

SENATE BILL NO. 464

Introduced: 02/18/83

Referred to Committee on Judiciary: 02/18/83  
Died in Committee.

1 *Senate* BILL NO. *464*  
 2 INTRODUCED BY *Anthony Dore William Lundedal*  
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING CRIMINAL  
 6 OFFENSES RELATING TO JUVENILES AND OBSCENE OR OTHERWISE  
 7 HARMFUL MATERIALS AND PROVIDING FOR DECLARATORY JUDGMENTS  
 8 AND INJUNCTIONS; AMENDING SECTION 45-8-201, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Definitions. As used in  
11 [sections 2 through 8], the following definitions apply:

12 (1) "Harmful to juveniles" means any material or  
13 performance offensive to prevailing standards in the adult  
14 community with respect to what is suitable for juveniles  
15 and:

16 (a) it tends to appeal to the prurient interest of  
17 juveniles;

18 (b) it contains a display, description, or  
19 representation of sexual activity, masturbation, sexual  
20 excitement, or nudity;

21 (c) it contains a display, description, or  
22 representation of bestiality, extreme or bizarre violence,  
23 cruelty, or brutality;

24 (d) it contains a display, description, or  
25 representation of human bodily functions of elimination;

1 (e) it makes repeated use of foul language;

2 (f) it contains a display, description, or  
3 representation in lurid detail of the violent physical  
4 torture, dismemberment, destruction, or death of a human  
5 being; or

6 (3) it contains a display, description, or  
7 representation of criminal activity that tends to glorify or  
8 glamorize the activity and that, with respect to juveniles,  
9 has a dominant tendency to corrupt.

10 (2) "Juvenile" means an unmarried person under the age  
11 of 18.

12 (3) "Material" means any book, magazine, newspaper,  
13 pamphlet, poster, print, picture, figure, image,  
14 description, motion picture film, phonograph record, tape,  
15 or other tangible thing capable of arousing interest through  
16 sight, sound, or touch.

17 (4) "Nudity" means the showing, representation, or  
18 depiction of human male or female genitals, pubic area, or  
19 buttocks with less than a full, opaque covering or of a  
20 female breast with less than a full, opaque covering of any  
21 portion thereof below the top of the nipple, or of covered  
22 male genitals in a discernibly turgid state.

23 (5) "Obscene" means any material or performance if,  
24 when considered as a whole and judged with reference to  
25 ordinary adults or, if it is designed for sexual deviates or

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1 some other specially susceptible group, judged with  
2 reference to that group:

3 (a) its dominant appeal is to prurient interest;

4 (b) its dominant tendency is to arouse lust by  
5 displaying or depicting sexual activity, masturbation,  
6 sexual excitement, or nudity in a way that tends to  
7 represent human beings as mere objects of sexual appetite;

8 (c) its dominant tendency is to arouse lust by  
9 displaying or depicting bestiality, extreme or bizarre  
10 violence, cruelty, or brutality;

11 (d) its dominant tendency is to appeal to scatological  
12 interest by displaying or depicting human bodily functions  
13 of elimination in a way that inspires disgust or revulsion  
14 in persons with ordinary sensibilities, without serving any  
15 genuine scientific, educational, sociological, moral,  
16 literary, or artistic purpose;

17 (e) it contains a series of displays or descriptions  
18 of sexual activity, masturbation, sexual excitement, nudity,  
19 bestiality, extreme or bizarre violence, cruelty, brutality,  
20 or human bodily functions of elimination, the cumulative  
21 effect of which is a dominant tendency to appeal to prurient  
22 or scatological interest, when the appeal to such an  
23 interest is primarily for its own sake or for commercial  
24 exploitation, rather than primarily for a genuine  
25 scientific, educational, sociological, moral, literary, or

1 artistic purpose.

2 (6) "Performance" means any motion picture, preview or  
3 trailer, play, show, skit, dance, or other exhibition  
4 performed before an audience.

5 (7) "Prostitute" means a male or female who  
6 promiscuously engages in sexual activity for hire,  
7 regardless of whether the hire is paid to the prostitute or  
8 to another.

9 (8) "Sexual activity" means sexual conduct or sexual  
10 contact, or both.

11 (9) "Sexual conduct" means vaginal intercourse between  
12 a male and female, anal intercourse, fellatio, and  
13 cunnilingus between persons regardless of sex. Penetration,  
14 however slight, is sufficient to complete vaginal or anal  
15 intercourse.

