

MAINE STATE LEGISLATURE

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L.D. 1232

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 850, L.D. 1232, Bill, "An Act To Protect Children from Individuals Who Have Engaged in Sexual Abuse of Children in the Past"

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

'Sec. 1. 18-A MRSA §9-304, sub-§(b-1) is enacted to read:

(b-1) There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if the adoption were granted and that the adoption is not in the best interest of the child if the court finds that the petitioner for the adoption of a minor child:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the petitioner was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the petitioner and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The petitioner may present evidence to rebut the presumption.

COMMITTEE AMENDMENT

2 **Sec. 2. 19-A MRSA §1653, sub-§6-A, ¶A**, as amended by PL 2003,
c. 711, Pt. C, §1, is further amended to read:

4 A. For the purposes of this section, "child-related sexual
6 offense" means the following sexual offenses if, at the time
of the commission of the offense, the victim was under 18
years of age:

8 (1) Sexual exploitation of a minor, under Title 17-A,
10 section 282;

12 (2) Gross sexual assault, under Title 17-A, section
253;

14 (3) Sexual abuse of a minor, under Title 17-A, section
16 254;

18 (4) Unlawful sexual contact, under ~~former~~ Title 17-A,
20 section 255-A or former section 255;

22 (5) Visual sexual aggression against a child, under
Title 17-A, section 256;

24 (6) Sexual misconduct with a child under 14 years of
26 age, under Title 17-A, section 258; ~~or~~

28 (6-A) Solicitation of a child by computer to commit a
prohibited act, under Title 17-A, section 259; or

30 (7) An offense in another jurisdiction, including, but
32 not limited to, that of a state, federal, military or
tribal court, that includes the essential elements of
an offense listed in subparagraph (1), (2), (3), (4),
34 (5) ~~or~~, (6) or (6-A).

36 **Sec. 3. 19-A MRSA §1653, sub-§6-B** is enacted to read:

38 **6-B. Conviction or adjudication for certain sex offenses:**
presumption. There is a rebuttable presumption that the
40 petitioner would create a situation of jeopardy for the child if
any contact were to be permitted and that any contact is not in
42 the best interests of the child if the court finds that the
person seeking primary residence or contact with the child:

44 A. Has been convicted of an offense listed in Title 19-A,
46 section 1653, subsection 6-A, paragraph A in which the
victim was a minor at the time of the offense and the person
48 was at least 5 years older than the minor at the time of the
offense except that, if the offense was gross sexual assault
50 under Title 17-A, section 253, subsection 1,

2 paragraph B or C and the minor victim submitted as a result
3 of compulsion, the presumption applies regardless of the
4 ages of the person and the minor victim at the time of the
5 offense; or

6 B. Has been adjudicated in an action under Title 22,
7 chapter 1071 of sexually abusing a person who was a minor at
8 the time of the abuse.

10 The person seeking primary residence or contact with the child
11 may present evidence to rebut the presumption.

12 **Sec. 4. 19-A MRSA §1803, sub-§8 is enacted to read:**

14 **8. Conviction or adjudication for certain sex offenses;**
15 **presumption. There is a rebuttable presumption that the**
16 **grandparent would create a situation of jeopardy for the child if**
17 **any contact were to be permitted and that contact is not in the**
18 **best interest of the child if the court finds that the**
19 **grandparent:**

22 A. Has been convicted of an offense listed in Title 19-A,
23 section 1653, subsection 6-A, paragraph A in which the
24 victim was a minor at the time of the offense and the
25 grandparent was at least 5 years older than the minor at the
26 time of the offense except that, if the offense was gross
27 sexual assault under Title 17-A, section 253, subsection 1,
28 paragraph B or C and the minor victim submitted as a result
29 of compulsion, the presumption applies regardless of the
30 ages of the grandparent and the minor victim at the time of
31 the offense; or

32 B. Has been adjudicated in an action under Title 22,
33 chapter 1071 of sexually abusing a person who was a minor at
34 the time of the abuse.

