



LEGAL UPDATE

April 12, 2011

Legislature clarifies requisite intent for disseminating matter harmful to minors, pursuant to G.L. c. 272, § 28

On April 13, 2010, Governor Patrick signed legislation that prohibits sending obscene materials to minors via electronic communications such as email, text and instant messages. This law was enacted in response to *Commonwealth v. Zubiel*, 456 Mass. 27 (2010), where the SJC found that the existing definition of “matter” in G.L. c. 272, § 31 did not include electronically transmitted computer texts and online chats, and therefore dissemination of matter harmful to minors in these forms was not prohibited by statute.

Yesterday, April 11, 2011, the Governor signed legislation, effective immediately, which clarifies the requisite intent for this crime. The defendant must have purposefully disseminated (or possessed with intent to disseminate) such matter to a person he knows or believes to be a minor.

Below, please find the language of Section 19 of Chapter 9 of the Acts of 2011. The new statutory language is underlined.

SECTION 19. Chapter 272 of the General Laws is hereby amended by striking out section 28, as so appearing, and inserting in place thereof the following section:--

Section 28. Whoever purposefully disseminates to a person he knows or believes to be 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 a person he knows or believes to be a minor, 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 person who disseminates an electronic communication or possesses an electronic communication with the intent to disseminate it shall not be found to have violated this section unless he specifically intends to direct the communication to a person he knows or believes to be a minor. 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.