

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 772

6  
7 S.P. 283

In Senate, February 27, 1985

8 Referred to the Committee on Judiciary. Sent down for concurrence and  
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

11 Cosponsored by Senator Sewall of Lincoln, Representative Kane of So.  
Portland and Representative Stevens of Bangor.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Amend the Statutes on Sex Offenses.  
18

19 Be it enacted by the People of the State of Maine as  
20 follows:

21 Sec. 1. 17-A MRSA §252, as amended by PL 1981,  
22 c. 252, §2, is further amended to read:

23 §252. Rape

24 1. A person is guilty of rape if he engages in  
25 sexual intercourse:

26 A. With any person, not his spouse, who has not  
27 in fact attained his 14th birthday; or

28 B. With any person, ~~not his spouse,~~ and the per-  
29 son submits as a result of compulsion, as defined  
30 in section 251, subsection 1, paragraph E.

1           2. It is an affirmative defense to a prosecution  
2 under subsection 17, paragraph B that the defendant  
3 and the victim were living together as man and wife  
4 at the time of the crime.

5           3. Rape is a Class A crime. It is a defense to a  
6 prosecution under subsection 17, paragraph B, which  
7 reduces the crime to a Class B crime that the victim  
8 was a voluntary social companion of the defendant at  
9 the time of the crime and had, on that occasion, per-  
10 mitted the defendant sexual contact.

11           Sec. 2. 17-A MRSA §253, as amended by PL 1983,  
12 c. 326, §§1 to 4, is further amended to read:

13           §253. Gross sexual misconduct

14           A person is guilty of gross sexual misconduct

15           1. If he engages in a sexual act with another  
16 person, ~~not his spouse~~, and:

17           A. The other person submits as a result of com-  
18 pulsion, as defined in section 251, subsection 1,  
19 paragraph E; or

20           B. The other person, not his spouse, has not in  
21 fact attained his 14th birthday; or

22           2. If he engages in sexual intercourse or a sex-  
23 ual act with another person, ~~not his spouse~~, and:

24           A. He has substantially impaired the other  
25 person's power to appraise or control his sex  
26 acts by administering or employing drugs, intoxi-  
27 cants, or other similar means; ~~or~~

28           B. He compels or induces the other to engage in  
29 such sexual intercourse or sexual act by any  
30 threat; ~~or~~

31           C. The other person suffers from mental disabili-  
32 ty that is reasonably apparent or known to the  
33 actor, and which in fact renders the other sub-  
34 stantially incapable of appraising the nature of  
35 the contact involved; ~~or~~

1 D. The other person is unconscious or otherwise  
2 physically incapable of resisting and has not  
3 consented to such sexual intercourse or sexual  
4 act;

5 E. The other person, not his spouse, is in offi-  
6 cial custody as a probationer or a parolee, or is  
7 detained in a hospital, prison or other institu-  
8 tion, and the actor has supervisory or discipli-  
9 nary authority over such other person; or

10 F. The other person, not his spouse, has not in  
11 fact attained his 18th birthday and is a student  
12 enrolled in a private or public elementary, sec-  
13 ondary or special education school, facility or  
14 institution and the actor is a teacher, employee  
15 or other official having instructional, supervi-  
16 sory or disciplinary authority over the student.

17 3. It is a defense to a prosecution under sub-  
18 section 2, paragraph A that the other person volun-  
19 tarily consumed or allowed administration of the sub-  
20 stance with knowledge of its nature.

21 4. Violation of subsection 1 is a Class A crime.  
22 It is, however, a defense to prosecution under sub-  
23 section 1, paragraph A which reduces the crime to a  
24 Class B crime that the other person was a voluntary  
25 social companion of the defendant at the time of the  
26 offense and had, on that occasion, permitted him sex-  
27 ual contact. It is an affirmative defense to a prose-  
28 cution under subsection 1, paragraph A that the de-  
29 fendant and the victim were living together as man  
30 and wife at the time of the crime.

31 5. Violation of subsection 2, paragraph A, C or  
32 E is a Class B crime. Violation of subsection 2,  
33 paragraph B, D or F is a Class C crime.

