

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
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3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1408

6  
7 S.P. 525

In Senate, April 25, 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 Chalmers of Knox.

Cosponsored by Senator Gill of Cumberland.

11  
12 STATE OF MAINE  
13

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

17 AN ACT to Amend Certain Sex Crimes Under the  
18 Maine Criminal Code.  
19

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

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23 by PL 1975, c. 740, §44, is repealed and the follow-  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

25 C. "Sexual act" means:

26 (1) Any act between 2 persons involving di-  
27 rect physical contact between the sex organs  
28 of one and the mouth or anus of the other or  
29 direct physical contact between the sex or-  
30 gans of one and the sex organs of the other;

31 (2) Any act between a person and an animal  
32 being used by another person which act in-  
33 volves direct physical contact between the  
34 sex organs of one and the mouth or anus of

1           the other or direct physical contact between  
2           the sex organs of one and the sex organs of  
3           the other;

4           (3) Any act involving direct physical con-  
5           tact between the sex organs or anus of one  
6           and an instrument or device manipulated by  
7           another person when such act is done for the  
8           purpose of arousing or gratifying sexual de-  
9           sire, or for the purpose of causing bodily  
10           injury or offensive physical contact; or

11           (4) A sexual act may be proved without al-  
12           legation or proof of penetration.

13           Sec. 2. 17-A MRSA §251, sub-§1, ¶D, as enacted  
14 by PL 1975, c. 499, §1, is amended to read:

15           D. "Sexual contact" means any touching of the  
16           genitals, sex organs or anus, directly or through  
17           clothing, other than as would constitute a sexual  
18           act, for the purpose of arousing or gratifying  
19           sexual desire or for the purpose of causing bodily  
20           injury or offensive physical contact.

21           Sec. 3. 17-A MRSA §252, sub-§3, as amended by PL  
22 1975, c. 740, §47, is further amended to read:

23           3. Rape is a Class A crime. It is a defense to a  
24           prosecution under subsection 1, paragraph B, which  
25           reduces the crime to a Class B crime that the victim  
26           was a voluntary social companion of the defendant at  
27           the time of the crime and had, on that occasion, per-  
28           mitted the defendant sexual contact or voluntarily  
29           engaged in sexual contact with the defendant.

30           Sec. 4. 17-A MRSA §253, sub-§3, as enacted by PL  
31 1975, c. 499, §1, is amended to read:

32           3. It is a defense to a prosecution under sub-  
33           section 2, paragraph A, that the other person volun-  
34           tarily consumed or allowed administration of the sub-  
35           stance with knowledge of its nature, except that it  
36           is no defense where the other person is a patient of  
37           the actor and has a reasonable belief that the actor  
38           is administering the substance for medical or dental  
39           examination or treatment.

Sec. 5. 17-A MRSA §253, sub-§4, as enacted by PL 1975, c. 499, §1, is amended to read:

4. Violation of subsection 1 is a Class A crime. It is, however, a defense to prosecution under subsection 1, paragraph A, which reduces the crime to a Class B crime that the other person was a voluntary social companion of the defendant at the time of the offense and had, on that occasion, permitted him the defendant sexual contact or voluntarily engaged in sexual contact with the defendant. It is an affirmative defense to a prosecution under subsection 1, paragraph A, that the defendant and the victim were living together as man and wife at the time of the crime.

## STATEMENT OF FACT

Section 1 amends the definition of a "sexual act" in a number of respects. First, it identifies 3 alternative forms of "sexual act." The first form mirrors the present definition except that the phrase "act of sexual gratification" is removed on the ground that, given the physical contacts described, no concern exists for excluding "innocent" contacts. The 2nd form ensures that direct physical contacts between the victim's sex organs or anus and the mouth, anus or sex organs of a nonhuman, that is, an animal, made use of by a 2nd person are included within the definition of a "sexual act." The 2nd form addresses the same act specified in the first form, except that the acts are between one person and an animal being used by another person. In this form the animal is, in fact, an animate device or instrument utilized by another human being. Of course, the animal utilized may, but need not be under the actual control and direction of the 2nd person. As with the first form, given the physical contacts described, no concern exists for excluding "innocent" contacts. The 3rd and final form mirrors the present definition except for one in particular. For this alternative, given the physical contacts described, a legitimate concern exists for excluding "innocent" contacts such as for proper medical purposes or other valid rea-

1 sons. See State v. Keaten, 390 A.2d 1043, 1045 (Me.  
2 1978), State v. Lyons, 466 A.2d 868 (Me. 1983).  
3 Hence, the contacts described are limited to those  
4 done "for the purpose of arousing or gratifying sexual  
5 desire," or "for the purpose of causing bodily injury  
6 or offensive physical contact." The latter purpose  
7 is not included in present law. It has been  
8 added to confront the growing evidence that actors do  
9 not necessarily perform these insults for the purpose  
10 of giving or deriving sexual pleasure or satisfaction;  
11 instead, the physical contacts may well be performed  
12 for the purpose of causing physical harm to or  
13 to degrade the victim. Of course, as with sexual  
14 gratification, where it is immaterial as to whether  
15 the participants subjectively derived pleasure or  
16 satisfaction from the act, it is equally immaterial  
17 whether the victim was actually injured or  
18 subjectively found the contact to be degrading. The  
19 focus is instead on whether these acts were performed  
20 by the actor for these purposes. See State v. Alley,  
21 385 A.2d 1175, 1178 (Me. 1978). Although under the  
22 latter circumstances the conduct would undoubtedly  
23 constitute an assault or aggravated assault against  
24 the victim, because the physical contacts involve the  
25 sex organs or anus, it is deemed appropriate to additionally  
26 include it here.

27 Section 2 amends the definition of "sexual contact"  
28 so that it will include digital manipulation or  
29 invasion of the anus. This conduct is not uncommon  
30 where the victim is a child. It further replaces the  
31 word "genitals" with the phrase "sex organs" to conform  
32 the terminology used to describe both "sexual act"  
33 and "sexual contact." Lastly, the purpose of  
34 "causing bodily injury or offensive physical contact"  
35 has been added for the reason given for its inclusion  
36 relative to "sexual act" described in section 1.

37 Sections 3 and 5 clarify the meaning of the so-called  
38 "voluntary social companion" defense. Specifically,  
39 they make clear, consistent with the Law Court's  
40 opinion in State v. Reed, 459 A.2d 178, 180 n.1  
41 (Me. 1983), that the defense is available both  
42 when the victim voluntarily allows the defendant sexual  
43 contact, the defendant thus being the actor, and  
44 when the victim voluntarily performs a sexual contact  
45 upon the defendant, the victim thus being the actor.

1           Section 4 amends the defense to a prosecution un-  
2   der the Maine Revised Statutes, Title 17-A, section  
3   253, subsection 2, paragraph A, to make the same un-  
4   available in the instance where the actor, for exam-  
5   ple, a doctor or dentist, administers or employs the  
6   substance under circumstances where the person who  
7   voluntarily acquiesces possesses a reasonable belief  
8   that this is for the purpose of medical or dental ex-  
9   amination or treatment.

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