36 The grandparent seeking contact with the child may present
37 evidence to rebut the presumption.

40 **Sec. 5. 19-A MRSA §4007, sub-§1, ¶G, as amended by PL 2001, c.**
41 **273, §4, is further amended to read:**

42 G. Either awarding some or all temporary parental rights
43 and responsibilities with regard to minor children or
44 awarding temporary rights of contact with regard to minor
45 children, or both, under such conditions that the court
46 finds appropriate as determined in accordance with the best
47 interest of the child pursuant to section 1653, subsections
48 3 to 6 6-B. The court's award of parental rights and
49 responsibilities or rights of contact is not binding in any
50

2 separate action involving an award of parental rights and
responsibilities pursuant to chapter 55 or in a similar
4 action brought in another jurisdiction exercising child
custody jurisdiction in accordance with the Uniform Child
6 Custody Jurisdiction and Enforcement Act;

8 **Sec. 6. 22 MRSA §4005-E, sub-§3** is enacted to read:

10 **3. Conviction or adjudication for certain sex offenses;**
presumption. There is a rebuttable presumption that the
12 grandparent would create a situation of jeopardy for the child if
any contact were to be permitted and that contact is not in the
14 best interest of the child if the court finds that the
grandparent:

16 A. Has been convicted of an offense listed in Title 19-A,
section 1653, subsection 6-A, paragraph A in which the
18 victim was a minor at the time of the offense and the
grandparent was at least 5 years older than the minor at the
20 time of the offense except that, if the offense was gross
sexual assault under Title 17-A, section 253, subsection 1,
22 paragraph B or C and the minor victim submitted as a result
of compulsion, the presumption applies regardless of the
24 ages of the grandparent and the minor victim at the time of
the offense; or

26 B. Has been adjudicated in an action under Title 22,
28 chapter 1071 of sexually abusing a person who was a minor at
the time of the abuse.

30 The grandparent seeking visitation with or access to the child
32 may produce evidence to rebut the presumption.

34 **Sec. 7. 22 MRSA §4035, sub-§2-A** is enacted to read:

36 **2-A. Conviction or adjudication for certain sex offenses;**
presumption. There is a rebuttable presumption:

38 A. That the person seeking custody or contact with the
40 child would create a situation of jeopardy for the child if
any contact were to be permitted and that contact is not in
42 the best interest of the child if the court finds that the
person:

44 (1) Has been convicted of an offense listed in Title
46 19-A, section 1653, subsection 6-A, paragraph A in
which the victim was a minor at the time of the offense
48 and the person was at least 5 years older than the
minor at the time of the offense except that, if the
50 offense was gross sexual assault under Title 17-A,
section 253, subsection 1, paragraph B or C and the

2 minor victim submitted as a result of compulsion, the
3 presumption applies regardless of the ages of the
4 person and the minor victim at the time of the offense;
5 or

6 (2) Has been adjudicated in an action under Title 22,
7 chapter 1071 of sexually abusing a person who was a
8 minor at the time of the abuse.

10 The person seeking custody or contact with the child may
11 produce evidence to rebut the presumption; and

12 B. That the parent or person responsible for the child
13 would create a situation of jeopardy for the child if the
14 parent or person allows, encourages or fails to prevent
15 contact between the child and a person who:

16 (1) Has been convicted of an offense listed in Title
17 19-A, section 1653, subsection 6-A, paragraph A in
18 which the victim was a minor at the time of the offense
19 and the person was at least 5 years older than the
20 minor at the time of the offense except that, if the
21 offense was gross sexual assault under Title 17-A,
22 section 253, subsection 1, paragraph B or C and the
23 minor victim submitted as a result of compulsion, the
24 presumption applies regardless of the ages of the
25 person and the minor victim at the time of the offense;
26 or

27 (2) Has been adjudicated in an action under Title 22,
28 chapter 1071 of sexually abusing a person who was a
29 minor at the time of the abuse.

30 The parent or person responsible for the child may produce
31 evidence to rebut the presumption.'

SUMMARY

34 This amendment replaces the bill.

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42 This amendment revises the presumption of jeopardy to apply
43 when the person seeking adoption, contact, primary residence,
44 custody or visitation has any of a number of specific convictions
45 for sexual abuse of a minor. The convictions are the same as in
46 the bill, but are limited to crimes committed when the person was
47 at least 5 years older than the victim at the time of the abuse,
48 except that a conviction for gross sexual assault of a child
49 under 14 years of age or under 12 years of age results in the
50 presumption if the child submitted because of compulsion,
51 regardless of the age difference.

2 This amendment also corrects references to the types of
4 contact being sought with a minor to include types other than
adoption.

6 This amendment also adds a parallel provision in the child
8 protection laws relating to the hearing and disposition of
jeopardy petitions. This amendment provides a rebuttable
10 presumption that there is jeopardy with regard to a parent or
other person responsible for the child who allows, encourages or
12 fails to prevent contact between the child and a person who has
been convicted of one of the listed offenses. The parent or
14 other person responsible for the child may produce evidence to
rebut the presumption.