

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 347, L.D. 450, Bill, "An Act to Expand Protection to Persons with Mental Illness and Mental Retardation"

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

'Sec. 1. 17-A MRSA §253, sub-§2, ¶¶H and I, as enacted by PL 1989, c. 401, Pt. A, §4, are amended to read:

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

Sec. 2. 17-A MRSA §253, sub-§2, ¶J is enacted to read:

COMMITTEE AMENDMENT

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2 J. The actor owns, operates or is an employee of an
4 organization, program or residence that is operated,
6 administered, licensed or funded by the Department of Mental
8 Health and Mental Retardation or the Department of Human
10 Services and the other person, not the actor's spouse,
12 receives services from the organization, program or
 residence and the organization, program or residence
 recognizes that person as a person with mental retardation.
 It is an affirmative defense to prosecution under this
 paragraph that the actor receives services for mental
 retardation or is a person with mental retardation as
 defined in Title 34-B, section 5001, subsection 3.

14 **Sec. 3. 17-A MRSA §253, sub-§5, as amended by PL 1991, c. 569,**
16 **is further amended to read:**

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

22 **Sec. 4. 17-A MRSA §255, sub-§1, ¶G, as amended by PL 1993, c.**
24 **453, §2, is further amended to read:**

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

30 **Sec. 5. 17-A MRSA §255, sub-§1, ¶H, as enacted by PL 1993, c.**
32 **453, §3, is amended to read:**

34 H. The other person submits as a result of compulsion; or

36 **Sec. 6. 17-A MRSA §255, sub-§1, ¶I is enacted to read:**

38 I. The actor owns, operates or is an employee of an
40 organization, program or residence that is operated,
42 administered, licensed or funded by the Department of Mental
44 Health and Mental Retardation or the Department of Human
46 Services and the other person, not the actor's spouse,
48 receives services from the organization, program or
 residence and the organization, program or residence
 recognizes that person as a person with mental retardation.
 It is an affirmative defense to prosecution under this
 paragraph that the actor receives services for mental
 retardation or is a person with mental retardation as
 defined in Title 34-B, section 5001, subsection 3.

2 **Sec. 7. 17-A MRSA §255, sub-§2**, as amended by PL 1993, c. 451,
§2, and c. 453, §4, is repealed and the following enacted in its
4 place:

6 2. Unlawful sexual contact is a Class D crime, except that
a violation of subsection 1, paragraph C, G or H is a Class C
8 crime, and a violation of this section when the actor has 2 or
more prior Maine convictions for violations of this section is a
10 Class C crime. For purposes of this subsection, the dates of
both of the prior convictions must precede the commission of the
12 offense being enhanced by no more than 5 years, although both
prior convictions may have occurred on the same day. The date of
14 a conviction is deemed to be the date that sentence is imposed,
even though an appeal was taken. The date of a commission of an
16 offense is presumed to be that stated in the complaint,
information or indictment, notwithstanding the use of the words
18 "on or about" or the equivalent.

20 **Sec. 8. 34-B MRSA §3008** is enacted to read:

22 **§3008. Sexual activity with recipient of services prohibited**

24 A person who owns, operates or is an employee of an
organization, program or residence that is operated,
26 administered, licensed or funded by the Department of Mental
Health and Mental Retardation or the Department of Human Services
28 may not engage in a sexual act, as defined in Title 17-A, section
251, subsection 1, paragraph C, with another person or subject
30 another person to sexual contact, as defined in Title 17-A,
section 251, subsection 1, paragraph D, if the other person, not
32 the actor's spouse, is a person with mental illness who receives
therapeutic, residential or habilitative services from the
34 organization, program or residence.

36 **Sec. 9. 34-B MRSA §5004** is enacted to read:

38 **§5004. Sexual activity with recipient of services prohibited**

40 A person who owns, operates or is an employee of an
organization, program or residence that is operated,
42 administered, licensed or funded by the Department of Mental
Health and Mental Retardation or the Department of Human Services
44 may not engage in a sexual act, as defined in Title 17-A, section
251, subsection 1, paragraph C, with another person or subject
46 another person to sexual contact, as defined in Title 17-A,
section 251, subsection 1, paragraph D, if the other person, not
48 the actor's spouse, is a person with mental retardation who
receives therapeutic, residential or habilitative services from
50 the organization, program or residence.'

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Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

This bill establishes a new Class C crime and a new Class D crime.

Sentences of more than 9 months and, beginning January 1, 1995, more than 12 months imposed for Class C crimes must be served in a state correctional institution. The cost to the State per sentence is \$45,352 based upon an average length of stay of one year and 9 months. The State also must reimburse counties for sentences served in county jails of 9 months or less and, beginning January 1, 1995, 12 months or less for Class C crimes.

Sentences imposed for Class D offenses must be served in a county jail. The average cost per sentence for a Class D crime is \$8,320 based upon an average length of stay of 119 days. The additional costs to the counties for the housing of each offender sentenced under this new crime are not reimbursed by the State.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these new crimes. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department's administrative account. The collection of additional fines may also increase General Fund revenue by minor amounts.

STATEMENT OF FACT

This amendment replaces the bill, but carries out the original intent to protect persons with mental retardation or mental illness from being taken advantage of sexually. The crime of gross sexual assault is expanded to cover situations in which the owner, operator or employee of a provider of services to persons with mental retardation engages in a sexual act with one of the recipients of the services. The prohibition is specifically directed at persons who own, operate or are employed by an organization, program or residence operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Services. These persons are prohibited from engaging in a sexual act with a person receiving services from the organization, program or residence when that recipient receives those services and the recipient is

2 recognized as being a person with mental retardation. The issue
3 of whether the recipient meets the statutory definition of being
4 a person with mental retardation will not be litigated in the
5 context of a prosecution under this definition of gross sexual
6 assault. It is sufficient that the organization, program or
7 residence providing the services recognized the recipient as
8 being a person with mental retardation and provided the services
9 on that basis. This type of gross sexual assault is a Class C
10 crime. This does apply to situations in which the actor and the
11 recipient are married to each other. There is an affirmative
12 defense to prosecution for a violation of this provision if the
13 actor is also receiving services for mental retardation or is a
14 person with mental retardation.

15 The crime of unlawful sexual contact is expanded to the same
16 extent. This form of unlawful sexual contact is a Class D crime.

17 The amendment enacts the Maine Revised Statutes, Title 34-B,
18 section 5004 to affirmatively state the State's policy that a
19 provider of services to persons with mental retardation is
20 prohibited from engaging in a sexual act with another person who
21 is a person with mental retardation, or subject a person with
22 mental retardation to sexual contact.

23 Rather than taking the ultimate step of criminalizing the
24 same type of behavior between a provider of services and a person
25 with mental illness, this amendment takes the initial step of
26 prohibiting such conduct when the services for persons with
27 mental illness are provided by the State, or licensed or funded
28 by the State. This will make it very clear that providers of
29 services to persons with mental illness can not take advantage of
30 the trust involved in that relationship.
31

32 This amendment repeals and replaces the penalty section of
33 the crime of unlawful sexual contact, the Maine Revised Statutes,
34 Title 17-A, section 255, subsection 2, to correct a conflict
35 created in that subsection when the penalties for unlawful sexual
36 contact were amended in 2 different ways in 2 different bills
37 during the First Regular Session of the 116th Legislature.
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