

MAINE STATE LEGISLATURE

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L.D. 1067

(Filing No. H-503)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 763, L.D. 1067, Bill, "An Act to Amend the Laws Relating to Sex Offenses"

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

PART A

Sec. 1. 17-A MRSA c. 11, first 2 lines, as amended, are repealed and the following enacted in their place:

CHAPTER 11

SEXUAL ASSAULTS

Sec. 2. 17-A MRSA §251, sub-§1, ¶B, as enacted by PL 1975, c. 499, §1, is repealed.

Sec. 3. 17-A MRSA §252, as amended by PL 1987, c. 255, §1, is repealed.

Sec. 4. 17-A MRSA §253, as amended by PL 1987, c. 255, §2, is repealed and the following enacted in its place:

§253. Gross sexual assault

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E; or

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years.

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

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A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by administering or employing drugs, intoxicants or other similar means;

B. The actor compels or induces the other person to engage in the sexual act by any threat;

C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent;

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act;

E. The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person;

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student;

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person;

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person; or

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means

1 psychotherapy or other treatment modalities intended to
3 change behavior, emotions or attitudes, which therapy is
 based upon an intimate relationship involving trust and
5 dependency with a substantial potential for vulnerability
 and abuse.

7 3. It is a defense to a prosecution under subsection 2,
 paragraph A, that the other person voluntarily consumed or
9 allowed administration of the substance with knowledge of its
 nature, except that it is no defense when the other person is a
11 patient of the actor and has a reasonable belief that the actor
 is administering the substance for medical or dental examination
13 or treatment.

15 4. Violation of subsection 1 is a Class A crime.

17 5. Violation of subsection 2, paragraph A, B, C, E or H is
 a Class B crime. Violation of subsection 2, paragraph D, F, G or
19 I is a Class C crime.

21 Sec. 5. 17-A MRSA §254, sub-§1, as repealed and replaced by PL
23 1985, c. 495, §9, is amended to read:

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

27 A. ~~Having attained his-19th-birthday-he~~ the age of 19 years,
 ~~the person~~ engages in ~~sexual-intercourse-or~~ a sexual act
29 with another person, not ~~his~~ the actor's spouse, who has
 ~~attained his-14th-birthday~~ the age of 14 years but has not
31 ~~attained his-16th-birthday~~ the age of 16 years, provided
 that the actor is at least 5 years older than the other
 ~~person,-or.~~

33 B. ~~He engages in sexual-intercourse-or-a-sexual-act-with~~
 ~~another-person-who-has-not-attained-his-18th-birthday-and~~
35 ~~the-actor-is-a-parent,-stepparent,-foster-parent,-guardian~~
 ~~or-other-similar-person-responsible-for-the-long-term~~
37 ~~general-care-and-welfare-of-that-other-person.~~

39 Sec. 6. 17-A MRSA §255, sub-§1, as amended by PL 1985, c. 247,
41 §3, is further amended to read:

43 1. A person is guilty of unlawful sexual contact if he the
 person intentionally subjects another person to any sexual
45 contact, and:

47 A. The other person has not expressly or impliedly
 acquiesced in such the sexual contact;

49 B. The other person is unconscious or otherwise physically
51 incapable of resisting, and has not consented to the sexual
 contact;

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3 C. The other person, not his the actor's spouse, has not in
fact attained ~~his-14th-birthday~~ the age of 14 years and the
actor is at least 3 years older;

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7 D. The other person suffers from a mental disability that
is reasonably apparent or known to the actor which in fact
renders the other person substantially incapable of
9 appraising the nature of the contact involved or of
understanding that the person has the right to deny or
11 withdraw consent;

13 E. The other person, not his the actor's spouse, is in
official custody as a probationer or parolee or is detained
15 in a hospital, prison or other institution and the actor has
supervisory or disciplinary authority over such the other
17 person; ~~or~~

19 F. The other person, not his the actor's spouse, has not in
fact attained ~~his-18th-birthday~~ the age of 18 years and is a
21 student enrolled in a private or public elementary,
secondary or special education school, facility or
23 institution and the actor is a teacher, employee or other
official having instructional, supervisory or disciplinary
25 authority over the student; or

27 G. The other person has not in fact attained the age of 18
years and the actor is a parent, stepparent, foster parent,
29 guardian or other similar person responsible for the
long-term general care and welfare of that other person.

31 Sec. 7. 17-A MRSa §556, as amended by PL 1977, c. 510, §57,
33 is further amended to read:

35 §556. Incest

37 1. A person is guilty of incest if, being at least 18 years
of age, ~~he has that person engages in~~ sexual intercourse with
39 another person ~~as-to-whom-he~~ who the actor knows he is related to
the actor within the 2nd degree of consanguinity.

41
43 1-A. It is a defense to a prosecution under this section
that, at the time he the actor engaged in sexual intercourse with
45 the other person, the actor was legally married to the other
person.

