

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-SIX

—  
H.P. 343 - L.D. 524

**An Act to Protect Children from Technology-facilitated Sexual Abuse**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this Act extends the prohibitions in current state law against the creation, dissemination and possession of sexually explicit material depicting minors engaged in sexually explicit conduct to similarly prohibit the creation, dissemination and possession of images that have been modified or generated, including through the use of artificial intelligence, or AI, technology, so that the images appear to depict minors engaged in sexually explicit conduct; and

**Whereas,** perpetrators of these crimes have already begun creating child sexual abuse material using technology through which they modify existing images of identifiable children or through which they wholly create images that appear to depict children engaged in sexually explicit conduct, but these perpetrators cannot be prosecuted because this conduct is not currently prohibited by state law; and

**Whereas,** as generative artificial intelligence technology continues to advance, it is becoming more and more difficult to distinguish between unaltered child sexual abuse material subject to prosecution under current law and modified or AI-generated child sexual abuse material not currently subject to prosecution; and

**Whereas,** it is essential to clarify state law as soon as possible to prevent sexual exploitation of children; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 17-A MRSA §281,** as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

**§281. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. "Disseminate" means to manufacture, publish, send, promulgate, distribute, exhibit, issue, furnish, sell or transfer or to offer or agree to do any of these acts.

1-A. "Child sexual abuse material" means any image, including a computer-generated image, that depicts or has been created or modified so that it appears to depict a minor, regardless of whether that depiction is an identifiable child, engaged in sexually explicit conduct.

1-B. "Generative AI or machine learning" means any computer algorithm or model that creates content, including, but not limited to, text, images, audio or video.

1-C. "Identifiable child" means a person:

A. Who is recognizable as an actual person by that person's face, likeness or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

B. Who was a minor at the time an unaltered image was created or whose likeness when the person was a minor was used in creating, adapting or modifying an image.

"Identifiable child" does not require proof of the actual identity of the identifiable child.

1-D. "Image" means something that is made, captured, generated or saved as a print, negative, slide, motion picture, photograph, computer data file, animation, video, livestream or other mechanically, electronically or chemically reproduced visual image or material.

2. "Minor" means a person who has not attained 18 16 years of age.

~~3. "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.~~

3-A. "Obscene material" means material that:

A. To the average individual, applying contemporary community standards, appeals to the prurient interest. For purposes of this paragraph, if it appears from the nature of an image or the circumstances of the image's dissemination, distribution or exhibition that the image is designed for clearly defined deviant sexual groups, the appeal of the image must be judged with reference to its intended recipient group;

B. Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and

C. Considered as a whole, lacks serious literary, artistic, political or scientific value. For purposes of this paragraph:

(1) The fact that the defendant knew that the image depicts a minor engaged in sexually explicit conduct is a factor that may be considered in making the determination that an image taken as a whole lacks serious literary, artistic, political or scientific value; and

(2) If circumstances of production, presentation, sale, dissemination, distribution or exhibition indicate that an image is being exploited by the defendant for the sake

of its prurient appeal, this evidence is probative with respect to the nature of the image and may justify the conclusion that the image lacks serious literary, artistic, political or scientific value.

4. "Sexually explicit conduct" means any of the following acts:
  - A. A sexual act;
  - B. Bestiality;
  - C. Masturbation;
  - D. Sadoomasochistic abuse for the purpose of sexual stimulation;
  - E. Lewd exhibition of the genitals, anus or pubic area of a person. An exhibition is considered lewd if the exhibition 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.

