

Massachusetts

Part IV, Title I, Chapter 272, Sections 28 to 31

- [Matter harmful to minors](#)
- [Information or petition against obscene books](#)
- [Dissemination or possession of obscene matter](#)
- [Injunctive relief against dissemination of obscene matter](#)
- [Definitions](#)

CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Chapter 272: Section 28 Matter harmful to minors, dissemination; possession; defenses

Section 28. Whoever disseminates to a minor any matter harmful to minors, as defined in section thirty-one, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to minors, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars for the first offense, not less than five thousand nor more than twenty thousand dollars for the second offense, or not less than ten thousand nor more than thirty thousand dollars for the third and subsequent offenses, or by both such fine and imprisonment. A prosecution commenced under this section shall not be continued without a finding nor placed on file. It shall be a defense in any prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in any prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Chapter 272: Section 28C Information or petition against obscene books; order of notice to show cause; notice of order; interlocutory adjudication; defense

Section 28C. Whenever there is reasonable cause to believe that a book which is being disseminated, or is in the possession of any person who intends to disseminate the same, is obscene, the attorney general, or any district attorney within his district, shall bring an information or petition in equity in the superior court directed against said book by name. Upon the filing of such information or petition in equity, a justice of the superior court shall, if, upon a summary examination of the book, he is of opinion that there is reasonable cause to believe that such book is obscene, issue an order of notice, returnable in or within thirty days, directed against such book by name and addressed to all persons

interested in the dissemination thereof, to show cause why said book should not be judicially determined to be obscene. Notice of such order shall be given by publication once each week for two successive weeks in a daily newspaper published in the city of Boston and, if such information or petition be filed in any county other than Suffolk county, then by publication also in a daily newspaper published in such other county. A copy of such order of notice shall be sent by registered mail to the publisher of said book, to the person holding the copyrights, and to the author, in case the names of any such persons appear upon said book, fourteen days at least before the return day of such order of notice. After the issuance of an order of notice under the provisions of this section, the court shall, on motion of the attorney general or district attorney, make an interlocutory finding and adjudication that said book is obscene, which finding and adjudication shall be of the same force and effect as the final finding and adjudication provided in section twenty-eight E or section twenty-eight F, but only until such final finding and adjudication is made or until further order of the court. It shall be an affirmative defense under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Chapter 272: Section 29 Dissemination or possession of obscene matter; punishment; defense

Section 29. Whoever disseminates any matter which is obscene, knowing it to be obscene, or whoever has in his possession any matter which is obscene, knowing it to be obscene, with the intent to disseminate the same, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars for the first offense, not less than five thousand nor more than twenty thousand dollars for the second offense, or not less than ten thousand nor more than thirty thousand dollars for the third and subsequent offenses, or by both such fine and imprisonment. A prosecution commenced under this section shall not be continued without a finding nor placed on file. It shall be a defense under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Chapter 272: Section 30 Injunctive relief against dissemination of obscene matter; jurisdiction; procedures; appeal

Section 30. The superior court shall have jurisdiction to enjoin the dissemination of any matter which is obscene. The attorney general or a district attorney within his district may request an injunction against any person, firm, or corporation which disseminates or is about to disseminate any matter which is obscene.

The person, firm, or corporation sought to be enjoined shall be entitled to a trial on the merits within one day after filing of responsive pleadings and a decision shall be rendered by the court within two days of the conclusion of the trial.

A justice of the superior court may issue a preliminary injunction pending the trial on the merits against such person, firm, or corporation which disseminates or is about to disseminate any matter which is obscene.

No preliminary injunction shall be issued without notice to the adverse party.

In any action brought as herein provided the attorney general or a district attorney shall not be required to furnish security before the issuance of any injunction provided for in this section and neither the commonwealth nor any county, shall be liable for costs or for damages sustained by reason of the injunction in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.

If the court finds that the person, firm, or corporation is disseminating or is about to disseminate any obscene matter, it shall issue a permanent injunction prohibiting the dissemination of that matter. The court's order shall direct the person, firm or corporation to surrender to a sheriff or a police officer the matter found obscene and a sheriff or police officer shall be directed to seize and destroy the same.

Appeals shall be as otherwise provided by law in civil proceedings, but any party or intervenor shall have the right to an expedited appeal to the appeals court.

The procedures set forth in this section are in addition to criminal proceedings initiated under any provisions of the General Laws, and not a condition precedent thereto.

CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Chapter 272: Section 31 Definitions

Section 31. As used in sections twenty-eight, twenty-eight C, twenty-eight D, twenty-eight E, twenty-nine, twenty-nine A, twenty-nine B, thirty and thirty D, the following words shall, unless the context requires otherwise, have the following meanings:--

""Disseminate", to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

""Harmful to minors", matter is harmful to minors if it is obscene or, if taken as a whole, it (1) describes or represents nudity, sexual conduct or sexual excitement, so as to appeal predominantly to the prurient interest of minors; (2) is patently contrary to prevailing standards of adults in the county where the offense was committed as to suitable material for such minors; and (3) lacks serious literary, artistic, political or scientific value for minors.

""Knowing", a general awareness of the character of the matter.

""Lascivious intent", a state of mind in which the sexual gratification or arousal of any person is an objective. For the purposes of prosecution under this chapter, proof of lascivious intent may include, but shall not be limited to, the following:

(1) whether the circumstances include sexual behavior, sexual relations, infamous conduct of a lustful or obscene nature, deviation from accepted customs and manners, or sexually oriented displays;

(2) whether the focal point of a visual depiction is the child's genitalia, pubic area, or breast area of a female child;

(3) whether the setting or pose of a visual depiction is generally associated with sexual activity;

(4) whether the child is depicted in an unnatural pose or inappropriate attire, considering the child's age;

(5) whether the depiction denotes sexual suggestiveness or a willingness to engage in sexual activity;

(6) whether the depiction is of a child engaging in or being engaged in sexual conduct, including, but not limited to, sexual intercourse, unnatural sexual intercourse, bestiality, masturbation, sado-masochistic behavior, or lewd exhibition of the genitals.

""Minor", a person under eighteen years of age.

""Nudity", uncovered or less than opaquely covered human genitalia, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitalia in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.

""Matter", any handwritten or printed material, visual representation, live performance or sound recording including but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances.

""Performance", any play, dance, exhibit, or such similar activity performed before one or more persons.

""Obscene", matter is obscene if taken as a whole it

(1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed;

(2) depicts or describes sexual conduct in a patently offensive way; and

(3) lacks serious literary, artistic, political or scientific value.

""Sexual conduct", human masturbation, sexual intercourse, actual or simulated, normal or perverted, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship, any lewd touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, and any depiction or representation of excretory functions in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

""Sexual excitement", the condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

""Visual material", any motion picture film, picture, photograph, videotape, book, magazine, pamphlet that contains pictures, photographs or similar visual representations or reproductions, or depiction by computer. Undeveloped photographs, pictures, motion picture films, videotapes and similar visual representations or reproductions may be visual materials notwithstanding that processing, development or similar acts may be required to make the contents thereof apparent.