16 (10) "Sexual contact" means any touching of an  
17 erogenous zone of another, including without limitation the  
18 thigh, genitals, buttock, pubic region, or, if the person is  
19 a female, a breast, for the purpose of sexually arousing or  
20 gratifying either person.

21 (11) "Sexual excitement" means the condition of human  
22 male or female genitals when in a state of sexual  
23 stimulation or arousal.

24 (12) "Spouse" means a person married to an offender at  
25 the time of an alleged offense, except that such person may

1 not be considered the spouse during the pendency of an  
2 action between the parties for separation, declaration of  
3 invalidity, or dissolution of marriage.

4 ~~NEW SECTION.~~ Section 2. Disseminating matter harmful  
5 to juveniles. (1) Any person who, with knowledge of its  
6 character, knowingly or purposely furnishes or presents to a  
7 juvenile any material or performance that is obscene or  
8 harmful to juveniles commits the offense of disseminating  
9 matter harmful to juveniles.

10 (2) (a) If the material or performance is alleged and  
11 found to be harmful to juveniles but is not alleged and  
12 found to be obscene, the person shall be fined not to exceed  
13 \$1,000 or imprisoned in the county jail for any term not to  
14 exceed 6 months, or both.

15 (b) If the material or performance is alleged and  
16 found to be obscene, the person shall be fined not to exceed  
17 \$2,500 or imprisoned in the state prison for a term of not  
18 less than 6 months or more than 5 years, or both.

19 (3) The following are affirmative defenses to a charge  
20 under this section involving material or a performance  
21 alleged to be harmful to juveniles but not alleged to be  
22 obscene:

23 (a) The defendant is the parent, guardian, or spouse  
24 of the juvenile involved.

25 (b) The juvenile involved, at the time the material or

1 performance was presented to him, was accompanied by his  
2 parent or guardian who, with knowledge of its character,  
3 consented to the material or performance being furnished or  
4 presented to the juvenile.

5 (c) The juvenile exhibited to the defendant or his  
6 agent or employee a draft card, driver's license, birth  
7 certificate, marriage license, or other official or  
8 apparently official document purporting to show that such  
9 juvenile was 18 years of age or over or married, and the  
10 person to whom such document was exhibited did not otherwise  
11 have reasonable cause to believe that such juvenile was  
12 under the age of 18 and unmarried.

13 (4) It is an affirmative defense to a charge under  
14 this section involving material or a performance which is  
15 alleged to be either obscene or harmful to juveniles that  
16 such material or performance was furnished or presented for  
17 a bona fide medical, scientific, educational, religious,  
18 governmental, judicial, or other proper purpose by a  
19 physician, psychologist, sociologist, scientist, teacher,  
20 librarian, clergyman, prosecutor, judge, or other person  
21 having a proper interest in the material or performance.

22 (5) This section does not apply to a motion picture  
23 operator or projectionist acting within the scope of his  
24 employment as an employee of the owner or manager of a  
25 theater or other place for the showing of motion pictures to

1 the general public and having no managerial responsibility  
2 or financial interest in his place of employment, other than  
3 wages.

4 **NEW SECTION.** Section 3. Pandering obscenity involving  
5 a minor. (1) Any person who, with knowledge of the character  
6 of the material or performance involved, knowingly or  
7 purposely does any of the following commits the offense of  
8 pandering obscenity to a minor:

9 (a) creates, reproduces, or publishes any obscene  
10 material that has a minor as one of its participants or  
11 portrayed observers, when the offender knows that the  
12 material will be used for commercial exploitation or will be  
13 publicly disseminated or displayed;

14 (b) exhibits or advertises for sale or dissemination,  
15 sells, or publicly disseminates or displays any obscene  
16 material that has a minor as one of its participants or  
17 portrayed observers;

18 (c) creates, directs, or produces an obscene  
19 performance that has a minor as one of its participants,  
20 when the offender knows that it will be used for commercial  
21 exploitation or will be publicly presented;

22 (d) advertises for presentation, presents, or  
23 participates in presenting an obscene performance that has a  
24 minor as one of its participants and is presented publicly  
25 or has an admission charge; or

1 (e) possesses or controls any obscene material that  
2 has a minor as one of its participants with purpose to  
3 violate subsection (1)(b) or (1)(d).

4 (2) It is an affirmative defense to a charge under  
5 this section that the material or performance involved was  
6 disseminated or presented for a bona fide medical,  
7 scientific, educational, religious, governmental, judicial,  
8 or other proper purpose by or to a physician, psychologist,  
9 sociologist, scientist, teacher, person pursuing bona fide  
10 studies or research, librarian, clergyman, prosecutor,  
11 judge, or other person having a proper interest in the  
12 material or performance.

