

MAINE STATE LEGISLATURE

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L.D. 826

DATE: 4/25/95

(Filing No. H-157)

CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 616, L.D. 826, Bill, "An Act to Amend the Sexual Abuse Laws by Including 18-year-olds Who are Still in School in the Provisions for the Sexual Abuse of Minors"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Sexual Abuse Laws by Including 16-year-olds and 17-year-olds Who Are Still in School in the Provisions for Sexual Abuse of Minors'

Further 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 §254, sub-§1, ¶A. as amended by PL 1989, c. 401, Pt. A, §5, is further amended to read:

A. Having attained the age of 19 years, the person engages in a sexual act with another person, not the actor's spouse, who has attained the age of 14 years but has not attained the age of 16 years, provided that the actor is at least 5 years older than the other person; or

Sec. 2. 17-A MRSA §254, sub-§1, ¶C is enacted to read:

C. Having attained the age of 21 years, the person engages in a sexual act with another person, not the actor's spouse, who has attained the age of 16 years but not the age of 18 years, and is a student enrolled in a private or public elementary, secondary or special education school, facility

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2 or institution and the actor is a teacher, employee or other
3 official in the school district, school union, educational
4 unit, school, facility or institution in which the student
5 is enrolled.

6 **Sec. 3. 17-A MRSA §254, sub-§3,** as amended by PL 1993, c. 451,
7 §1, is repealed and the following enacted in its place:

8 3. Violation of subsection 1, paragraph A is a Class D
9 crime; and violation of subsection 1, paragraph C is a Class E
10 crime; except that the sentencing class for a violation of
11 subsection 1 is one class higher if the State pleads and proves:

12 A. The actor was more than 10 years older than the other
13 person;

14 B. The actor knew the other person was related to the actor
15 within the 2nd degree of consanguinity; or

16 C. The actor has 2 or more prior Maine convictions for
17 violations of this section. For purposes of this
18 subsection, the dates of both of the prior convictions must
19 precede the commission of the offense being enhanced by no
20 more than 5 years, although both prior convictions may have
21 occurred on the same day. The date of a conviction is
22 deemed to be the date that sentence is imposed, even though
23 an appeal was taken. The date of a commission of an offense
24 is presumed to be that stated in the complaint, information
25 or indictment, notwithstanding the use of the words "on or
26 about" or the equivalent.

27 **Sec. 4. 17-A MRSA §255, sub-§1, ¶H,** as amended by PL 1993, c.
28 687, §5, is further amended to read:

29 H. The other person submits as a result of compulsion; e#

30 **Sec. 5. 17-A MRSA §255, sub-§1, ¶I,** as enacted by PL 1993, c.
31 687, §6, is amended to read:

32 I. The actor owns, operates or is an employee of an
33 organization, program or residence that is operated,
34 administered, licensed or funded by the Department of Mental
35 Health and Mental Retardation or the Department of Human
36 Services and the other person, not the actor's spouse,
37 receives services from the organization, program or
38 residence and the organization, program or residence
39 recognizes that person as a person with mental retardation.
40 It is an affirmative defense to prosecution under this
41 paragraph that the actor receives services for mental

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retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3-; or

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

J. 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, having attained the age of 21 years, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled.

Sec. 7. 17-A MRSA §255, sub-§2, as repealed and replaced by PL 1993, c. 687, §7, is amended to read:

2. Unlawful sexual contact is a Class D crime, except that a violation of subsection 1, paragraph J is a Class E crime and except that a violation of subsection 1, paragraph C, G or H is a Class C crime, and a violation of this section when the actor has 2 or more prior Maine convictions for violations of this section is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of 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 offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.'

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

'FISCAL NOTE

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.22 per day for each offender. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

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. The collection of additional fines may increase General Fund revenue by minor amounts.'

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STATEMENT OF FACT

This amendment replaces the original bill. The amendment does the following:

1. Amends the title and language in the original bill to clarify that 16-year-olds and 17-year-olds who are enrolled in school are included in the provisions for sexual abuse of minors;

2. Changes the age of the actor to 21 years or older in cases of sexual abuse of a minor when the actor is a teacher, employee or school official in the minor's school;

3. Clarifies that the new crime of sexual abuse of a minor is a Class E crime and that a violation of either provision regarding sexual abuse of a minor must be enhanced by one class of crime if the State pleads and proves certain aggravating circumstances;

4. Changes the age of the actor to 21 years or older in the new crime of unlawful sexual contact when the actor is a teacher, employee or school official in the minor's school; and

5. Adds a fiscal note to the bill.