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Testimony on

L.D. 94, *“An Act To Prohibit the Dissemination of Obscene Material by Public Schools”*

Presented by

Representative Amy Bradstreet Arata
District 65

Criminal Justice and Public Safety Committee
Monday, February 4, 2019

Good morning, Senator Deschambault, Representative Warren, and distinguished members of the Criminal Justice and Public Safety Committee:

I am State Representative Amy Arata, and I proudly serve the people of District 65, which includes New Gloucester and a portion of Poland. It is an honor to appear before you to introduce L.D. 94, *“An Act To Prohibit the Dissemination of Obscene Material by Public Schools.”*

You have been given a packet that contains an example of material that has been assigned to schoolchildren in Maine. If I were to read these passages out loud to you, it would be disgraceful and embarrassing to me, this panel, and this distinguished building in which I stand. I apologize that I have to give these explicit passages to you, but I need people to understand that I am not exaggerating the pornographic nature of materials that are being assigned to students in Maine. This is very different from the materials that were debated a generation ago. Please note that the cover of your packet has information describing the material. As a matter of courtesy and respect, you have been given the right to make an informed decision about whether you want to view such material. However, this same courtesy and respect is not extended to Maine children or parents.

Although the response to this bipartisan bill has been mostly positive, there has been confusion and concerns that need to be addressed. Therefore, in a spirit of compromise, I am presenting an amendment which replaces the bill. The amendment does not prohibit any books or other materials from being given to minors. It simply provides a process for schools to give information to students and parents about explicit sexual materials prior to handing them out. This includes a required disclosure, similar to the one on the front of your packet. It also requires written acceptance of the material by both the child and a parent or legal

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guardian, and prohibits retribution or penalties for students or parents who refuse to grant permission.

We have an obligation to protect the psychological welfare of abused children. The National Center for Victims of Crime says that at least 20% of girls and 5-10% of boys are victims of sexual abuse. Therefore, we should assume that at least one student in every classroom has been a victim of sexual assault. Especially for these victims, the graphic sex and rape in the sample passages I have provided would trigger emotional distress. We need to have compassion and concern for these children. This is why the amendment requires both the student and a parent to approve the material. Many children have not reported their abuse, so teachers and parents would have no way to realize that certain books would be especially traumatic for a certain child to read. Therefore, children should have the power to reject distressing material on their own.

Furthermore, rape scenes that depict rape as pleasurable for the victim, such as in the example I have provided to you, are particularly alarming. Studies show that exposure to pornography exacerbates sexual violence. One study correlated the viewing of pornography by boys with the likelihood of them agreeing that "forcing a girl to have sex" is sometimes okay. In spite of recent efforts, "Rape Myths" are still prevalent in our society. Parents should have the right to decide if their children will be exposed to such confusing and disturbing material, and how such subjects should be explained to them. Material that undermines the requirement of sexual consent are especially destructive, because it is important for kids to understand that "no" means "no" -- every single time.

We are in the era of the "Me Too" movement. As a society, we are finally taking sexual assault and harassment seriously. Many parents want to instill in their children the value of human dignity and feel that explicit sexual material undermines this. We need to support these parents as they strive to raise respectful, conscientious children who are mindful of how their choices impact others. Schools and parents need to work together if we are to win the battle against sexual harassment and assault.

If I were to give an employee this material, it could be considered sexual harassment. As legislators, we had to take sexual harassment prevention training, because even successful adults do not always understand what is appropriate and what is not. Being in a position of authority does not give one the right to humiliate or traumatize those who have less power. This should apply not only to employers and employees, or legislators and lobbyists, but also to schools and children.

To better clarify the intent of the bill, I am also proposing a title change. The proposed title is: "*An Act to Require Informed Consent Prior to Dissemination of Explicit Sexual Material to Minors.*"

Most teachers would never dream of giving material to minors that would humiliate, confuse, or re-traumatize them. Sadly, I know from experience that a few teachers do, indeed, give these types of assignments. This common-sense bipartisan bill will give minors and parents the respect and dignity of choosing what is appropriate for them and their family so that they do not have to feel embarrassed, harassed, or traumatized. L.D. 94 will help make sure that all Maine schools are safe and nurturing environments for our children. I ask you to vote "*ought to pass as amended*".

Thank you for your time and consideration. I would be happy to answer any questions.

Sponsor: Rep Arata

Drafter: JO

Date: Jan 31, 2019

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Proposed Amendment to LD 94 – Proposed by Rep Arata
An Act to Prohibit the Dissemination of Obscene Material by Public Schools

Strike the title of the bill and insert a new title to read: “An Act to Require Informed Consent Prior to Dissemination of Explicit Sexual Material to Minors.”

Amend the bill by deleting everything after the enacting clause and by inserting the following:

Sec. 1. 17 MRSA §2911, subsection 2 is amended to read:

2. General rule. A person is guilty of disseminating obscene matter to a minor if he knowingly distributes, or exhibits or offers to distribute or exhibit to a minor, any obscene matter declared obscene, in an action to which he was a party, pursuant to subsection 3.