13 (3) A person who commits an offense under this section  
14 shall be fined not to exceed \$2,500 or be imprisoned in the  
15 state prison for a term of not less than 6 months or more  
16 than 5 years, or both.

17 (4) This section does not apply to a motion picture  
18 operator or projectionist acting within the scope of his  
19 employment as an employee of the owner or manager of a  
20 theater or other place for the showing of motion pictures to  
21 the general public and having no managerial responsibility  
22 or financial interest in his place of employment, other than  
23 wages.

24 **NEW SECTION.** Section 4. Deception to obtain matter  
25 harmful to juveniles. (1) A person who, with the purpose to

1 enable a juvenile to obtain any material or gain admission  
2 to any performance that is harmful to juveniles, does either  
3 of the following commits the offense of deception to obtain  
4 matter harmful to juveniles:

5 (a) falsely represents that he is the parent,  
6 guardian, or spouse of such juvenile; or

7 (b) furnishes such juvenile with any identification or  
8 document purporting to show that such juvenile is 18 years  
9 of age or over or married.

10 (2) A person who commits an offense under subsection  
11 (1) shall be fined not to exceed \$750 or imprisoned in the  
12 county jail for any term not to exceed 90 days, or both.

13 (3) A juvenile who, for the purpose of obtaining any  
14 material or gaining admission to any performance that is  
15 harmful to juveniles, falsely represents that he is 18 years  
16 of age or over or married or exhibits any identification or  
17 document purporting to show that he is 18 years of age or  
18 over or married commits the offense of deception to obtain  
19 matter harmful to juveniles and is subject to the  
20 proceedings in Title 41, chapter 5, relating to delinquent  
21 youths.

22 NEW SECTION. Section 5. Compelling acceptance of  
23 objectionable material. A person who, as a condition to the  
24 sale or delivery of any material or goods of any kind, over  
25 the objection of the purchaser or consignee, knowingly or

1 purposely requires the purchaser or consignee to accept any  
2 material reasonably believed to be obscene or that if  
3 furnished or presented to a juvenile would be in violation  
4 of [section 2] commits the offense of compelling acceptance  
5 of objectionable materials and shall be fined not to exceed  
6 \$2,500 or imprisoned in the state prison for a term of not  
7 less than 6 months or more than 5 years, or both.

8 NEW SECTION. Section 6. Notice of character of  
9 material or performance. Without limitation on the manner in  
10 which such notice may be given, actual notice of the  
11 character of material or a performance may be given in  
12 writing by the chief legal officer of the jurisdiction in  
13 which the person to whom the notice is directed does  
14 business. Such notice must identify the sender and the  
15 material or performance involved, state whether the material  
16 or performance is obscene or harmful to juveniles, and bear  
17 the date of the notice.

18 NEW SECTION. Section 7. Declaratory judgments. (1)  
19 Without limitation on the persons otherwise entitled to  
20 bring an action for a declaratory judgment pursuant to Title  
21 27, chapter 8, involving the same issue, the following  
22 persons may bring such an action to determine whether  
23 particular materials or performances are obscene or harmful  
24 to juveniles:

25 (a) the chief legal officer of a jurisdiction in which

1 there is reasonable cause to believe that [section 2 or 3]  
2 is being or is about to be violated; and

3 (b) any person who has received notice in writing  
4 under [section 6] from a chief legal officer stating that  
5 particular materials or performances are obscene or harmful  
6 to juveniles.

7 (2) Any party to an action for a declaratory judgment  
8 under this section is entitled, upon his request, to trial  
9 on the merits within 5 days after the filing of the last  
10 response, if any, and the court shall render judgment within  
11 5 days after trial is concluded.

12 (3) No action for a declaratory judgment under this  
13 section may be brought during the pendency of any civil  
14 action or criminal prosecution if the character of the  
15 particular material or performance involved is at issue in  
16 the pending case and either of the following applies:

17 (a) either of the parties to the action for a  
18 declaratory judgment is a party to the pending case; or

19 (b) a judgment in the pending case will necessarily be  
20 res judicata as to the character of the materials or  
21 performances involved.

22 (4) A civil action or criminal prosecution in which  
23 the character of a particular material or performance is at  
24 issue, brought during the pendency of an action for a  
25 declaratory judgment involving the same issue, must be

1 stayed during the pendency of the action for a declaratory  
2 judgment.

