

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1067

H.P. 763

House of Representatives, April 5, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

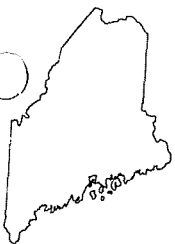
Presented by Representative PARADIS of Augusta.

Cosponsored by Senator HOLLOWAY of Lincoln, Representative FARNSWORTH of Hallowell and Representative HASTINGS of Fryeburg.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Laws Relating to Sex Offenses.



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

3 Sec. 1. 17-A MRSA c. 11, first 2 lines, as amended, are repealed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

5 CHAPTER 11

7 SEXUAL ASSAULTS

9 Sec. 2. 17-A MRSA §251, sub-§1, ¶E, as enacted by PL 1981, c.
11 252, §1, is amended to read:

13 E. "Compulsion" means physical force, a threat of physical
15 force or a combination thereof which makes a person unable
to physically repel the actor or which produces in that
17 person a reasonable fear that death, serious bodily injury
or kidnapping might be imminently inflicted upon that person
or upon another human being.

19 Sec. 3. 17-A MRSA §251, sub-§1, ¶F is enacted to read:

21 F. "Anal penetration" means penetration of an anus by a
23 penis.

25 Sec. 4. 17-A MRSA §252, sub-§1, as amended by PL 1985, c. 247,
27 §1, is further amended to read:

29 1. A person is guilty of rape if he that person engages in
sexual intercourse or anal penetration:

31 A. With any person, not his the actor's spouse, who has not
33 in fact attained his 14th birthday the age of 14 years; or

35 B. With any another person and the other person submits as
a result of compulsion, as defined in section 251,
37 subsection 1, paragraph E; or

39 C. With another person who has not attained the age of 18
years and the actor is a parent, stepparent, foster parent,
41 guardian or other similar person responsible for the
long-term general care and welfare of the other person.

43 Sec. 5. 17-A MRSA §253, as amended by PL 1987, c. 255, §2, is
repealed and the following enacted in its place:

45 §253. Gross sexual assault

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

1 A. The other person submits as a result of compulsion, as
2 defined in section 251, subsection 1, paragraph E;
3
4 B. The other person, not the actor's spouse, has not in
5 fact attained the age of 14 years; or
6
7 C. The other person has not attained the age of 18 years
8 and the actor is a parent, stepparent, foster parent,
9 guardian or other similar person responsible for the
10 long-term general care and welfare of that other person.
11
12 2. A person is guilty of gross sexual assault if that
13 person engages in sexual intercourse or a sexual act with another
14 person and:
15
16 A. The actor has substantially impaired the other person's
17 power to appraise or control the other person's sex acts by
18 administering or employing drugs, intoxicants or other
19 similar means;
20
21 B. The actor compels or induces the other person to engage
22 in the sexual intercourse or sexual act by any threat;
23
24 C. The other person suffers from mental disability that is
25 reasonably apparent or known to the actor, and which in fact
26 renders the other person substantially incapable of
27 appraising the nature of the contact involved or of
28 understanding that the person has the right to deny or
29 withdraw consent;
30
31 D. The other person is unconscious or otherwise physically
32 incapable of resisting and has not consented to the sexual
33 intercourse or sexual act;
34
35 E. The other person, not the actor's spouse, is in official
36 custody as a probationer or a parolee, or is detained in a
37 hospital, prison or other institution, and the actor has
38 supervisory or disciplinary authority over the other person;
39
40 F. The other person, not the actor's spouse, has not in
41 fact attained the age of 18 years and is a student enrolled
42 in a private or public elementary, secondary or special
43 education school, facility or institution and the actor is a
44 teacher, employee or other official having instructional,
45 supervisory or disciplinary authority over the student;
46
47 G. The other person, not the actor's spouse, has not
48 attained the age of 18 years and is a resident in or
49 attending a private or public nursery school, children's
50 home, day care facility, residential child care facility,
51 drug treatment center, camp or similar school, facility or
52 institution regularly providing care or services for
53 children, and the actor is a teacher, employee or other

1 person having instructional, supervisory or disciplinary
2 authority over the other person; or

3
4 H. The actor is a mental health professional or purports to
5 be a mental health professional and the other person, not
6 the actor's spouse, is a patient or client of the actor at
7 the time.

