

MAINE STATE LEGISLATURE

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L.D. 1386

(Filing No. H-426)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 969, L.D.
1386, Bill, "AN ACT to Protect Abused Children."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 15 MRSA §1205, sub-§§1 and 2, as en-
acted by PL 1983, c. 411, are repealed and the fol-
lowing enacted in their place:

1. Mental or physical well-being of a person.
On motion of the attorney for the State and at an in
camera hearing, the court finds that the mental or
physical well-being of that person will more likely
than not be harmed if that person were to testify in
open court; and

2. Examination and cross-examination. Pursuant
to order of court made on such a motion, the state-
ment is made under oath, subject to all of the rights
of confrontation secured to an accused by the Consti-
tution of Maine or the United States Constitution and
the statement has been recorded by any means approved
by the court, and is made in the presence of a judge
or justice.

Sec. 2. 17 MRSA §2921, sub-§1, as enacted by PL
1977, c. 628, §1, is repealed.

Sec. 3. 17 MRSA §2922, sub-§1, ¶¶A and B, as en-
acted by PL 1977, c. 628, §1, are amended to read:

A. Knowing or intending that the conduct will be
photographed ~~for commercial use~~, he intentionally
or knowingly employs, solicits, entices, per-
suades, uses or compels another person, not his

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1 spouse, who is in fact a minor, to engage in
2 sexually explicit conduct; or

3 B. Being a parent, legal guardian or other per-
4 son having care or custody of another person, who
5 is in fact a minor, he knowingly or intentionally
6 permits that minor to engage in sexually explicit
7 conduct, knowing or intending that the conduct
8 will be photographed ~~for commercial use~~.

9 Sec. 4. 17-A MRSA §207, sub-§2, as enacted by PL
10 1975, c. 499, §1, is amended to read:

11 2. Assault is a Class D crime, except in in-
12 stances of bodily injury to another who has not at-
13 tained his 6th birthday, provided that the actor has
14 attained his 18th birthday, in which case, it is a
15 Class C crime.

16 Sec. 5. 17-A MRSA §251, sub-§1, ¶C, as amended
17 by PL 1975, c. 740, §44, is repealed and the follow-
18 ing enacted in its place:

19 C. "Sexual act" means:

20 (1) Any act between 2 persons involving di-
21 rect physical contact between the genitals
22 of one and the mouth or anus of the other,
23 or direct physical contact between the
24 genitals of one and the genitals of the oth-
25 er;

26 (2) Any act between a person and an animal
27 being used by another person which act in-
28 volves direct physical contact between the
29 genitals of one and the mouth or anus of the
30 other, or direct physical contact between
31 the genitals of one and the genitals of the
32 other; or

33 (3) Any act involving direct physical con-
34 tact between the genitals or anus of one and

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1 an instrument or device manipulated by an
2 other person when that act is done for the
3 purpose of arousing or gratifying sexual de-
4 sire or for the purpose of causing bodily
5 injury or offensive physical contact.

6 A sexual act may be proved without allegation or
7 proof of penetration.

8 Sec. 6. 17-A MRSA §251, sub-§1, ¶D, as enacted
9 by PL 1975, c. 499, §1, is amended to read:

10 D. "Sexual contact" means any touching of the
11 genitals or anus, directly or through clothing,
12 other than as would constitute a sexual act, for
13 the purpose of arousing or gratifying sexual de-
14 sire or for the purpose of causing bodily injury
15 or offensive physical contact.

16 Sec. 7. 17-A MRSA §253, sub-§2, as amended by PL
17 1983, c. 326, §§1 to 3, is further amended to read:

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

20 A. He has substantially impaired the other
21 person's power to appraise or control his sex
22 acts by administering or employing drugs, intoxi-
23 cants, or other similar means; ~~or~~

24 B. He compels or induces the other to engage in
25 such sexual intercourse or sexual act by any
26 threat; ~~or~~

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

32 D. The other person is unconscious or otherwise
33 physically incapable of resisting and has not

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1 consented to such sexual intercourse or sexual
2 act;

3 E. The other person, not his spouse, is in official
4 custody as a probationer or a parolee, or is
5 detained in a hospital, prison or other institution,
6 and the actor has supervisory or disciplinary
7 authority over such other person; ~~or~~

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

16 G. The other person, not his spouse, has not at-
17 tained his 18th birthday and is a resident in or
18 attending a private or public nursery school,
19 children's home, day-care facility, residential
20 child-care facility, drug treatment center, camp
21 or similar school, facility or institution regu-
22 larly providing care or services for children,
23 and the actor is a teacher, employee or other
24 person having instructional, supervisory or dis-
25 ciplinary authority over that other person.