47 1-B. As used in this section "sexual intercourse" means any
penetration of the female sex organ by the male sex organ.
49 Emission is not required.

51 2. Incest is a Class D crime.

PART B

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3 **Sec. 1. 15 MRSA §1205, first ¶**, as amended by PL 1987, c. 564,
is further amended to read:

5 A hearsay statement made by a person under the age of 16
7 years, describing any incident involving ~~sexual-intercourse~~, a
sexual act or sexual contact performed with or on the minor by
9 another, shall not be excluded as evidence in criminal
proceedings in courts of this State if:

11 **Sec. 2. 17 MRSA §2921, sub-§5, ¶A**, as enacted by PL 1977, c.
13 628, §1, is amended to read:

15 A. ~~Sexual intercourse-or-sexual act~~, as defined in Title
17 17-A, section 251, subsection 1, ~~paragraphs-B-and paragraph~~
C;

19 **Sec. 3. 17-A MRSA §851, sub-§1**, as enacted by PL 1975, c. 499,
21 §1, is amended to read:

23 1. "Prostitution" means engaging in, or agreeing to engage
in, or offering to engage in ~~sexual-intercourse-or~~ a sexual act,
25 as defined in ~~chapter-11~~, section 251, in return for a pecuniary
benefit to be received by the person engaging in prostitution or
a 3rd person;

27 **Sec. 4. 17-A MRSA §851, sub-§1-A**, as enacted by PL 1981, c.
29 611, §1, is amended to read:

31 1-A. "Engages a prostitute" means providing or agreeing to
provide, either to the person whose prostitution is sought or to
33 a 3rd person, pecuniary benefit in return for ~~sexual-intercourse~~
or a sexual act as defined in section 251;

35 **Sec. 5. 17-A MRSA §851, sub-§2, ¶B**, as repealed and replaced by
37 PL 1977, c. 671, §25-A, is amended to read:

39 B. Publicly soliciting patrons for prostitution. Publicly
soliciting patrons for prostitution shall include, but not
41 be limited to, an offer, made in a public place, to engage
in ~~sexual-intercourse-or~~ a sexual act, as defined in ~~chapter~~
43 ~~11~~, section 251, in return for a pecuniary benefit to be
received by the person making the offer or a 3rd person; or

45 **Sec. 6. 17-A MRSA §854, sub-§1, ¶A**, as amended by PL 1975, c.
47 740, §90, is further amended to read:

49 A. In a public place:

51 (1) ~~he~~ The actor engages in ~~sexual-intercourse-or~~ a
sexual act, as defined in ~~chapter-11~~, section 251; or

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(2) he The actor knowingly exposes his the actor's genitals under circumstances which, in fact, are likely to cause affront or alarm; or

Sec. 6. 17-A MRSA §854, sub-§1, ¶B, as amended by PL 1975, c. 499, §1, is further amended to read:

B. In a private place, he the actor exposes his the actor's genitals with the intention that he the actor be seen from a public place or from another private place.'

STATEMENT OF FACT

This amendment replaces the bill, but retains the purpose of strengthening the sexual assault laws. It is divided into 2 parts. Part A consists of amendments to the sexual assaults chapter; Part B deletes references to "sexual intercourse" because the definition of "sexual act" encompasses sexual intercourse.

Part A

Section 1 renames the Maine Revised Statutes, Title 17-A, chapter 11 to more accurately characterize the criminal behavior addressed in the chapter.

Section 2 repeals the definition of "sexual intercourse." This definition presently exists independently of "sexual act" so as to allow for the common-law crime of rape, altered only to the extent that it is now gender neutral. See, State v. Stevens, 510 A.2d 1070 (Me. 1986). The present dichotomy between rape and the Class A crime of gross sexual misconduct is no longer desirable.

Section 3 repeals the crime of rape in favor of a single Class A crime of gross sexual assault, formerly Class A gross sexual misconduct.

The crime of rape presently is limited solely to penetrations of the female sex organ by the male sex organ. Rape does not encompass penetrations of the other body orifices of a female victim by a male sex organ, penetrations of the body orifices of a male victim by a male sex organ or penetrations of a body orifice of a male or female victim by an instrument, device or animal. The omissions of these other penetrations from the crime of rape are subject to criticism on the grounds of fairness given present-day notions of sexual assault. For example, today a male victim of sodomy considers himself every bit as much a "rape" victim as does a male or female who is a "rape" victim due to sexual intercourse. As a consequence, if

1 rape were to remain as part of chapter 11 of the Maine Criminal
2 Code, expansion of its focus would appear to be necessary.
3 However, for the reasons set out in this statement of fact both
4 society and the victim are better served by the repeal of the
5 crime of rape rather than attempting to expand its present
6 application.