A. This section ~~shall~~ does not apply to any noncommercial distribution or exhibition for purely educational purposes by any library, art gallery, museum, public school, private school or institution of learning, nor to any commercial distribution or exhibition by any art gallery or museum.

B. It shall be a valid defense to any proceeding under this section that:

- (1) The defendant was a parent or guardian of the minor;
- (2) The distribution or exhibition is exempt under paragraph A; or
- (3) For motion pictures, the minor was accompanied by his spouse, parent or legal guardian.

Sec. 2. 17 MRSA §2911, subsection 5 is enacted to read:

5. Requirements for dissemination. The following requirements apply to a public school, private school or institution of learning to which the general rule of subsection 2 does not apply that has deemed otherwise obscene material to have serious literary, artistic, political or scientific value and that intends to disseminate such material to a minor.

A. Prior to disseminating the material the public school, private school or institution of learning must provide written notice to the minor and to the parent or legal guardian of

the minor regarding the materials using the following language: “The material depicts or describes ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals.”

B. If the material depicts or describes a sexual assault, the written notice under paragraph A must state that the material depicts or describes a sexual assault.

C. Prior to disseminating the material the public school, private school or institution of learning must obtain and retain for its records written acceptance of the material from the minor and the parent or legal guardian.

D. If a minor or the parent of legal guardian declines to accept the material, the public school, private school or institution of learning may not engage in or condone or tolerate its staff or students engaging in any act that questions, imposes isolation or punishment, imposes an educational penalty or retribution or ridicules the decision of the minor or the parent or guardian not to accept the material.

SUMMARY

This amendment replaces the bill. The amendment amends the law on dissemination of obscene matter to minors. It provides for a process to provide information about the dissemination of obscene material, including required disclosures, and to obtain, prior to dissemination, written acceptance of the material from the minor and the parent or legal guardian of the minor that is retained in the records of the school or institution of learning. It states that a school or institution of learning may not engage in or condone or tolerate its staff or students engaging in any act that questions, imposes isolation or punishment, imposes an educational penalty or retribution or ridicules the decision of the minor or the parent or guardian not to accept the material.

Maine Revised Statutes
Title 17: CRIMES
Chapter 93-A: OBSCENITY

§2911. DISSEMINATION OF OBSCENE MATTER TO MINORS

1. Definitions. As used in this section, unless the context indicates otherwise, the following words shall have the following meanings.

A. "Distribute" means to transfer possession, whether with or without consideration. [1977, c. 410, §2 (NEW) .]

B. "Exhibit" means to display for viewing by the public. [1977, c. 410, §2 (NEW) .]

C. "Matter" means any printed or written material, any picture, photograph, motion picture or other visual representation. [1983, c. 300, §2 (AMD) .]

C-1. "Minor" means a person under 18 years of age. [1983, c. 300, §3 (NEW) .]

D. "Obscene matter" means matter which:

(1) To the average individual, applying contemporary community standards, with respect to what is suitable material for minors, considered as a whole, appeals to the prurient interest;

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

(3) Considered as a whole, lacks serious literary, artistic, political or scientific value. [1977, c. 696, §168 (AMD) .]

[1983, c. 300, §§2, 3 (AMD) .]

2. General rule. A person is guilty of disseminating obscene matter to a minor if he knowingly distributes, or exhibits or offers to distribute or exhibit to a minor, any obscene matter declared obscene, in an action to which he was a party, pursuant to subsection 3.

A. This section shall not apply to any noncommercial distribution or exhibition for purely educational purposes by any library, art gallery, museum, public school, private school or institution of learning, nor to any commercial distribution or exhibition by any art gallery or museum. [1977, c. 410, §2 (NEW) .]

B. It shall be a valid defense to any proceeding under this section that:

(1) The defendant was a parent or guardian of the minor;

(2) The distribution or exhibition is exempt under paragraph A; or

(3) For motion pictures, the minor was accompanied by his spouse, parent or legal guardian.

[1983, c. 300, §4 (AMD) .]

[1983, c. 300, §4 (AMD) .]

3. Procedure for adjudicating obscenity. Whenever the Attorney General, or any district attorney, reasonably believes a person is disseminating to minors matter that is obscene, the Attorney General or district attorney may petition the Superior Court to declare the matter obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General or district attorney may join all persons the Attorney General or district attorney reasonably believes to be disseminating that matter to minors as parties to the action. The hearing on such petition may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

A. Trial on the issue of obscenity must be by jury. [2011, c. 559, Pt. A, §18 (AMD) .]

B. Intervention by others disseminating the same matter must be freely allowed. [2011, c. 559, Pt. A, §18 (AMD) .]

C. Determination by a court pursuant to this subsection that a matter is obscene does not bar relitigation of that issue in a criminal prosecution under this section. [2011, c. 559, Pt. A, §18 (AMD) .]

[2011, c. 559, Pt. A, §18 (AMD) .]

4. Penalty. Disseminating obscene matter to a minor is a Class C crime.

[1983, c. 300, §5 (AMD) .]

SECTION HISTORY

1977, c. 410, §2 (NEW). 1977, c. 696, §168 (AMD). 1983, c. 300, §§2-5 (AMD). 2011, c. 559, Pt. A, §18 (AMD).

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