

CHAPTER 12**SEXUAL EXPLOITATION OF MINORS****§281. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 711, Pt. B, §12 (NEW).]

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.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

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

[PL 2003, c. 711, Pt. B, §12 (NEW).]

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.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

4. "Sexually explicit conduct" means any of the following acts:

A. A sexual act; [PL 2003, c. 711, Pt. B, §12 (NEW).]

B. Bestiality; [PL 2003, c. 711, Pt. B, §12 (NEW).]

C. Masturbation; [PL 2003, c. 711, Pt. B, §12 (NEW).]

D. Sadomasochistic abuse for the purpose of sexual stimulation; [PL 2003, c. 711, Pt. B, §12 (NEW).]

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 [PL 2003, c. 711, Pt. B, §12 (NEW).]

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. [PL 2003, c. 711, Pt. B, §12 (NEW).]

[PL 2003, c. 711, Pt. B, §12 (NEW).]

SECTION HISTORY

PL 2003, c. 711, §B12 (NEW).

§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, the person intentionally or knowingly employs, solicits, entices, persuades or uses another person, not that person's spouse, who has not in fact attained 16 years of age, to engage in sexually explicit conduct, except that it is not a violation of this paragraph if the other person is 14 or 15 years of age and the person is less than 5 years older than the other person. Violation of this paragraph is a Class B crime; [PL 2015, c. 394, §1 (AMD).]

A-1. Knowing or intending that the conduct will be photographed, 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; [PL 2015, c. 394, §1 (NEW).]

B. The person violates paragraph A or A-1 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; [PL 2015, c. 394, §1 (AMD).]

C. The person violates paragraph A or A-1 and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime; [PL 2015, c. 394, §1 (AMD).]

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, that person knowingly or intentionally 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. Violation of this paragraph is a Class B crime; [PL 2015, c. 394, §1 (AMD).]

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 [PL 2007, c. 476, §5 (AMD).]

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. [PL 2003, c. 711, Pt. B, §12 (NEW).]
[PL 2015, c. 394, §1 (AMD).]

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 or D a sentencing alternative involving a term of imprisonment of at least 5 years. [PL 2015, c. 394, §2 (AMD).]

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. [PL 2003, c. 711, Pt. B, §12 (NEW).]

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.

[PL 2015, c. 394, §2 (AMD).]

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 who had not attained 12 years of age, the court, in determining the appropriate sentence, shall treat the age of the victim as an aggravating sentencing factor.

[PL 2019, c. 113, Pt. B, §15 (NEW).]

SECTION HISTORY

PL 2003, c. 711, §B12 (NEW). PL 2007, c. 476, §§4, 5 (AMD). PL 2015, c. 394, §§1, 2 (AMD). PL 2019, c. 113, Pt. B, §15 (AMD).

§283. Dissemination of sexually explicit material

1. A person is guilty of dissemination of sexually explicit material if:

A. 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 person who has not in fact attained 16 years of age who the person knows or has reason to know is a person under 16 years of age engaging in sexually explicit conduct, except that 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 C crime; [PL 2015, c. 394, §3 (AMD).]

B. The person violates paragraph A 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; [PL 2007, c. 476, §6 (AMD).]

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. Violation of this paragraph is a Class B crime; or [PL 2003, c. 711, Pt. B, §12 (NEW).]

D. The person violates paragraph C 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. [PL 2007, c. 476, §7 (AMD).]

Section 9-A governs the use of prior convictions when determining a sentence.
[PL 2015, c. 394, §3 (AMD).]

2. For the purposes of this section, possession of 10 or more copies 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.
[PL 2003, c. 711, Pt. B, §12 (NEW).]

3. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.
[PL 2009, c. 608, §3 (NEW).]

SECTION HISTORY

PL 2003, c. 711, §B12 (NEW). PL 2007, c. 476, §§6, 7 (AMD). PL 2009, c. 608, §3 (AMD). PL 2015, c. 394, §3 (AMD).

§284. Possession of sexually explicit material

1. A person is guilty of possession of sexually explicit 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 material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

- (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; [PL 2015, c. 394, §4 (AMD).]

B. Violates paragraph A 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; [PL 2007, c. 476, §8 (AMD).]

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:

- (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 [PL 2011, c. 50, §2 (AMD).]

D. Violates paragraph C 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. [PL 2007, c. 476, §9 (AMD).]

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

[PL 2015, c. 394, §4 (AMD).]

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 material at the time the material was produced.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

3. The age of the person depicted and that the person depicted is an actual person 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.

[PL 2005, c. 345, §2 (AMD).]

4. Any 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.

[PL 2005, c. 345, §2 (AMD).]

5. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of the transporting, exhibiting, purchasing, possession or accessing of the sexually explicit visual image or material.

[PL 2011, c. 464, §13 (AMD).]

SECTION HISTORY

PL 2003, c. 711, §B12 (NEW). PL 2005, c. 345, §§1,2 (AMD). PL 2007, c. 476, §§8, 9 (AMD). PL 2009, c. 608, §4 (AMD). PL 2011, c. 50, §§1-3 (AMD). PL 2011, c. 464, §13 (AMD). PL 2015, c. 394, §4 (AMD).

§285. Forfeiture of equipment used to facilitate violations

1. Upon a finding of guilt of any violation of this chapter, but prior to sentencing, an attorney for the State may, in writing, move the court for an order requiring the forfeiture to the State of any equipment, including computers, that may have facilitated the commission of the offense. Notice of

the motion must be made by the State to the defendant and any party of interest; this notice must be done by registered mail.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

2. If contesting the forfeiture, the defendant or other party-in-interest in the in rem civil forfeiture proceeding may request a jury trial. Absent that request, the proceeding must be before the court.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

3. At the jury trial or court hearing, the State has the burden of proving to the fact finder by a preponderance of the evidence that the equipment was used in violation of this chapter.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

4. Upon a finding by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation of this chapter, the court shall order the equipment forfeited and may, upon the written recommendation of the attorney for the State, provide in its order for the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

5. The Attorney General may adopt by rule guidelines regulating the disposition and use of property forfeited or sought for forfeiture under this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2003, c. 711, Pt. B, §12 (NEW).]

SECTION HISTORY

PL 2003, c. 711, §B12 (NEW).

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