8
9 3. It is a defense to a prosecution under subsection 2,
10 paragraph A, that the other person voluntarily consumed or
11 allowed administration of the substance with knowledge of its
12 nature, except that it is no defense when the other person is a
13 patient of the actor and has a reasonable belief that the actor
14 is administering the substance for medical or dental examination
15 or treatment.

16
17 4. Violation of subsection 1 is a Class A crime.

18
19 5. Violation of subsection 2 is a Class B crime.

20
21 **Sec. 6. 17-A MRSA §254, sub-§1, as repealed and replaced by PL**
22 **1985, c. 495, §9, is amended to read:**

23
24 1. A person is guilty of sexual abuse of a minor if:

25
26 A. ~~Having attained his 19th birthday he~~ the age of 19 years,
27 the person engages in sexual intercourse or a sexual act
28 with another person, not his the actor's spouse, who has
29 attained his ~~14th birthday~~ the age of 14 years but has not
30 attained his ~~16th birthday~~ the age of 16 years, provided
31 that the actor is at least 5 years older than the other
32 person; ~~or .~~

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

39
40 **Sec. 7. 17-A MRSA §255, sub-§1, as amended by PL 1985, c. 247,**
41 **§3, is further amended to read:**

42
43 1. A person is guilty of unlawful sexual contact if he the
44 person intentionally subjects another person to any sexual
45 contact, and:

46
47 A. The other person has not expressly or impliedly
48 acquiesced in such the sexual contact;

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

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

5 D. The other person suffers from a mental disability that
7 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
withdraw consent;

11 E. The other person, not his the actor's spouse, is in
13 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.

27 **Sec. 8. 17-A MRSA §255, sub-§2,** as enacted by PL 1975, c. 499,
§1, is repealed and the following enacted in its place:

29 2. Unlawful sexual contact is a Class D crime, except that:

31 A. A violation of subsection 1, paragraph C, is a Class C
crime; and

33 B. If the State pleads and proves that the sexual contact
35 included penetration of the anus or female sex organ, then
37 the sentencing for the crime is one Class higher than it
would otherwise be.

39

STATEMENT OF FACT

41

43 In the last 15 years, vast amounts of new information have
been acquired regarding the prevalence and impact of sexual
45 assault. Long-term studies and day-to-day experiences of rape
crisis counselors reveal the life-altering trauma created by
47 sexual violence. This accumulated knowledge has brought
professionals to a heightened level of awareness of the severity
of impact on victims of sexual assault. This bill makes Maine
49 laws consistent with the current body of knowledge.

51 Section 1 of the bill renames the chapter to more accurately
characterize the prohibited behavior.

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The bill expands the definition of rape, which is a Class A crime, in 2 ways. First, it includes anal penetration as well as sexual intercourse. Second, it makes it a Class A crime for an adult to have sexual intercourse with anyone under 18 years if that person is a relative or under the guardianship of the adult. This includes foster parents, stepparents, guardians, parents, etc.

The bill revises the crime of gross sexual misconduct, changing the name to gross sexual assault. It makes it a Class A crime for an adult to engage in a sexual act with anyone under the age of 18 if that person is a relative or under the guardianship of the adult. This section of the bill raises to a Class B crime certain behavior currently categorized as Class C:

1. If the actor uses threat to compel or induce submission;
2. If the actor employs drugs against the will of the other person;
3. If the other person is unconscious; and
4. If the other person is under age 18 and is a student or institutional resident under the supervisory or disciplinary authority of the actor.

The bill expands the criteria under gross sexual assault and unlawful sexual conduct to include the concept of recognition and understanding by someone with a mental disability that he or she has the right to deny or withdraw consent.

The bill makes it illegal for a mental health professional, or a person who holds himself or herself out as a mental health professional, to have sexual intercourse with a current patient.

The bill also increases the sentencing classification for sexual contact if digital penetration was involved.

The bill also makes current language gender neutral.