26 Sec. 8. 17-A MRSA §253, sub-§5, as amended by PL
27 1983, c. 326, §4, is further amended to read:

28 5. Violation of subsection 2, paragraph A, C or
29 E is a Class B crime. Violation of subsection 2,
30 paragraph B, D ~~or~~, F or G is a Class C crime.

31 Sec. 9. 17-A MRSA §254, sub-§1, as amended by PL
32 1975, c. 740, §50, is repealed and the following en-
33 acted in its place:

34 1. A person is guilty of sexual abuse of a minor
35 if:

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1 A. Having attained his 19th birthday he engages
2 in sexual intercourse or a sexual act with another
3 person, not his spouse, who has attained his
4 14th birthday but has not attained his 16th
5 birthday, provided that the actor is at least 5
6 years older than the other person; or

7 B. He engages in sexual intercourse or a sexual
8 act with another person who has not attained his
9 18th birthday and the actor is a parent, steppar-
10 ent, foster parent, guardian or other similar
11 person responsible for the long-term general care
12 and welfare of that other person.

13 Sec. 10. 17-A MRSA §254, sub-§2, as enacted by
14 PL 1975, c. 499, §1, is amended to read:

15 2. It is a defense to a prosecution under ~~this~~
16 ~~section~~ subsection 1, paragraph A, that the actor
17 reasonably believed the other person to have attained
18 his 16th birthday.

19 Sec. 11. 19 MRSA §764, sub-§1, as amended by PL
20 1983, c. 583, §26, is further amended to read:

21 1. Filing. Any adult who has been abused by a
22 family or household member may seek relief by filing
23 a sworn petition in an appropriate court alleging
24 that abuse.

25 When any minor child in the care or custody of a fam-
26 ily or household member has been abused by a family
27 or household member, a person responsible for the
28 child as defined in Title 22, section 4002, subsec-
29 tion 9, or a representative of the Department of Hu-
30 man Services may seek relief by filing a petition al-
31 leging that abuse.

32 Sec. 12. 19 MRSA §765, sub-§2, as amended by PL
33 1983, c. 583, §26, is further amended to read:

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1 2. Temporary orders. The court may enter any
2 temporary orders authorized under subsection 4 as it
3 deems necessary to protect the plaintiff or minor
4 child from abuse, on good cause shown in an ex parte
5 proceeding. Immediate and present danger of physical
6 abuse to the plaintiff or minor child shall consti-
7 tute good cause. Any order shall remain in effect
8 pending a hearing pursuant to subsection 1.

9 Sec. 13. 19 MRSA §765, sub-§3, ¶A, as amended by
10 PL 1983, c. 583, §26, is further amended to read:

11 A. When the courthouse is closed and no other
12 provision can be made for the shelter of an
13 abused family or household member or minor child,
14 a complaint may be filed before any District
15 Court Judge or Superior Court Justice. Upon a
16 showing of good cause, as defined in subsection
17 2, the court may enter any temporary orders
18 ~~authorized~~ authorized under subsection 4 as it
19 deems necessary to protect the plaintiff or minor
20 child from abuse.

21 Sec. 14. 19 MRSA §766, sub-§2, as amended by PL
22 1983, c. 583, §26, is further amended to read:

23 2. Duration. Any protective order or approved
24 consent agreement shall be for a fixed period not to
25 exceed one year. At the expiration of that time, the
26 court may extend an order, upon motion of the plain-
27 tiff, for such additional time as it deems necessary
28 to protect the plaintiff or minor child from abuse.
29 Upon motion by either party, for sufficient cause,
30 the court may modify the order or agreement from time
31 to time as circumstances require.

32 Sec. 15. 19 MRSA §766-A, as amended by PL 1983,
33 c. 583, §26, is further amended to read:

34 §766-A. Confidentiality of plaintiff's address

35 To protect the plaintiff or minor child, the

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1 court may order the omission or deletion of his ad-
2 dress from any papers available to the public.

