

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1249

H.P. 867

House of Representatives, March 15, 2005

### **An Act To Amend the Crimes of Unlawful Sexual Contact and Unlawful Sexual Touching**

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Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

**Sec. 1. 17-A MRSA §255-A, sub-§1, ¶¶S and T.** as enacted by PL 2001, c. 383, §23 and affected by §156, are amended to read:

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 private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime; ~~or~~

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 private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational 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 crime; ~~;~~

**Sec. 2. 17-A MRSA §255-A, sub-§1, ¶¶U and V** are enacted to read:

U. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client of the actor for mental health therapy. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes and based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse. Violation of this paragraph is a Class D crime; or

V. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client of the actor for mental health therapy and the sexual contact includes penetration. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes and based upon an intimate relationship involving trust and dependency with a

2                   substantial potential for vulnerability and abuse. Violation  
3                   of this paragraph is a Class C crime.

4                   **Sec. 3. 17-A MRSA §260, sub-§1, ¶I**, as corrected by RR 2003, c.  
5                   2, §27, is amended to read:

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

18                  **Sec. 4. 17-A MRSA §260, sub-§1, ¶J**, as enacted by PL 2003, c.  
19                  138, §5, is amended to read:

20                  J. The other person, not the actor's spouse, is in fact  
21                  less than 18 years of age and is a student enrolled in a  
22                  private or public elementary, secondary or special education  
23                  school, facility or institution and the actor, who is at  
24                  least 21 years of age, is a teacher, employee or other  
25                  official in the school district, school union, educational  
26                  unit, school, facility or institution in which the student  
27                  is enrolled. Violation of this paragraph is a Class E  
28                  crime; or

29                  **Sec. 5. 17-A MRSA §260, sub-§1, ¶K** is enacted to read:

30                  K. The actor is a psychiatrist, a psychologist or licensed  
31                  as a social worker or purports to be a psychiatrist, a  
32                  psychologist or licensed as a social worker to the other  
33                  person and the other person, not the actor's spouse, is a  
34                  patient or client of the actor for mental health therapy.  
35                  As used in this paragraph, "mental health therapy" means  
36                  psychotherapy or other treatment modalities intended to  
37                  change behavior, emotions or attitudes and based upon an  
38                  intimate relationship involving trust and dependency with a  
39                  substantial potential for vulnerability and abuse.  
40                  Violation of this paragraph is a Class D crime.

## SUMMARY

2

4           This bill expands the crimes of unlawful sexual contact and  
unlawful sexual touching by prohibiting a psychiatrist,  
6           psychologist or licensed social worker or a purported  
psychiatrist, psychologist or licensed social worker from  
8           engaging in sexual contact or sexual touching with a patient or  
client undergoing mental health therapy by the treating  
psychiatrist, psychologist or licensed social worker.