

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

### Chapter 272: Section 29A. Posing or exhibiting child **an elder or a person with a disability** in state of nudity or sexual conduct; punishment

Section 29A. (a) Whoever, either with knowledge that a person is a child under eighteen years of age, **an elder or a person with a disability** or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, **an elder or a person with a disability** and with lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child, **elder or person with a disability** to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment. **For purposes of this section “an elder” and “a person with a disability” shall be defined as those terms are defined in Section 13K of Chapter 265 (“Elder”, a person sixty years of age or older. “Person with disability”, a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection)**

(b) Whoever, either with knowledge that a person is a child under eighteen years of age, **elder or a person with a disability** or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, **an elder or a person with a disability** hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child, **an elder or a person with a disability** to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.

(c) In a prosecution under this section, a minor **or an elder or a person with a disability adjudicated as incompetent by a court of the commonwealth** shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

(d) For the purposes of this section, the determination whether the person in any visual material prohibited hereunder is under eighteen years of age, **an elder or a person with a disability** be made by the personal testimony of such person, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that ~~the child~~ **person** therein was known to him to be under eighteen years of age, or **to be an elder or a person with a disability** or by expert medical testimony as to the age **or disability of the person** based upon the person’s physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

## **Chapter 272: Section 29B. Dissemination of visual material of child in state of nudity or sexual conduct; punishment**

Section 29B. (a) Whoever, with **lascivious intent**, disseminates any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, **an elder or a person with a disability** knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.

(b) Whoever with lascivious intent disseminates any visual material that contains a representation or reproduction of any act that depicts, describes, or represents sexual conduct participated or engaged in by a child who is under eighteen years of age, **an elder or a person with a disability** knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or whoever has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.

(c) For the purposes of this section, the determination whether the ~~child~~ **person** in any visual material prohibited hereunder is **a child** under eighteen years of age, **an elder or a person with a disability** may be made by the personal testimony of such child, **elder or person with a disability**, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the ~~child~~ **person** therein was known to him to be under eighteen years of age, **an elder or a person with a disability**, by testimony of a person who observed the visual material, or by expert medical testimony as to the age of the child based upon the child's physical appearance, **or that of an elder or a person with a disability** by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

(d) In a prosecution under this section, a minor **or an elder or a person with a disability adjudicated incompetent by a court of the commonwealth** shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

(e) Pursuant to this section, proof that dissemination of any visual material that contains a representation or reproduction of sexual conduct or of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, **an elder or a person with a disability** was for a bona fide scientific, medical, or educational purpose for a bona fide school, museum, or library may be considered as evidence of a lack of lascivious intent.