

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1491

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H.P. 1122

House of Representatives, March 8, 2001

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**An Act to Protect Minors from Sexual Exploitation.**

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MICHAEL of Auburn.  
Cosponsored by Representatives: MacDOUGALL of North Berwick, SNOWE-MELLO of Poland.

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

2  
4       **Sec. 1. 17 MRSA §2924, sub-§2. ¶A**, as enacted by PL 1993, c. 727, §2, is amended to read:

6           A. The other person has not in fact attained the age of 14  
8           18 years; or

10       **Sec. 2. 17 MRSA §2924, sub-§2, ¶B**, as corrected by RR 1993, c. 2, §8, is amended to read:

12           B. The person knows or has reason to know that the other  
14           person has not attained the age of 14 18 years.

16       **Sec. 3. 17 MRSA §2924, sub-§5**, as enacted by PL 1993, c. 727, §2, is repealed and the following enacted in its place:

18           **5. Penalty.** Possession of sexually explicit material is a  
20           Class C crime. The court shall require a person convicted under  
22           this section to:

24           A. Serve a period of incarceration of at least 18 months  
26           but not more than 5 years;

28           B. Serve a period of probation of at least 3 years but not  
30           more than 5 years;

32           C. Satisfy all requirements set forth in the Sex Offender  
34           Registration and Notification Act; and

36           D. Pay restitution to the victim, if known, for counseling  
38           and other medical services.

40       **Sec. 4. 17 MRSA §2924, sub-§6**, as enacted by PL 1993, c. 727, §2, is amended to read:

42           **6. Contraband.** Any material that depicts a person who has  
44           not attained the age of 14 18 years engaging in sexually explicit  
46           conduct is declared to be contraband and may be seized by the  
48           State.

48       **Sec. 5. 17 MRSA §2924**, as corrected by RR 1993, c. 2, §8, is amended by adding at the end a new paragraph to read:

If the State pleads and proves a prior conviction under this  
          section or under Title 17-A, section 253, 254, 255, 256, 258 or  
          259, the provisions of subsection 5, paragraphs A to D apply,  
          except that the court shall sentence the offender to a period of  
          incarceration of at least 36 months and, notwithstanding Title

2 17-A, section 1202, a period of probation of at least 5 years but  
3 not more than 10 years.

4 **Sec. 6. 17-A MRSA §253, sub-§1, ¶B,** as repealed and replaced  
5 by PL 1989, c. 401, Pt. A, §4, is amended to read:

6 B. The other person, not the actor's spouse, has not in  
7 fact attained the age of ~~14~~ 18 years.

10 **Sec. 7. 17-A MRSA §253, sub-§4.** as repealed and replaced by PL  
11 1989, c. 401, Pt. A, §4, is amended to read:

12 4. Violation of subsection 1 is a Class A crime. The court  
13 shall require a person convicted of a violation of subsection 1  
14 to:

15 A. Notwithstanding section 1252, serve a period of  
16 incarceration of at least 120 months to life;

17 B. Serve a period of probation of at least 7 years;

18 C. Satisfy all requirements set forth in the Sex Offender  
19 Registration and Notification Act; and

20 D. Pay restitution to the victim for counseling and other  
21 medical services.

22 If the State pleads and proves a prior conviction under this  
23 subsection, section 254, 255, 256, 258 or 259 or Title 17,  
24 section 2924, the provisions of paragraphs A to D apply, except  
25 that the court shall sentence the offender to an additional  
26 period of incarceration of 10 years for each prior conviction.

27 **Sec. 8. 17-A MRSA §254,** as amended by PL 1997, c. 460, §§2  
28 and 3, is further amended to read:

29 **§254. Sexual abuse of minors**

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

31 A. Having attained the age of 19 years, the person engages  
32 in a sexual act with another person, not the actor's spouse,  
33 who has not attained the age of ~~14~~ 18 years ~~but has not~~  
34 ~~attained the age of 16 years, provided that~~ and the actor is  
35 at least ~~5~~ 3 years older than the other person; or

36 C. Having attained the age of 21 years, the person engages  
37 in a sexual act with another person, not the actor's spouse,  
38 who has not attained the age of ~~16 years but not the age of~~  
39 18 years, and is a student enrolled in a private or public  
40 school.

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

7 2. It is a defense to a prosecution under subsection 1,  
8 paragraph A, that the actor reasonably believed the other person  
9 to have attained ~~his-16th~~ that person's 18th birthday.