3 Sec. 16. 22 MRSA §4002, sub-§6-A is enacted to
4 read:

5 6-A. Licensed mental health professional. "Li-
6 censed mental health professional" means a psychia-
7 trist, licensed psychologist, licensed clinical so-
8 cial worker or certified social worker.

9 Sec. 17. 22 MRSA §4007, sub-§1, as enacted by PL
10 1979, c. 733, §18, is amended to read:

11 1. Procedures. All child protection proceedings
12 shall be conducted according to the rules of civil
13 procedure and the rules of evidence, except as pro-
14 vided otherwise in this chapter. ~~At the request of a~~
15 ~~party, all~~ All the proceedings shall be recorded. All
16 proceedings and records shall be closed to the pub-
17 lic, unless the court orders otherwise.

18 Sec. 18. 22 MRSA §4008, sub-§3, ¶B, as enacted
19 by PL 1979, c. 733, §18, is amended to read:

20 B. A court on its finding that access to those
21 records may be necessary for the determination of
22 any issue before the court or a court requesting
23 a report from the department pursuant to Title
24 19, section 533 or 751. Access to such a report
25 shall be limited to counsel of record unless oth-
26 erwise ordered by the court. Access to actual
27 records shall be limited to in camera inspection,
28 unless the court determines that public disclo-
29 sure of the information is necessary for the res-
30 olution of an issue pending before it;

31 Sec. 19. 22 MRSA §4011, sub-§1, as amended by PL
32 1983, c. 354, §3, is further amended to read:

33 1. Reasonable cause to suspect. When, while act-
34 ing in his professional capacity, a medical or

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1 osteopathic physician, resident, intern, emergency
2 medical technician, medical examiner, physician's as-
3 sistant, dentist, dental hygienist, dental assistant,
4 chiropractor, podiatrist, registered or licensed
5 practical nurse, Christian Science practitioner,
6 teacher, guidance counselor, school official, social
7 worker, homemaker, home health aide, medical or so-
8 cial service worker, psychologist, child care person-
9 nel, mental health professional or law enforcement
10 official knows or has reasonable cause to suspect
11 that a child has been or is likely to be abused or
12 neglected, he shall immediately report or cause a re-
13 port to be made to the department.

14 A. Whenever a person is required to report in
15 his capacity as a member of the staff of a medi-
16 cal or public or private institution, agency or
17 facility, he shall immediately notify the person
18 in charge of the institution, agency or facility,
19 or his designated agent, who shall then cause a
20 report to be made. The staff may also make a re-
21 port directly to the department.

22 B. Any person may make a report if that person
23 knows or has reasonable cause to suspect that a
24 child has been or is likely to be abused or ne-
25 glected.

26 ~~E- A person shall not be required to report when~~
27 ~~the factual basis for knowing or suspecting abuse~~
28 ~~or neglect comes from treatment of a person re-~~
29 ~~sponsible for the child, the treatment was sought~~
30 ~~by that person for a problem of abuse or neglect~~
31 ~~and there is little threat of serious harm to the~~
32 ~~child.~~

33 D. When, while acting in his professional capac-
34 ity, any person required to report under this
35 section knows or has reasonable cause to suspect
36 that a child has been abused or neglected by a
37 person not responsible for the child, he shall
38 immediately report or cause a report to be made

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1 to the appropriate district attorney's office,
2 except as provided in subsection 1-A.

3 Sec. 20. 22 MRSA §4011, sub-§1-A is enacted to
4 read:

5 1-A. Mental health treatment. When a licensed
6 mental health professional is required to report un-
7 der subsection 1, and his knowledge or reasonable
8 cause to suspect that a child has been or is likely
9 to be abused or neglected comes from treatment of a
10 person responsible for the abuse or neglect, the li-
11 censed mental health professional shall report to the
12 department in accordance with subsection 1 and under
13 the following conditions.

14 A. The department shall consult with the li-
15 censed mental health professional who has made
16 the report and shall attempt to reach agreement
17 with the professional as to how the report is to
18 be pursued. If agreement is not reached, the li-
19 censed mental health professional may request a
20 meeting under paragraph B.

