

HOUSE BILL 603

Introduced by Herron, et al.

2/12	Introduced
2/12	Referred to Judiciary
2/12	First Reading
2/17	Hearing
2/18	Tabled in Committee

1 House BILL NO. 603
2 INTRODUCED BY Harrison
3 GRINER JOHN HARP Bergman Smith Bendwin
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW CONCERNING OBSCENITY; EXPANDING THE OBSCENITY LAW TO
6 INCLUDE ANY PERSON REGARDLESS OF AGE; INCREASING PENALTIES;
7 AND AMENDING SECTIONS 45-8-201, 45-8-205, 45-8-206,
8 45-8-207, AND 45-8-208, MCA."

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

11 Section 1. Section 45-8-201, MCA, is amended to read:

12 "45-8-201. Obscenity. (1) A person commits the offense
13 of obscenity when, with knowledge of the obscene nature
14 thereof, he the person purposely or knowingly:

15 (a) sells, delivers, or provides or offers or agrees to
16 sell, deliver, or provide any obscene writing, picture,
17 record, or other representation or embodiment of the obscene
18 to anyone ~~under-the-age-of-18~~;

19 (b) presents or directs an obscene play, dance, or
20 other performance, or participates in that portion thereof
21 which that makes it ~~obscenity-to-anyone-under-the-age-of-18~~;

22 (c) publishes, exhibits, or otherwise makes available
23 anything obscene ~~to-anyone-under-the-age-of-18~~;

24 (d) performs an obscene act or otherwise presents an
25 obscene exhibition ~~of--his-body-to-anyone-under-the-age-of~~

1 ~~18~~;

2 (e) creates, buys, procures, or possesses obscene
3 matter or material with the purpose to disseminate it to
4 anyone ~~under-the-age-of-18~~; or

5 (f) advertises or otherwise promotes the sale of
6 obscene material or materials represented or held out by him
7 the person to be obscene.

8 (2) A thing is obscene if:

9 (a) (i) it is a representation or description of
10 perverted ultimate sexual acts, actual or simulated;

11 (ii) it is a patently offensive representation or
12 description of normal ultimate sexual acts, actual or
13 simulated; or

14 (iii) it is a patently offensive representation or
15 description of masturbation, excretory functions, or lewd
16 exhibition of the genitals; and

17 (b) taken as a whole the material:

18 (i) applying contemporary community standards, appeals
19 to the prurient interest in sex;

20 (ii) portrays conduct described in subsection (2)(a)(i),
21 (ii), or (iii) in a patently offensive way; and

22 (iii) lacks serious literary, artistic, political, or
23 scientific value.

24 (3) In any prosecution for an offense under this
25 section, evidence ~~shall-be~~ is admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof of appeal to prurient interest in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

~~(4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.~~

{5} Cities, towns, or counties may adopt ordinances or resolutions which that are more restrictive as to obscenity than the provisions of 45-8-205, 45-8-206, and this section."

Section 2. Section 45-8-205, MCA, is amended to read:

"45-8-205. Definitions. As used in 45-8-201 and 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual

conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for or with reference to minors if it appears that the character of the material or the circumstances of its dissemination is designed or directed to minors or susceptible audiences; and

(c) it lacks serious literary, scientific, artistic, or political value ~~for minors~~. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older-minors persons, the material or performance may not be found to lack such value ~~for the entire class of minors~~.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, representation, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other live exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."

Section 3. Section 45-8-206, MCA, is amended to read:

"45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display, publish, exhibit, or otherwise display or disseminate any obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors;

(d) exhibit, rent, deliver, provide, or offer or agree to exhibit, rent, deliver, sell, or provide any obscene material or performance; or

1 (e) create, buy, procure, or possess obscene material
2 for dissemination.

3 (2) A person does not violate this section if:

4 (a) ~~he had reasonable cause to believe the minor was 18~~
5 ~~years of age. "Reasonable cause" includes but is not limited~~
6 ~~to being shown a draft card, driver's license, marriage~~
7 ~~license, birth certificate, educational identification card,~~
8 ~~governmental identification card, or other official or~~
9 ~~apparently official card or document purporting to establish~~
10 ~~that the person is 18 years of age;~~

11 (b) the person is, or is acting as, an employee of a
12 bona fide public school, college, or university or a retail
13 outlet affiliated with and serving the educational purposes
14 of a school, college, or university and the material or
15 performance was disseminated in accordance with policies
16 approved by the governing body of the institution;

17 (c) the person is an officer, director, trustee, or
18 employee of a public library or museum and the material or
19 performance was acquired by the library or museum and
20 disseminated in accordance with policies approved by the
21 governing body of the library or museum;

22 (d) an exhibition in a state of nudity is for a bona
23 fide scientific or medical purpose for a bona fide school,
24 library, or museum; or

25 (e) the person is a retail sales clerk with no

1 financial interest in the material or performance or in the
2 establishment displaying or selling the material or
3 performance."

4 **Section 4.** Section 45-8-207, MCA, is amended to read:

5 "45-8-207. Notice of violation. Before a county
6 attorney may prosecute a person for a continuing violation
7 of 45-8-206, he the county attorney shall determine that the
8 material or performance is obscene to minors, give the
9 alleged violator actual notice of the determination and
10 notice that he the alleged violator will be prosecuted if he
11 the alleged violator does not desist, and determine that the
12 violation continued for at least 3 days after notice was
13 received. The person may seek a declaratory judgment on the
14 question whether the material or performance is obscene to
15 minors. The statute of limitations for the offense is tolled
16 while the declaratory judgment or an appeal from it is
17 pending."

18 **Section 5.** Section 45-8-208, MCA, is amended to read:

19 "45-8-208. Penalties. (1) A person who is convicted of
20 violating 45-8-201 or 45-8-206 for the first time is guilty
21 of a misdemeanor and may be fined an amount of not to exceed
22 less than \$500 or more than \$5,000 or be imprisoned for a
23 term not to exceed 6 months, or both. Upon a second or
24 subsequent conviction, a person is guilty of a felony and
25 may be fined an amount not to exceed \$50,000 or be

1 imprisoned for a term not to exceed 10 years, or both.

2 (2) A person who knowingly imports or causes obscene
3 material to be brought into the state for sale, rent,
4 delivery, or exhibition is guilty of a felony and may be
5 fined an amount not to exceed \$50,000 or be imprisoned for a
6 term not to exceed 10 years, or both.

7 (3) For purposes of 45-8-206, multiple copies of the
8 same title, monthly issue, volume and number issue, or other
9 identical material constitutes a single offense.

10 (4) Obscene material is contraband."

-End-