3 (5) The occurrence of a violation of [section 2 or 3]  
4 prior to a judicial determination of the character of the  
5 material or performance involved in the violation does not  
6 relieve the offender of criminal liability for the  
7 violation, even though prosecution is stayed pending the  
8 judicial determination.

9 ~~NEW SECTION.~~ Section 8. Injunctions. (1) If it  
10 appears that [section 2 or 3] is being or is about to be  
11 violated, the chief legal officer of the jurisdiction in  
12 which the violation is taking place or is about to take  
13 place may bring an action to enjoin the violation. The  
14 defendant, upon his request, is entitled to trial on the  
15 merits within 5 days after the filing of the last response,  
16 if any, and the court shall render judgment within 5 days  
17 after trial is concluded.

18 (2) Premises used or occupied for repeated violations  
19 of [section 2 or 3] are a public nuisance and subject to  
20 proceedings under 45-8-112 and Title 27, chapter 30.

21 Section 9. Section 45-8-201, MCA, is amended to read:

22 "45-8-201. Obscenity. (1) A person commits the offense  
23 of obscenity when, with knowledge of the obscene nature  
24 thereof, he purposely or knowingly\*

25 ~~(a)--sells, delivers, or provides or offers or agrees~~

1 to--sell,--deliver,--or--provide--any--obscene--writing,--picture,  
 2 record,--or--other--representation--or--embodiment--of--the--obscene  
 3 to--anyone--under--the--age--of--18;  
 4 (b)--presents--or--directs--an--obscene--play,--dance,--or  
 5 other--performance,--or--participates--in--that--portion--thereof  
 6 which--makes--it--obscene--to--anyone--under--the--age--of--18;  
 7 (c)--publishes,--exhibits,--or--otherwise--makes--available  
 8 anything--obscene--to--anyone--under--the--age--of--18;  
 9 (d)--performs--on--obscene--act--or--otherwise--presents--an  
 10 obscene--exhibition--of--his--body--to--anyone--under--the--age--of  
 11 18;  
 12 (e)--creates,--buys,--procures,--or--possesses--obscene  
 13 matter--or--material--with--the--purpose--to--disseminate--it--to  
 14 anyone--under--the--age--of--18;--or  
 15 (f) advertises or otherwise promotes the sale of  
 16 obscene material or materials represented or held out by him  
 17 to be obscene.  
 18 (2)--A--thing--is--obscene--if:  
 19 (a)--(i)--it--is--a--representation--or--description--of  
 20 perverted--ultimate--sexual--acts,--actual--or--simulated;  
 21 (ii)--it--is--a--patently--offensive--representation--or  
 22 description--of--normal--ultimate--sexual--acts,--actual--or  
 23 simulated;--or  
 24 (iii)--it--is--a--patently--offensive--representation--or  
 25 description--of--masturbation,--excretory--functions,--or--teard

1 exhibition--of--the--genitals,--and  
 2 (b)--taken--as--a--whole--the--material;  
 3 (ii)--applying--contemporary--community--standards,--appeals  
 4 to--the--prurient--interest--in--sex;  
 5 (iii)--portrays--conduct--described--in--(2)(a)(i),--(ii),--or  
 6 (iii)--of--this--section--in--a--patently--offensive--way;--and  
 7 (iii)--lacks--serious--literary,--artistic,--political,--or  
 8 scientific--values.  
 9 (2) AS used in this section, "obscene" has the meaning  
 10 contained in [section 1].  
 11 (3) In any prosecution for an offense under this  
 12 section, evidence shall be admissible to show:  
 13 (a) the predominant dominant appeal of the material  
 14 and what effect, if any, it would probably have on the  
 15 behavior of people;  
 16 (b) the artistic, literary, scientific, educational,  
 17 sociological, moral, or other merits of the material;  
 18 (c) the degree of public acceptance of the material in  
 19 the community by ordinary adults;  
 20 (d) appeal to prurient interest or absence thereof in  
 21 advertising or other promotion of the material; or  
 22 (e) purpose of the author, creator, publisher, or  
 23 disseminator.  
 24 (4) A person convicted of obscenity shall be fined at  
 25 least \$500 but not more than \$1,000 or imprisoned in the

1 county jail for a term not to exceed 6 months, or both.  
2 (5) Cities, towns, or counties may adopt ordinances or  
3 resolutions which are more restrictive as to obscenity than  
4 the provisions of this section and 45-8-202."

-End-