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

14 A. The actor was more than 10 years older than the other  
15 person; or

16 B. The actor knew the other person was related to the actor  
17 within the 2nd degree of consanguinity.

18 4. The court shall impose the following for a violation of  
19 this section:

20 A. For a violation of subsection 1, paragraph A:

21 (1) Notwithstanding section 1252, serve a period of  
22 incarceration of at least 18 months but not more than  
23 120 months;

24 (2) Serve a period of probation of at least 3 years  
25 but not more than 5 years;

26 (3) Satisfy all requirements set forth in the Sex  
27 Offender Registration and Notification Act; and

28 (4) Pay restitution to the victim for counseling and  
29 other medical services.

30 If the State pleads and proves a prior conviction under this  
31 subsection, section 253, 255, 256, 258 or 259 or Title 17,  
32 section 2924, the provisions of subparagraphs (1) to (4)  
33 apply, except that the court shall sentence the offender to  
34 a period of incarceration of at least 36 months to 60 months  
35 and, notwithstanding section 1202, a period of probation of  
36 at least 5 years but not more than 10 years; and

37 B. For a violation of subsection 1, paragraph C:

2           (1) Notwithstanding section 1252, serve a period of  
3           incarceration of at least 9 months but not more than 18  
4           months;

6           (2) Serve a period of probation of at least 18 months  
7           but not more than 3 years;

8           (3) Satisfy all requirements set forth in the Sex  
9           Offender Registration and Notification Act; and

10           (4) Pay restitution to the victim for counseling and  
11           other medical services.

14           If the State pleads and proves a prior conviction under this  
15           subsection, section 253, 255, 256, 258 or 259 or Title 17,  
16           section 2924, the provisions of subparagraphs (1) to (4)  
17           apply, except that, notwithstanding section 1252, the court  
18           shall sentence the offender to a period of incarceration of  
19           at least 18 months but less than 36 months and,  
20           notwithstanding section 1202, a period of probation of at  
21           least 3 years but not more than 5 years.

22           **Sec. 9. 17-A MRSA §255, sub-§1, ¶C,** as amended by PL 1989, c.  
23           401, Pt. A, §6, is further amended to read:

26           C. The other person, not the actor's spouse, has not in  
27           fact attained the age of 14 18 years and the actor is at  
28           least 3 years older;

30           **Sec. 10. 17-A MRSA §255, sub-§2,** as amended by PL 1997, c.  
31           460, §4, is further amended to read:

32           2. Unlawful sexual contact is a Class D crime, except that  
33           a violation of subsection 1, paragraph J is a Class E crime and  
34           except that a violation of subsection 1, paragraph C, G or H is a  
35           Class C crime. The court shall require a person convicted of a  
36           violation of subsection 1, paragraph C to:

38           A. Notwithstanding section 1252, serve a period of  
39           incarceration of at least 120 months up to life;

42           B. Serve a period of probation of at least 7 years;

44           C. Satisfy all requirements set forth in the Sex Offender  
45           Registration and Notification Act; and

46           D. Pay restitution to the victim for counseling and other  
47           medical services.

2 If the State pleads and proves a prior conviction of subsection  
4 1, paragraph C or section 253, 254, 256, 258 or 259 or Title 17,  
6 section 2924, the provisions of paragraphs A to D apply, except  
8 that, notwithstanding section 1252, the court shall sentence the  
offender to a period of incarceration of at least 240 months and,  
notwithstanding section 1202, a period of probation of at least  
10 years.

10 **Sec. 11. 17-A MRSA §256**, as enacted by PL 1995, c. 72, §1, is  
12 amended to read:

14 **§256. Visual sexual aggression against a child**

16 1. A person is guilty of visual sexual aggression against a  
18 child if, for the purpose of arousing or gratifying sexual desire  
20 or for the purpose of causing affront or alarm, the actor, having  
in fact attained 18 years of age, exposes the actor's genitals to  
another person or causes the other person to expose that person's  
genitals to the actor and the other person, not the actor's  
spouse, has not in fact attained 14 18 years of age.

22 2. Visual sexual aggression against a child is a Class D C  
24 crime. The court shall require a person convicted of a violation  
of subsection 1 to:

26 A. Notwithstanding section 1252, serve a period of  
28 incarceration of at least 18 months but not more than 120  
months;

30 B. Serve a period of probation of at least 3 years but not  
32 more than 5 years;

34 C. Satisfy all requirements set forth in the Sex Offender  
Registration and Notification Act; and

36 D. Pay restitution to the victim for counseling and other  
38 medical services.

40 If the State pleads and proves a prior conviction under this  
42 section, section 253, 254, 255, 258 or 259 or Title 17, section  
44 2924, the provisions of subsection 2, paragraphs A to D apply,  
46 except that, notwithstanding section 1252, the court shall  
sentence the offender to a period of incarceration of at least 36  
months but not more than 240 months and, notwithstanding section  
1202, a period of probation of at least 5 years but not more than  
10 years.