21 B. Upon the request of the licensed mental
22 health professional who has made the report, af-
23 ter the department has completed its investiga-
24 tion of the report under section 4021 or has re-
25 ceived a preliminary protection order under sec-
26 tion 4034 and where the department plans to ini-
27 tiate or has initiated a final protection action
28 under section 4035 or plans to refer or has re-
29 ferred the report to law enforcement officials,
30 the department shall convene at least one meeting
31 of the licensed mental health professional who
32 made the report, at least one representative from
33 the department, a licensed mental health profes-
34 sional with expertise in child abuse or neglect
35 and a representative of the district attorney's
36 office having jurisdiction over the report, un-
37 less that office indicates that prosecution is
38 unlikely.

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1 C. The persons meeting under paragraph B shall
2 make recommendations regarding treatment and
3 prosecution of the person responsible for the
4 abuse or neglect. The persons making the recom-
5 mendations shall take into account the nature,
6 extent and severity of abuse or neglect, the
7 safety of the child and the community and needs
8 of the child and other family members for treat-
9 ment of the effects of the abuse or neglect and
10 the willingness of the person responsible for the
11 abuse or neglect to engage in treatment. The
12 persons making the recommendations may review or
13 revise these recommendations at their discretion.

14 The department shall, after consultation with the
15 Maine Prosecutors Association, the Maine Psychologi-
16 cal Association and other affected groups, report on
17 the effects of this subsection to the joint standing
18 committee of the Legislature having jurisdiction over
19 the judiciary by February 15, 1987.

20 The intent of this subsection is to encourage offend-
21 ers to seek and effectively utilize treatment, at the
22 same time providing any necessary protection and
23 treatment for the child and other family members.

24 Sec. 21. 22 MRSA §4015, as amended by PL 1983,
25 c. 781, §2, is further amended to read:

26 §4015. Privileged or confidential communications

27 The husband-wife and physician and
28 psychotherapist-patient privileges under the Maine
29 Rules of Evidence and the confidential quality of
30 communication under Title 20-A, sections 4008 and
31 6001, to the extent allowed by applicable federal
32 law; Title 24-A, section 4224; and Title 32, sections
33 1092-A and 7005; and Title 34-B, section 1207, are
34 abrogated in relation to required reporting, cooper-
35 ating with the department or a guardian ad litem in
36 an investigation or other child protective activity

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1 or giving evidence in a child protection proceeding.
2 Information released to the department pursuant to
3 this section shall be kept confidential and may not
4 be disclosed by the department except as provided in
5 section 4008.

6 Statements made to a licensed mental health pro-
7 fessional in the course of counseling, therapy or
8 evaluation where the privilege is abrogated under
9 this section may not be used against the client in a
10 criminal proceeding except to rebut the client's tes-
11 timony contradicting those statements. Nothing in
12 this section may limit any responsibilities of the
13 professional pursuant to this Act.

14 Sec. 22. 30 MRSA §509 is enacted to read:

15 §509. Investigation of child abuse cases

16 Unless a written agreement exists between a law
17 enforcement agency and a district attorney concerning
18 primary responsibility for investigating any of the
19 following offenses, the district attorneys may direct
20 the investigation of any offense under Title 17,
21 chapter 93-B, and Title 17-A, chapter 11, or Title
22 17-A, sections 207, 208 and 556, wherein a victim may
23 not have attained his 18th birthday, and may desig-
24 nate, by geographical boundaries or otherwise, a par-
25 ticular law enforcement agency to have primary re-
26 sponsibility for that investigation.

27 Any case involving the sexual or physical abuse
28 of children which is discovered by or reported to any
29 law enforcement department or officer shall be imme-
30 diately reported by that department or officer to the
31 appropriate district attorney or assistant district
32 attorney or, in their absence, to the Attorney Gener-
33 al or one of his assistants.

34 Sec. 23. 34-B MRSA §1207, sub-§1, ¶B-1 is en-
35 acted to read:

1 B-1. Information shall be disclosed to the De-
2 partment of Human Services for the purpose of co-
3 operating in an investigation or any other activ-
4 ity pursuant to Title 15, chapter 507, or Title
5 22, chapter 1071, pursuant to an agreement be-
6 tween the department and the Department of Human
7 Services. The agreement, specifying the circum-
8 stances and conditions by which disclosure shall
9 be made, shall be promulgated as rules by the de-
10 partment in accordance with the Maine Administra-
11 tive Procedure Act, Title 5, chapter 375;'

12

STATEMENT OF FACT

13 This amendment deletes section 1 of the original
14 bill which would have permitted the use of
15 out-of-court statements by child or adult residents
16 of facilities involved in the licensing proceedings
17 covered by section 1. Without this change in the
18 law, court proceedings concerning residential facili-
19 ties licensed by the Department of Human Services
20 will continue to be governed by the traditional rules
21 of evidence which generally forbid the use of state-
22 ments made out of court as evidence.

