 - **(1)** appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed;
 - **(2)** depicts or describes sexual conduct in a patently offensive way; and
 - **(3)** lacks serious literary, artistic, political or scientific value.
- "Sexual conduct", human masturbation, sexual intercourse, actual or simulated, normal or perverted, any lewd exhibitions of the genitalia, flagellation or torture in the context of a sexual relationship, any lewd touching of the genitalia, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, and any depiction or representation of excretory functions in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

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- "Sexual excitement", the condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.
- "Visual material", any motion picture film, picture, photograph, videotape, book, magazine, pamphlet that contains pictures, photographs or similar visual representations or reproductions, or depiction by computer, telephone or any other device capable of electronic data storage or transmission. Undeveloped photographs, pictures, motion picture films, videotapes and similar visual representations or reproductions may be visual materials notwithstanding that processing, development or similar acts may be required to make the contents thereof apparent.

§ 32. Obscene Material/Acts -- Certain Theater Employees Not to Be Prosecuted.

The provisions of sections twenty-eight, twenty-nine and twenty-nine A shall not apply to a manager or a motion picture operator or assistant operator licensed under sections seventy-five and seventy-six, respectively, of chapter one hundred and forty-three, who is employed in a motion picture theatre licensed under section one hundred and eighty-one of chapter one hundred and forty and the provisions of the state building code, in connection with a motion picture show exhibited in said theatre; provided that such manager, operator or assistant operator has no financial interest in the motion picture theatre wherein he is so employed; and provided, further, that such manager has no authority in determining which motion picture films are to be presented in said theatre.

§ 33. Obscene Material/Acts -- Exhibition of Deformities.

Whoever exhibits for hire an albino person, a minor or mentally ill person who is deformed or a person who has an appearance of deformity produced by artificial means shall be punished by a fine of not more than five hundred dollars.

§ 34. Obscene Material/Acts -- Sodomy and Buggery.

Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for not more than twenty years.

§ 35. Obscene Material/Acts -- Unnatural and Lascivious Acts.

Whoever commits any unnatural and lascivious act with another person shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years.

§ 30D. Child Pornography -- Injunctions.

The superior court shall also have jurisdiction to enjoin the dissemination of any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity or of any act that depicts, describes, or represents sexual conduct

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participated or engaged in by a child who is under eighteen years of age. The procedures for issuance of such injunction shall be the same as those provided in section thirty, and are in addition to other criminal proceedings initiated under any provisions of the General Laws, and not a condition precedent thereto.

FILTERING LAWS:

§ 93. Internet Safety Policy.

Every public school providing computer access to students shall have a policy regarding internet safety measures to protect students from inappropriate subject matter and materials that can be accessed via the internet and shall notify the parents or guardians of all students attending the school of the policy. The policy and any standards and rules enforcing the policy shall be prescribed by the school committee in conjunction with the superintendent or the board of trustees of a commonwealth charter school.