48 **Sec. 12. 17-A MRSA §258**, as enacted by PL 1997, c. 143, §1,  
50 is amended to read:

2  
3 **§258. Sexual misconduct with a child under 18 years of age**

4 1. A person is guilty of sexual misconduct with a child  
5 under 14 18 years of age if that person, having in fact attained  
6 18 years of age knowingly displays any sexually explicit  
7 materials to another person, not the actor's spouse, who has not  
8 in fact attained the age of 14 18 years, with the intent to  
9 encourage the other person to engage in a sexual act or sexual  
10 contact.

11 2. As used in this section, "sexually explicit materials"  
12 means any book, magazine, print, negative, slide, motion picture,  
13 videotape or other mechanically reproduced visual material that  
14 the person knows or should know depicts a person, minor or adult,  
15 engaging in sexually explicit conduct, as that term is defined in  
16 Title 17, section 2921, subsection 5.

17 3. Sexual misconduct with a child under 14 18 years of age  
18 is a Class D C crime. The court shall require a person convicted  
19 of a violation of subsection 1 to:

20  
21 A. Notwithstanding section 1252, serve a period of  
22 incarceration of at least 18 months but not more than 36  
23 months;

24  
25 B. Serve a period of probation of at least 3 years but not  
26 more than 7 years;

27  
28 C. Satisfy all requirements set forth in the Sex Offender  
29 Registration and Notification Act; and

30  
31 D. Pay restitution to the victim for counseling and other  
32 medical services.

33  
34 If the State pleads and proves a prior conviction under this  
35 section, section 253, 254, 255, 256 or 259 or Title 17, section  
36 2924, the provisions of subsection 3, paragraphs A to D apply,  
37 except that, notwithstanding section 1252, the court shall  
38 sentence the offender to a period of incarceration of at least 36  
39 months but not more than 240 months and, notwithstanding section  
40 1202, a period of probation of at least 5 years but not more than  
41 10 years.

42  
43 **Sec. 13. 17-A MRSA §259, sub-§1, ¶¶B and C,** as enacted by PL  
44 1999, c. 349, §3, are amended to read:

45  
46 B. Is 16 19 years of age or older; and

47  
48 C. Knows or believes the other person is less than 14 18  
49 years of age;  
50



2           **Sec. 14. 17-A MRSA §259, sub-§3**, as enacted by PL 1999, c.  
349, §3, is amended to read:

4  
6           3. Solicitation of a child by a computer to commit a  
prohibited act is a Class D C crime. The court shall require a  
person convicted of a violation of subsection 1 to:

8           A. Notwithstanding section 1252, serve a period of  
10 incarceration of at least 18 months but not more than 120  
months;

12           B. Serve a period of probation of at least 3 years but not  
14 more than 5 years;

16           C. Satisfy all requirements set forth in the Sex Offender  
18 Registration and Notification Act; and

20           D. Pay restitution to the victim for counseling and other  
medical services.

22           **Sec. 15. 17-A MRSA §259**, as enacted by PL 1999, c. 349, §3,  
is amended by adding at the end a new paragraph to read:

24           If the State pleads and proves a prior conviction under this  
26 section, section 253, 254, 255, 256 or 258 or Title 17, section  
2924, the provisions of subsection 3, paragraphs A to D apply,  
28 except that, notwithstanding section 1252, the court shall  
sentence the offender to a period of incarceration of at least 36  
30 months but not more than 240 months and, notwithstanding section  
1202, a period of probation of at least 5 years but not more than  
32 10 years.

34           **Sec. 16. 17-A MRSA §1329, sub-§6** is enacted to read:

36           6. License suspension; late fee. In addition to the other  
requirements of this section, an offender who has been ordered to  
38 make restitution pursuant to Title 17, section 2924 or section  
253, 254, 255, 256, 258 or 259 and who has defaulted in payment  
40 or service is subject to the following.

42           A. The court shall suspend the offender's motor vehicle  
operator's license until the offender is in compliance with  
44 the restitution order for 12 consecutive months.

46           B. The court shall impose a late fee penalty of 18% per  
year.

48

## SUMMARY

2  
4 This bill increases to 18 years of age the threshold before  
6 which certain specified actions are crimes and imposes mandatory  
8 minimum sentences of incarceration and probation and the  
10 requirement to register under the Sex Offender Registration and  
12 Notification Act and pay restitution to the victim, if the victim  
14 can be determined, of a person convicted of: possession of  
16 sexually explicit materials; gross sexual assault; sexual abuse  
18 of a minor; unlawful sexual contact; visual sexual aggression  
against a child; sexual misconduct with a child under 14 years of  
age; and solicitation of child by computer to commit a prohibited  
act. This bill also requires the court to suspend the driver's  
license of a person who fails to make restitution and imposes a  
late fee penalty on that person. The person's license is  
restored once the order for restitution has been complied with  
for 12 consecutive months.