

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1005

S.P. 349

In Senate, February 25, 2003

### An Act To Increase the Class of Crime of Unlawful Sexual Contact

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

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator LEMONT of York.  
Cosponsored by Representatives: ANDREWS of York, BROWN of South Berwick,  
GOODWIN of Pembroke.

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

2  
3       **Sec. 1. 17-A MRSA §255-A, sub-§1**, as amended by PL 2001, c.  
4 354, §3 and enacted by c. 383, §23 and affected by §156, is  
5 further amended to read:

6  
7       1. A person is guilty of unlawful sexual contact if the  
8 actor intentionally subjects another person to any sexual contact  
9 and:

10       A. The other person has not expressly or impliedly  
11 acquiesced in the sexual contact. Violation of this  
12 paragraph is a Class D B crime;

13       B. The other person has not expressly or impliedly  
14 acquiesced in the sexual contact and the sexual contact  
15 includes penetration. Violation of this paragraph is a Class  
16 C B crime;

17       C. The other person is unconscious or otherwise physically  
18 incapable of resisting and has not consented to the sexual  
19 contact. Violation of this paragraph is a Class D B crime;

20       D. The other person is unconscious or otherwise physically  
21 incapable of resisting and has not consented to the sexual  
22 contact and the sexual contact includes penetration.  
23 Violation of this paragraph is a Class E B crime;

24       E. The other person, not the actor's spouse, is in fact  
25 less than 14 years of age and the actor is at least 3 years  
26 older. Violation of this paragraph is a Class E B crime;

27       F. The other person, not the actor's spouse, is in fact  
28 less than 14 years of age and the actor is at least 3 years  
29 older and the sexual contact includes penetration.  
30 Violation of this paragraph is a Class B crime;

31       G. The other person suffers from a mental disability that  
32 is reasonably apparent or known to the actor that in fact  
33 renders the other person substantially incapable of  
34 appraising the nature of the contact involved or of  
35 understanding that the other person has the right to deny or  
36 withdraw consent. Violation of this paragraph is a Class D  
37 B crime;

38       H. The other person suffers from a mental disability that  
39 is reasonably apparent or known to the actor that in fact  
40 renders the other person substantially incapable of  
41 appraising the nature of the contact involved or of  
42 understanding that the other person has the right to deny or  
43 withdraw consent. Violation of this paragraph is a Class D  
44 B crime;

2 withdraw consent and the sexual contact includes  
penetration. Violation of this paragraph is a Class C B  
crime;

4

6 I. The other person, not the actor's spouse, is in official  
custody as a probationer or parolee or is detained in a  
hospital, prison or other institution and the actor has  
8 supervisory or disciplinary authority over the other  
person. Violation of this paragraph is a Class D B crime;

10

12 J. The other person, not the actor's spouse, is in official  
custody as a probationer or parolee or is detained in a  
hospital, prison or other institution and the actor has  
14 supervisory or disciplinary authority over the other person  
and the sexual contact includes penetration. Violation of  
16 this paragraph is a Class C B crime;

18

20 K. The other person, not the actor's spouse, is in fact  
less than 18 years of age and is a student enrolled in a  
private or public elementary, secondary or special education  
22 school, facility or institution and the actor is a teacher,  
employee or other official having instructional, supervisory  
or disciplinary authority over the student. Violation of  
24 this paragraph is a Class D B crime;

26

28 L. The other person, not the actor's spouse, is in fact  
less than 18 years of age and is a student enrolled in a  
private or public elementary, secondary or special education  
30 school, facility or institution and the actor is a teacher,  
employee or other official having instructional, supervisory  
or disciplinary authority over the student and the sexual  
32 contact includes penetration. Violation of this paragraph  
is a Class C B crime;

34

36 M. The other person is in fact less than 18 years of age  
and the actor is a parent, stepparent, foster parent,  
guardian or other similar person responsible for the  
38 long-term general care and welfare of that other person.  
Violation of this paragraph is a Class C B crime;

40

42 N. The other person is in fact less than 18 years of age  
and the actor is a parent, stepparent, foster parent,  
guardian or other similar person responsible for the  
44 long-term general care and welfare of that other person and  
the sexual contact includes penetration. Violation of this  
46 paragraph is a Class B crime;

48

50 O. The other person submits as a result of compulsion.  
Violation of this paragraph is a Class C B crime;

2 P. The other person submits as a result of compulsion and  
the sexual contact includes penetration. Violation of this  
paragraph is a Class B crime;

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

18  
20 R. The actor owns, operates or is an employee of an  
organization, program or residence that is operated,  
22 administered, licensed or funded by the Department of  
Behavioral and Developmental Services or the Department of  
24 Human Services and the other person, not the actor's spouse,  
receives services from the organization, program or  
26 residence and the organization, program or residence  
recognizes that other person as a person with mental  
retardation and the sexual contact includes penetration. It  
28 is an affirmative defense to prosecution under this  
paragraph that the actor receives services for mental  
30 retardation or is a person with mental retardation as  
defined in Title 34-B, section 5001, subsection 3.  
32 Violation of this paragraph is a Class C B crime;

34 S. The other person, not the actor's spouse, is in fact  
less than 18 years of age and is a student enrolled in a  
36 private or public elementary, secondary or special education  
school, facility or institution and the actor, who is at  
38 least 21 years of age, is a teacher, employee or other  
official in the school district, school union, educational  
40 unit, school, facility or institution in which the student  
is enrolled. Violation of this paragraph is a Class -E- B  
42 crime; or

44 T. The other person, not the actor's spouse, is in fact  
less than 18 years of age and is a student enrolled in a  
46 private or public elementary, secondary or special education  
school, facility or institution and the actor, who is at  
48 least 21 years of age, is a teacher, employee or other  
official in the school district, school union, educational  
50 unit, school, facility or institution in which the student

is enrolled and the sexual contact includes penetration.  
Violation of this paragraph is a Class D B crime.

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### SUMMARY

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Current law prohibits unlawful sexual contact, but varies  
the penalty depending upon the type of sexual contact, the age  
and mental state of the victim and the relationship of the actor  
to the victim. The class of crime for unlawful sexual contact  
varies from a Class E crime to a Class B crime.

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This bill makes all forms of unlawful sexual contact a Class  
B crime.

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