23 Section 1 of the amendment (section 2 in the
24 bill) concerns the ability of child victims of sexual
25 abuse to testify outside of a public courtroom in a
26 criminal trial concerning that abuse. The amendment
27 makes a technical correction, but does not change the
28 substance of the proposal in the bill.

29 Sections 2 and 3 of the amendment were added to
30 the bill to delete from the crime of sexual exploita-
31 tion the requirement that photographing of sexually
32 explicit conduct by minors be done for commercial
33 purposes in order for it to be criminal. Removal of
34 the "for commercial purposes" requirement keeps Maine
35 eligible for federal child abuse and neglect grants.

36 Section 4 of the amendment (section 3 in the

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1 bill) increases the penalty for the crime of assault
2 when the actor is an adult and the victim is under
3 the age of 6 years. The bill proposed to increase
4 this penalty for victims under 10 years old.

5 Sections 5 and 6 of the amendment (sections 4 and
6 5 in the bill) make technical corrections to the
7 criminal code definitions of "sexual act" and "sexual
8 contact" proposed in the bill.

9 Section 6 of the bill is deleted by the amendment
10 due to the technical changes made in the preceding
11 definitions.

12 Sections 7 and 8 of the amendment (sections 7 and
13 8 in the bill) are amended by deleting a provision
14 that would have made consensual sexual intercourse or
15 a consensual sexual act between a minor 14 years of
16 age or older and an adult parent, stepparent, foster
17 parent or similar guardian a Class C crime. The
18 amendment transfers this provision to sections 9 and
19 10 of the amendment, making this conduct a Class D
20 crime.

21 The amendment deletes section 9 of the bill,
22 which concerned increasing the penalty for sexual
23 contact that is not through clothing, and section 10
24 of the bill, which concerned long-term probation for
25 sex offenders.

26 Sections 11 to 15 of the amendment (sections 11
27 to 15 in the bill) remain essentially the same in the
28 amendment, with the addition of a clarifying defini-
29 tion concerning who may bring a protection from abuse
30 action to protect a child.

31 Section 16 of the amendment is added. It adds a
32 definition of "licensed mental health professional"
33 that applies in section 20 of the amendment.

34 Section 17 of the amendment (section 16 in the
35 bill) makes it clear that all child protective pro-

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1 ceedings are to be recorded.

2 Section 18 of the amendment (section 17 in the
3 bill) is unchanged.

4 Section 19 of the amendment (section 18 in the
5 bill) maintains the requirement in the bill for pro-
6 fessionals mandated to report suspected child abuse
7 to report their suspicions concerning a person not
8 responsible for a child (i.e. generally a
9 nonhousehold member) to the district attorney. It
10 also deletes the "treatment loophole."

11 Section 20 of the amendment, which is added to
12 the bill, addresses the mechanics of reporting sus-
13 pected abuse or neglect with the deletion of the
14 "treatment loophole." A mental health professional
15 who suspects that a person he is treating is or has
16 been abusing a child must now, with the deletion of
17 the "treatment loophole" report his suspicions to the
18 Department of Human Services. Under section 20, the
19 mental health professional may require the department
20 to consult with him and others in determining how to
21 proceed in handling the reported abuse.

22 Section 21 of the amendment (section 19 in the
23 bill) remains essentially the same as in the bill,
24 with only a technical clarifying change concerning
25 the abrogation in child abuse cases of the
26 psychotherapist-patient privilege concerning confi-
27 dential communications.

28 Section 22 of the amendment (section 20 in the
29 bill) continues to permit district attorneys to di-
30 rect which law enforcement agency is to conduct a
31 criminal child abuse investigation. The amendment
32 adds that district attorneys and law enforcement
33 agencies may enter into written agreements to pre-
34 clude the need for the district attorney to direct an
35 investigation.

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1 Section 23 of the amendment (section 21 in the
2 bill) remains the same as in the bill.

3

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Reported by the Committee on Judiciary
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