**Sec. 2. 17-A MRSA §282**, as amended by PL 2019, c. 113, Pt. B, §15, is further amended to read:

**§282. Sexual exploitation of minor**

1. A person is guilty of sexual exploitation of a minor if:
  - A. Knowing or intending that the conduct will be ~~photographed~~ used to create an image for the purpose of arousing or gratifying the sexual desire of that person or another person, the person intentionally or knowingly employs, solicits, entices, persuades or uses another person a minor, not that person's spouse, who has not in fact attained 16 years of age, to engage in sexually explicit conduct to create child sexual abuse material, except that it is not a violation of this paragraph if the other person minor is 14 or 15 years of age and the person is less than 5 years older than the other person minor. Violation of this paragraph is a Class B crime;
    - A-1. Knowing or intending that the conduct will be ~~photographed~~ used to create an image, the person intentionally or knowingly compels or induces by any threat another person, not that person's spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime. For purposes of this paragraph, "minor" means a person who has not attained 18 years of age;
    - A-2. The person intentionally or knowingly modifies or alters an image of an identifiable child to create child sexual abuse material, except that it is not a violation of this paragraph if the minor is 14 or 15 years of age and the person is less than 5 years older than the minor. Violation of this paragraph is a Class B crime;
    - A-3. The person intentionally or knowingly manufactures or creates, including using generative AI or machine learning, obscene material that is child sexual abuse material and the person knows or has reason to know that the material is child sexual abuse material. Violation of this paragraph is a Class B crime;
  - B. The person violates paragraph A ~~or~~, A-1, A-2 or A-3 and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;

C. The person violates paragraph A ~~or~~, A-1, A-2 or A-3 and the minor or identifiable child has not ~~in fact~~ attained 12 years of age. Violation of this paragraph is a Class A crime;

D. Being a parent, legal guardian or other person having care or custody of ~~another person who has not in fact attained 16 years of age~~ a minor, that person ~~knowingly or intentionally or knowingly~~ permits ~~that person who has not in fact attained 16 years of age to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed~~ the minor to create child sexual abuse material. Violation of this paragraph is a Class B crime;

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or

F. The person violates paragraph D and the minor has not ~~in fact~~ attained 12 years of age. Violation of this paragraph is a Class A crime.

2. The following mandatory minimum terms of imprisonment apply to sexual exploitation of a minor.

A. A court shall impose upon a person convicted under subsection 1, paragraph A, A-1, A-2, A-3 or D a sentencing alternative involving a term of imprisonment of at least 5 years.

B. A court shall impose upon a person convicted under subsection 1, paragraph B or E a sentencing alternative involving a term of imprisonment of at least 10 years.

The court may not suspend a minimum term of imprisonment imposed under this section 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 and the history and character of the defendant and may only suspend the minimum term if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence. Section 9-A governs the use of prior convictions when determining a sentence.

3. **Aggravating sentencing factor of victim under 12 years of age.** If the State pleads and proves that a crime under this section was committed against ~~an individual a~~ minor, including an identifiable child, who had not attained 12 years of age, the court, in determining the appropriate sentence, shall treat the age of the ~~victim~~ minor as an aggravating sentencing factor.

4. The following may be reasonably inferred from the contents of an image or may be established through competent medical evidence or other expert testimony:

A. The age of an individual depicted in the image;

B. The age of an individual who appears to be depicted in the image; and

C. That an individual depicted or who appears to be depicted in the image is an identifiable child.

5. A person is subject to prosecution pursuant to this section in this State if the person, the minor or the identifiable child was in the State at the time of the offense.

**Sec. 3. 17-A MRSA §283**, as amended by PL 2015, c. 394, §3, is further amended to read:

**§283. Dissemination of ~~sexually explicit~~ child sexual abuse material**

1. A person is guilty of dissemination of ~~sexually explicit~~ child sexual abuse material if ~~that~~ the person:

A. ~~The person intentionally~~ Intentionally or knowingly disseminates or possesses with intent to disseminate any ~~book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or~~ child sexual abuse material that depicts any person who has not in fact attained 16 years of age of an identifiable child who the person knows or has reason to know is a ~~person under 16 years of age engaging in sexually explicit conduct~~ minor, except that it is not a violation of this paragraph if the ~~person depicted~~ identifiable child is 14 or 15 years of age and the person is less than 5 years older than the ~~person depicted~~ identifiable child. Violation of this paragraph is a Class C crime;

A-1. Intentionally or knowingly disseminates or possesses with intent to disseminate any obscene material that is child sexual abuse material, including an image created using generative AI or machine learning, and the person knows or has reason to know that the material is child sexual abuse material. Violation of this paragraph is a Class C crime;

B. ~~The person violates~~ Violates paragraph A or A-1 and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime;

C. ~~The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any minor who is less than 12 years of age who the person knows or has reason to know is a minor less than 12 years of age engaging in sexually explicit conduct~~ Violates paragraph A and the identifiable child in the child sexual abuse material has not attained 12 years of age and the person knows or has reason to know the identifiable child has not attained 12 years of age. Violation of this paragraph is a Class B crime; ~~or~~

C-1. Violates paragraph A-1 and the person knows or has reason to know that the child sexual abuse material appears to depict a minor who has not attained 12 years of age. Violation of this paragraph is a Class B crime; or

D. ~~The person violates~~ Violates paragraph C or C-1 and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime.

Section 9-A governs the use of prior convictions when determining a sentence.

