

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1232

H.P. 850

House of Representatives, March 10, 2005

An Act To Protect Children from Individuals Who Have Engaged in Sexual Abuse of Children in the Past

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Representative: PELLETIER-SIMPSON of Auburn.

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

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

6 (b-1) If the court finds that a petitioner for adoption of
8 a minor child has been convicted of an offense listed in Title
10 19-A, section 1653, subsection 6-A, paragraph A in which the
12 victim was under 14 years of age at the time of the offense or
14 has been adjudicated in an action under Title 22, chapter 1071 of
sexually abusing a child under 14 years of age at the time of the
abuse, it is presumed 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.
The petitioner may produce evidence to rebut the presumption.

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

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

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

26 (2) Gross sexual assault, under Title 17-A, section
28 253;

30 (3) Sexual abuse of a minor, under Title 17-A, section
32 254;

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

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

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

42 (6-A) Solicitation of a child by computer to commit a
44 prohibited act, under Title 17-A, section 259; or

46 (7) An offense in another jurisdiction, including, but
48 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),
50 (5) ~~or~~, (6) or (6-A).

2
3 **Sec. 3. 19-A MRSA §1653, sub-§6-B** is enacted to read:

4 **6-B. Conviction or adjudication for certain sex offenses;**
5 **presumption.** If the court finds that a person has been convicted
6 of an offense listed in subsection 6-A, paragraph A in which the
7 victim was under 14 years of age at the time of the offense or
8 has been adjudicated in an action under Title 22, chapter 1071 of
9 sexually abusing a child under 14 years of age at the time of the
10 abuse, it is presumed that the person would create a situation of
11 jeopardy for a minor child if the adoption were granted and that
12 the adoption is not in the best interest of the child. The
13 person seeking primary residence or contact with the child may
14 produce evidence to rebut the presumption.

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

16 **8. Conviction or adjudication for certain sex offenses;**
17 **presumption.** If the court finds that a grandparent has been
18 convicted of an offense listed in section 1653, subsection 6-A,
19 paragraph A in which the victim was under 14 years of age at the
20 time of the offense or has been adjudicated in an action under
21 Title 22, chapter 1071 of sexually abusing a child under 14 years
22 of age at the time of the abuse, it is presumed that the
23 grandparent would create a situation of jeopardy for the child if
24 the adoption were granted and that the adoption is not in the
25 best interest of the child. The grandparent seeking contact with
26 the child may produce evidence to rebut the presumption.

27 **Sec. 5. 19-A MRSA §4007, sub-§1, ¶G,** as amended by PL 2001, c.
28 273, §4, is further amended to read:

29 G. Either awarding some or all temporary parental rights
30 and responsibilities with regard to minor children or
31 awarding temporary rights of contact with regard to minor
32 children, or both, under such conditions that the court
33 finds appropriate as determined in accordance with the best
34 interest of the child pursuant to section 1653, subsections
35 3 to 6 6-B. The court's award of parental rights and
36 responsibilities or rights of contact is not binding in any
37 separate action involving an award of parental rights and
38 responsibilities pursuant to chapter 55 or in a similar
39 action brought in another jurisdiction exercising child
40 custody jurisdiction in accordance with the Uniform Child
41 Custody Jurisdiction and Enforcement Act;

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

43 **3. Conviction or adjudication for certain sex offenses;**
44 **presumption.** If the court finds that a grandparent has been
45 convicted of an offense listed in Title 19-A, section 1653,

2 subsection 6-A, paragraph A in which the victim was under 14
3 years of age at the time of the offense or has been adjudicated
4 in an action under this chapter of sexually abusing a child under
5 14 years of age at the time of the abuse, it is presumed that the
6 grandparent would create a situation of jeopardy for the child if
7 the adoption were granted and that the adoption is not in the
8 best interest of the child. The grandparent seeking visitation
9 with or access to the child may produce evidence to rebut the
10 presumption.

11 **Sec. 7. 22 MRSA §4036, sub-§6 is enacted to read:**

12
13 **6. Conviction or adjudication for certain sex offenses;**
14 **presumption.** In ordering a disposition under this section, if
15 the court finds that a person has been convicted of an offense
16 listed in Title 19-A, section 1653, subsection 6-A, paragraph A
17 in which the victim was under 14 years of age at the time of the
18 offense or has been adjudicated in an action under this chapter
19 of sexually abusing a child under 14 years of age at the time of
20 the abuse, it is presumed that the person would create a
21 situation of jeopardy for the child if the adoption were granted
22 and that the adoption is not in the best interest of the child.
23 The person seeking primary residence or contact with the child
24 may produce evidence to rebut the presumption.

25 SUMMARY

26
27
28 This bill provides that when a court finds that a person has
29 been convicted of certain sexual offenses in which the victim was
30 under 14 years of age, there is a rebuttable presumption that
31 that person would create a situation of jeopardy for the child if
32 any contact were to be permitted and that any contact is not in
33 the best interest of the child. The crimes are the same offenses
34 for which special provisions apply when courts are ordering
35 custody, contact or primary residence under the adoption laws,
36 parental rights and responsibilities laws, grandparent visitation
37 laws and the child protective laws. Those crimes are sexual
38 exploitation of a minor under the Maine Revised Statutes, Title
39 17-A, section 282; gross sexual assault under Title 17-A, section
40 253; sexual abuse of a minor under Title 17-A, section 254;
41 unlawful sexual contact under Title 17-A, former section 255 or
42 current section 255-A; visual sexual aggression against a child
43 under Title 17-A, section 256; sexual misconduct with a child
44 under 14 years of age under Title 17-A, section 258; and a
45 comparable offense in another jurisdiction. Also added to the
46 list is the crime of solicitation of a child by computer to
47 commit a prohibited act under Title 17-A, section 259. The
48 person seeking the contact, custody or primary residence may
49 produce evidence to rebut the presumption.
50

2 The same presumption arises when the person has been
adjudicated in a child protection action under Title 22, chapter
4 1071 of having sexually abused a child under 14 years of age.
See In re Sarah C., 2004 ME 152.