

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1711

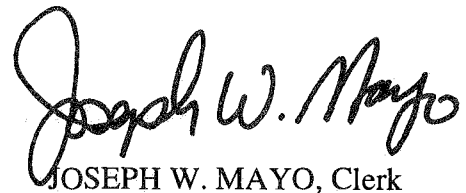
H.P. 1211

House of Representatives, April 1, 1997

**An Act Addressing Sexual Exploitation of an Abuse Victim by a Law Enforcement Officer.**

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Reference to the Committee on Criminal Justice suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative O'BRIEN of Augusta.  
Cosponsored by Representatives: BRENNAN of Portland, COWGER of Hallowell, POVICH of Ellsworth, WHEELER of Bridgewater.

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

2  
4 **Sec. 1. 17-A MRSA §253, sub-§2, ¶I**, as amended by PL 1993, c. 687, §1, is further amended to read:

6 I. The actor is a psychiatrist, a psychologist or licensed  
8 as a social worker or purports to be a psychiatrist, a  
10 psychologist or licensed as a social worker to the other  
12 person and the other person, not the actor's spouse, is a  
14 patient or client for mental health therapy of the actor.  
16 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

18 **Sec. 2. 17-A MRSA §253, sub-§2, ¶J**, as enacted by PL 1993, c.  
20 687, §2 and amended by PL 1995, c. 560, Pt. K, §82 and affected  
by §83, is further amended to read:

22 J. The actor owns, operates or is an employee of an  
24 organization, program or residence that is operated,  
26 administered, licensed or funded by the Department of Mental  
28 Health, Mental Retardation and Substance Abuse Services or  
30 the Department of Human Services and the other person, not  
32 the actor's spouse, receives services from the organization,  
34 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; or

36 **Sec. 3. 17-A MRSA §253, sub-§2, ¶K** is enacted to read:

38 K. The actor is a law enforcement officer engaged in an  
39 investigation or purported investigation involving an  
40 allegation of abuse and the other person, not the actor's  
41 spouse, is the alleged victim of that abuse. As used in  
42 this paragraph, the term "abuse" has the same meaning as in  
43 Title 19, section 762, subsection 1 and Title 19-A, section  
44 4002, subsection 1.

46 **Sec. 4. 17-A MRSA §253, sub-§3-A** is enacted to read:

48 3-A. It is a defense to a prosecution under subsection 2,  
49 paragraph K that at the time of the sexual act:

50 A. The other person and the actor had a preexisting and

2           then ongoing sexual relationship that included engaging in  
3           any sexual act; or

4           B. More than 6 months has elapsed since the initial  
5           participation by the actor in the investigation or purported  
6           investigation involving the allegation of abuse.

7           **Sec. 5. 17-A MRSA §253, sub-§5**, as amended by PL 1993, c. 687,  
8           §3, is further amended to read:

9           5. Violation of subsection 2, paragraph A, B, C, D, E or H  
10           is a Class B crime. Violation of subsection 2, paragraph F, G, I  
11           or J or K is a Class C crime.

12           **Sec. 6. 17-A MRSA §255, sub-§1, ¶I**, as amended by PL 1995, c.  
13           104, §5 and c. 560, Pt. K, §82 and affected by §83, is further  
14           amended to read:

15           I. The actor owns, operates or is an employee of an  
16           organization, program or residence that is operated,  
17           administered, licensed or funded by the Department of Mental  
18           Health, Mental Retardation and Substance Abuse Services or  
19           the Department of Human Services and the other person, not  
20           the actor's spouse, receives services from the organization,  
21           program or residence and the organization, program or  
22           residence recognizes that person as a person with mental  
23           retardation. It is an affirmative defense to prosecution  
24           under this paragraph that the actor receives services for  
25           mental retardation or is a person with mental retardation as  
26           defined in Title 34-B, section 5001, subsection 3; or

27           **Sec. 7. 17-A MRSA §255, sub-§1, ¶J**, as enacted by PL 1995, c.  
28           104, §6, is amended to read:

29           J. The other person, not the actor's spouse, has not in  
30           fact attained the age of 18 years and is a student enrolled  
31           in a private or public elementary, secondary or special  
32           education school, facility or institution and the actor,  
33           having attained the age of 21 years, is a teacher, employee  
34           or other official in the school district, school union,  
35           educational unit, school, facility or institution in which  
36           the student is enrolled; or

37           **Sec. 8. 17-A MRSA §255, sub-§1, ¶K** is enacted to read:

38           K. The actor is a law enforcement officer engaged in an  
39           investigation or purported investigation involving an  
40           allegation of abuse and the other person, not the actor's  
41           spouse, is the alleged victim of that abuse. As used in  
42           this paragraph, the term "abuse" has the same meaning as in

2           Title 19, section 762, subsection 1 and Title 19-A, section  
3           4002, subsection 1.

4           **Sec. 9. 17-A MRSA §255, sub-§1-A is enacted to read:**

6           1-A. It is a defense to a prosecution under subsection 1,  
7           paragraph K that at the time of the sexual contact:

8           A. The other person and the actor had a preexisting and  
9           then ongoing sexual relationship that included engaging in  
10           any sexual contact; or

11           B. More than 6 months has elapsed since the initial  
12           participation by the actor in the investigation or purported  
13           investigation involving the allegation of abuse.

18   **SUMMARY**

20           This bill creates a new Class C form of gross sexual assault  
21           and a new Class D form of unlawful sexual contact in a case in  
22           which the actor is a law enforcement officer engaged in an  
23           investigation or purported investigation involving an allegation  
24           of abuse and the other person, not the actor's spouse, is the  
25           alleged victim of that abuse and the actor engages in a sexual  
26           act with the other person or the actor intentionally subjects the  
27           other person to any sexual contact, respectively.

28           The bill also creates a defense to both crimes if either a  
29           preexisting and ongoing sexual relationship existed between the  
30           actor and the other person that included the same kind of sexual  
31           conduct or if more than 6 months had elapsed since the actor  
32           first became involved in the underlying investigation or  
33           purported investigation involving the allegation of abuse.