34 Sec. 3. 17-A MRSA §255, as amended by PL 1983,  
35 c. 326, §§5 to 7, is further amended to read:

36 §255. Unlawful sexual contact

37 1. A person is guilty of unlawful sexual contact  
38 if he intentionally subjects another person, ~~not his~~  
39 spouse, to sexual contact, and:

- 1 A. The other person has not expressly or im-  
2 pliedly acquiesced in such sexual contact; ~~or~~
- 3 B. The other person is unconscious or otherwise  
4 physically incapable of resisting, and has not  
5 consented to the sexual contact; ~~or~~
- 6 C. The other person, not his spouse, has not in  
7 fact attained his 14th birthday and the actor is  
8 at least 3 years older; ~~or~~
- 9 D. The other person suffers from a mental dis-  
10 ability that is reasonably apparent or known to  
11 the actor which in fact renders the other person  
12 substantially incapable of appraising the nature  
13 of the contact involved;
- 14 E. The other person, not his spouse, is in offi-  
15 cial custody as a probationer or parolee or is  
16 detained in a hospital, prison or other institu-  
17 tion and the actor has supervisory or disciplin-  
18 ary authority over such other person; or
- 19 F. The other person, not his spouse, has not in  
20 fact attained his 18th birthday and is a student  
21 enrolled in a private or public elementary, sec-  
22 ondary or special education school, facility or  
23 institution and the actor is a teacher, employee  
24 or other official having instructional, supervi-  
25 sory or disciplinary authority over the student.
- 26 2. Unlawful sexual contact is a Class D crime,  
27 except that a violation of subsection 1, paragraph C  
28 is a Class C crime.

1

STATEMENT OF FACT

2           The purpose of this bill is to remove from the  
3 Maine Criminal Code's sex offenses certain exemptions  
4 from criminal responsibility based on the relation-  
5 ship between the actor and the victim. These exemp-  
6 tions from criminal responsibility for conduct that  
7 would be a crime except for the protected relation-  
8 ship, exist when the actor and victim have a marital  
9 relationship. The actor is also held less responsi-  
10 ble if the actor and the victim were voluntary social  
11 companions in certain circumstances.

12           Section 1 of the bill amends the rape law that a  
13 crime is committed when the victim submits to sexual  
14 intercourse as the result of compulsion, even if the  
15 victim and actor are living in a marital relation-  
16 ship. The reduction in seriousness of the crime if,  
17 at the time of the crime, the actor and victim were  
18 voluntary social companions and the victim had per-  
19 mitted the actor sexual contact on the occasion of  
20 the crime, is also removed. The bill maintains the  
21 provisions for statutory rape, that is a crime based  
22 on the young age of the victim. Under the amended  
23 law, then, if a person submits to sexual intercourse  
24 as a result of compulsion, regardless of the rela-  
25 tionship between the victim and actor, the crime of  
26 Class A rape is committed. "Compulsion" as defined  
27 in the Maine Criminal Code includes the use of physi-  
28 cal force or threats of physical force in such a way  
29 that the victim cannot physically repel the actor or  
30 so as to produce a reasonable fear in the victim of  
31 death, serious bodily injury or kidnapping of the  
32 victim or another person.

33           Section 2 of the bill makes similar revisions in  
34 the crime of gross sexual misconduct, which involves  
35 the commission of a sexual act, generally meaning any  
36 act of sexual gratification involving contact between  
37 sex organs, oral or anal sex or contact between sex  
38 organs and a manipulated devise, in circumstances  
39 that would be rape except that sexual intercourse  
40 does not occur, or the commission of a sexual act or  
41 sexual intercourse in circumstances where the victim  
42 is impaired or confined in such a way that he or she  
43 cannot prevent the action, control himself or herself

1 or understand the nature of the actions. Under the  
2 current law, conduct that would otherwise be gross  
3 sexual misconduct is protected if the actor is living  
4 in a marital relationship with the victim. The seri-  
5 ousness of the crime is also reduced if the actor can  
6 show the "voluntary social companion" excuse. Both  
7 of these protections are removed from the crime of  
8 gross sexual misconduct by this bill, except that the  
9 spousal exemption is maintained where the activity is  
10 voluntary, but would otherwise be a crime because the  
11 actor has custodial authority, in the hospital, prison,  
12 school or other institution, over the other person  
13 involved.

14 Section 3 of the bill amends the unlawful sexual  
15 contact law in similar ways. Under the current law,  
16 the crime of unlawful sexual contact, which means the  
17 touching of another's genitals for purposes of sexual  
18 desire, is committed if the sexual contact occurs  
19 when the victim has not or cannot consent, when the  
20 victim is of a young age and the actor is not close  
21 to the victim in age, or when the actor has custodial  
22 authority over the victim in certain circumstances.  
23 The crime is excused if the actor and victim are liv-  
24 ing in a marital relationship. This bill removes  
25 this spousal exemption for the crime of unlawful sex-  
26 ual contact when the victim has not or cannot con-  
27 sent. The spousal exemption is maintained when the  
28 contact is voluntary, but the relationship between  
29 the actor and victim falls into the categories con-  
30 cerning age or custodial authority.

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