7
8 Under current law actual penetration of a body orifice is
9 not definitionally required for a "sexual act" nor is penetration
10 of a body orifice by a human hand required definitionally for
11 "sexual contact." Only in the single instance of "sexual
12 intercourse" is penetration presently definitionally required in
13 chapter 11. In-court experience has shown that victims of sexual
14 assaults often are reluctant or unable to discuss the penetration
15 aspect of the assault at trial. Prosecuting attorneys, aware of
16 both the potential problem of proof and victim-hardship, commonly
17 choose either to forego charging rape entirely, indicting instead
18 for Class A gross sexual misconduct alone, or indicting
19 simultaneously for rape and for Class A gross sexual misconduct.
20 For example, see State v. Walsh, No. 5067, (Me. May 4, 1989);
21 and State v. Pinkham, No. 5041, (Me. April 7, 1989). Under these
22 circumstances it makes little sense for the Maine Criminal Code
23 to continue to provide for the separate crime of rape,
24 necessitating proof of penetration, when the similar Class A
25 crime of gross sexual assault, necessitates proof of direct
26 physical contact only. This is particularly true because if the
27 evidence produced at trial in fact supports penetration, a court
28 is free to use that fact as an "aggravating circumstance" at the
29 time of sentencing for the Class A gross sexual assault since
30 penetration heightens the gravity of the offense.

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32 Section 4 makes 8 modifications to the present crime of
33 gross sexual misconduct. First, the name of the crime is changed
34 from "gross sexual misconduct" to "gross sexual assault" in an
35 effort to more properly characterize the criminal behavior
36 described therein. Second, the language of the crime is made
37 gender neutral. Third, consistent with the repeal of the crime
38 of rape, all references to "sexual intercourse" have been
39 deleted. Fourth, in the Maine Revised Statutes, Title 17-A,
40 section 253, subsection 2, paragraph C, the present criterion
41 used to measure the degree of overt mental disability precluding
42 an actor from engaging in a sexual act, namely, that the victim
43 is substantially incapable "of appraising the nature of the
44 conduct involved," has been broadened to include a 2nd standard,
45 namely, that the victim is substantially incapable "of
46 understanding that the person has the right to deny or withdraw
47 consent." This 2nd standard may have the effect of broadening
48 slightly the category of those so profoundly disabled as to
49 preclude another from engaging in a sexual act with them. Fifth,
50 in Title 17-A, section 253, subsection 2, paragraph G the phrase
51 "a private or public nursery school" has been eliminated in view
of the fact that preschool children come within section 253,

1 subsection 1, paragraph B of this amendment. Sixth, in section
253, subsection 2, paragraph I of this amendment a new category
3 of gross sexual assault has been added precluding psychiatrists,
psychologists, social workers licensed under Title 32, chapter 83
5 or someone masquerading as such, from engaging in a sexual act
with a person, other than a spouse, who is currently a patient or
7 client "for mental health therapy." "Mental health therapy" is
defined. It is not intended that Title 17-A, section 253,
9 subsection 2, paragraph I will criminalize sexual interaction if
the ongoing professional relationship is for purposes other than
11 mental health therapy, for example, therapy by a psychiatrist to
a patient who wishes to control smoking; nor is it intended to
13 criminalize sexual interaction once the professional mental
health therapy relationship is at an end. Seventh, a new
15 category of gross sexual assault has been added precluding
parents or surrogate parents from engaging in a sexual act with
17 their children. Eighth, and finally, gross sexual assaults
described in Title 17-A, section 253, subsection 2, paragraphs B
19 and H have been made Class B crimes, while gross sexual assault
described in Title 17-A, section 253, subsection 2, paragraph I,
21 has been made a Class C crime.

23 Section 5 amends the present crime of sexual abuse of a
minor in 3 particulars. First, the language of the crime has
25 been made gender neutral. Second, consistent with the repeal of
the crime of rape, reference to "sexual intercourse" has been
27 deleted. Third, Title 17-A, section 254, subsection 1, paragraph
B has been deleted since the conduct which it prohibited now
29 constitutes Class B gross sexual assault.

31 Section 6 amends the present crime of unlawful sexual
contact in 3 ways. First, the language of the crime has been
33 made gender neutral. Second, Title 17-A, section 255, subsection
1, paragraph D, has been amended in the same manner as Title
35 17-A, section 253, subsection 2, paragraph C. Third, in Title
17-A, section 255, subsection 1, paragraph G a new category of
37 unlawful sexual contact has been added precluding parents or
surrogate parents from engaging in unlawful sexual conduct with
39 their children.

41 Section 7 amends the present crime of incest in 2
particulars. First, the language of the crime has been made
43 gender neutral. Second, a definition for "sexual intercourse"
has been added since Title 17-A, section 251, paragraph B, has
45 been repealed.

47 Part B

49 This part of the amendment deletes references to "sexual
intercourse" because the definition of "sexual act" encompasses
51 sexual intercourse.

