

House BILL NO. 83INTRODUCED BY Jack Keenan

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OBSCENITY LAW; AMENDING SECTION 45-8-201, MCA; AND REPEALING SECTION 45-8-203, MCA."

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

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

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

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

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

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

~~(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;~~

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

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

~~(2) A thing is obscene if:~~

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

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

~~(iii) it is a patently offensive representation or description of masturbation, excretory functions, or low exhibition of the genitals; and~~

~~(b) taken as a whole the material:~~

- 1 ~~(i) applying contemporary community standards, appeals to the prurient interest in sex;~~  
 2 ~~(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) in a patently offensive way; and~~  
 3 ~~(iii) lacks serious literary, artistic, political, or scientific value.~~  
 4 ~~(3) In any prosecution for an offense under this section, evidence shall be admissible to show:~~  
 5 ~~(a) the predominant appeal of the material and what effect, if any, it would probably have on the~~  
 6 ~~behavior of people;~~  
 7 ~~(b) the artistic, literary, scientific, educational, or other merits of the material;~~  
 8 ~~(c) the degree of public acceptance of the material in the community;~~  
 9 ~~(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material;~~  
 10 ~~or~~  
 11 ~~(e) purpose of the author, creator, publisher, or disseminator.~~  
 12 (a) publishes, exhibits, presents, rents, sells, delivers, provides, or otherwise makes available  
 13 obscene material or offers or agrees to publish, exhibit, present, rent, sell, deliver, provide, or otherwise  
 14 make available obscene material;  
 15 (b) presents, participates in, or directs an obscene performance or offers or agrees to present,  
 16 participate in, or direct an obscene performance;  
 17 (c) creates, buys, procures, or possesses obscene material for dissemination; or  
 18 (d) imports obscene material into this state or otherwise causes obscene material to be brought  
 19 into this state for sale, rent, delivery, or exhibition.  
 20 (2) As used in this section:  
 21 (a) "Material" means any magazine or other printed or written matter, picture, photograph, motion  
 22 picture film, videotape, sound record, statue, representation, or computer transmission.  
 23 (b) "Obscene material" or "obscene performance" is that which:  
 24 (i) the average person, applying contemporary community standards, would consider to include a  
 25 patently offensive depiction or description of sexual conduct;  
 26 (ii) the average person, applying contemporary community standards, would consider to appeal to  
 27 a prurient interest in sex when taken as a whole; and  
 28 (iii) a reasonable person would find to lack serious literary, artistic, political, or scientific value, when  
 29 taken as a whole.  
 30 (c) "Performance" means a play, dance, or other live exhibition performed before an audience.

1           (d) "Person" means an individual, partnership, corporation, association, or other entity.

2           (e) "Sexual conduct" means:

3           (i) vaginal, anal, or oral intercourse, whether actual or simulated and whether normal or perverted;

4           (ii) masturbation, excretory functions, and lewd exhibition of the uncovered genitals; and

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

8           ~~(4)~~ (3) (a) A person convicted of obscenity under subsection (1)(a), (1)(b), or (1)(c) shall be fined  
9 at least \$500 but not more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months,  
10 or both.

11           (b) A person convicted of obscenity under subsection (1)(d) shall be fined an amount not to exceed  
12 \$50,000 or imprisoned for a term not to exceed 10 years, or both.

13           (4) When a conviction has become final, the court may order any material in the possession of law  
14 enforcement authorities and found to be obscene at the trial or alleged to be obscene if there was no trial  
15 to be destroyed by the law enforcement authority possessing the material or by the county sheriff.

16           (5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ that are more restrictive  
17 as to obscenity than the provisions of 45-8-206 and this section."

18

19           NEW SECTION. Section 2. Repealer. Section 45-8-203, MCA, is repealed.

20

-END-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 83

INTRODUCED BY HERRON, MILLS, L. SMITH, BARNETT, JORE, SIMPKINS, TOEWS, MCGEE, CURTISS,  
KEATING, BURNETT, ORR

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~~picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;~~

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

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

~~(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone~~  
~~under the age of 18;~~

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

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(2) A thing is obscene if:

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

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~~simulated; or~~

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1 ~~(b) taken as a whole the material:~~

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

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

6 ~~(a) the predominant appeal of the material and what effect, if any, it would probably have on the~~

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

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

11 ~~or~~

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

13 (a) publishes, exhibits, presents, rents, sells, delivers, provides, or otherwise makes available  
 14 obscene material or offers or agrees to publish, exhibit, present, rent, sell, deliver, provide, or otherwise  
 15 make available obscene material;

16 (b) presents, participates in, or directs an obscene performance or offers or agrees to present,  
 17 participate in, or direct an obscene performance;

18 (c) creates, buys, procures, or possesses obscene material for dissemination; or

19 (d) imports obscene material into this state or otherwise causes obscene material to be brought  
 20 into this state for sale, rent, delivery, or exhibition.

21 (2) As used in this section:

22 (a) "Material" means any magazine or other printed or written matter, picture, photograph, motion  
 23 picture film, videotape, sound record, statue, representation, or computer transmission.

24 (b) "Obscene material" or "obscene performance" is that which:

25 (i) the average person, applying contemporary community standards, would consider to include a  
 26 patently offensive depiction or description of sexual conduct;

27 (ii) the average person, applying contemporary community standards, would consider to appeal to  
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1 (c) "Performance" means a play, dance, or other live exhibition performed before an audience.

2 (d) "Person" means an individual, partnership, corporation, association, or other entity.

3 (e) "Sexual conduct" means:

4 (i) vaginal, anal, or oral intercourse, whether actual or simulated and whether normal or perverted;

5 (ii) masturbation, excretory functions, and lewd exhibition of the uncovered genitals; and

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

9 ~~(4) (3) (a)~~ A person convicted of obscenity under subsection (1)(a), (1)(b), or (1)(c) shall be fined  
10 at least \$500 but not more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months,  
11 or both.

12 (b) A person convicted of obscenity under subsection (1)(d) shall be fined an amount not to exceed  
13 \$50,000 or imprisoned for a term not to exceed 10 years, or both.

14 (4) When a conviction has become final, the court may order any material in the possession of law  
15 enforcement authorities and found to be obscene at the trial or alleged to be obscene if there was no trial  
16 to be destroyed by the law enforcement authority possessing the material or by the county sheriff.

17 (5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ that are more restrictive  
18 as to obscenity than the provisions of 45-8-206 and this section."  
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20 ~~NEW SECTION. Section 2. Repealer. Section 45-8-203, MCA, is repealed.~~

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

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21 into this state for sale, rent, delivery, or exhibition.

22 (2) As used in this section:

23 (A) "KNOWLEDGE OF THE CHARACTER" MEANS WITH GENERAL KNOWLEDGE OF THE

24 CONTENT OR CHARACTER OR WITH REASON TO KNOW OF THE CONTENT OR CHARACTER OF THE

25 MATERIAL.

26 (a)(B) "Material" means any magazine or other printed or written matter, picture, photograph,

27 motion picture film, videotape, sound record, statue, representation, or computer transmission.

28 (b)(C) "Obscene material" or "obscene performance" is that which:

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5 ~~(d)~~(D) "Performance" means a play, dance, or other live exhibition performed before an audience.

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