2. For the purposes of this section, possession of ~~10~~ 100 or more ~~copies~~ images of any of the materials as described in subsection 1 gives rise to a permissible inference under the

Maine Rules of Evidence, Rule 303 that the person possesses those items with intent to disseminate.

3. For purposes of this section, any element of age of ~~the person depicted~~ a minor or identifiable child means the age of the ~~person~~ minor or identifiable child at the time of the sexually explicit conduct ~~occurred in the child sexual abuse material~~, not the age of the ~~person depicted~~ minor or identifiable child at the time of dissemination or possession of the ~~sexually explicit visual image or~~ child sexual abuse material.

4. The following may be reasonably inferred from the contents of an image or may be established through competent medical evidence or other expert testimony:

A. The age of an individual depicted in the image;

B. The age of an individual who appears to be depicted in the image; and

C. That an individual depicted or who appears to be depicted in the image is an identifiable child.

**Sec. 4. 17-A MRSA §284**, as amended by PL 2015, c. 394, §4, is further amended to read:

**§284. Possession of ~~sexually explicit~~ child sexual abuse material**

**1.** A person is guilty of possession of ~~sexually explicit~~ child sexual abuse material if that person:

A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any ~~book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or~~ child sexual abuse material that the person knows or should know depicts another person engaging in sexually explicit conduct, ~~and~~ of an identifiable child who the person knows or has reason to know is a minor, except that it is not a violation of this paragraph if the identifiable child is 14 or 15 years of age and the person is less than 5 years older than the identifiable child.

(1) ~~The other person has not in fact attained 16 years of age; or~~

(2) ~~The person knows or has reason to know that the other person has not attained 16 years of age.~~

It is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted.

Violation of this paragraph is a Class D crime;

A-1. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any obscene material that is child sexual abuse material, including an image of a minor created using generative AI or machine learning, and the person knows or has reason to know that the material is child sexual abuse material. Violation of this paragraph is a Class D crime;

B. Violates paragraph A or A-1 and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class C crime;

~~C. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and: Violates paragraph A and the identifiable child in the child sexual abuse material has not attained 12 years of age or the person knows or has reason to know that the identifiable child has not attained 12 years of age.~~

~~(1) The other person has not in fact attained 12 years of age; or~~

~~(2) The person knows or has reason to know that the other person has not attained 12 years of age.~~

Violation of this paragraph is a Class C crime; ~~or~~

C-1. Violates paragraph A-1 and the person knows or has reason to know that the child sexual abuse material appears to depict a minor who has not attained 12 years of age. Violation of this paragraph is a Class C crime; or

~~D. Violates paragraph C or C-1 and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime.~~

Section 9-A governs the use of prior convictions when determining a sentence.

~~2. It is a defense to a prosecution under this section that the person depicted was the spouse of the person possessing the sexually explicit child sexual abuse material at the time the material was produced.~~

~~3. The age of the person depicted and that the person depicted is an actual person following may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age and authenticity of the person depicted. contents of an image or may be established through competent medical evidence or other expert testimony:~~

~~A. The age of an individual depicted in the image;~~

~~B. The age of an individual who appears to be depicted in the image; and~~

~~C. That an individual depicted or who appears to be depicted in the image is an identifiable child.~~

~~4. Any child sexual abuse material that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.~~

~~5. For purposes of this section, any element of age of the person depicted a minor or identifiable child means the age of the person minor or identifiable child at the time of the sexually explicit conduct occurred in the child sexual abuse material, not the age of the person depicted minor or identifiable child at the time of the transporting, exhibiting, purchasing, possession or accessing of the sexually explicit visual image or child sexual abuse material.~~

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.