

MAINE STATE LEGISLATURE

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Date: 4/13/7

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “^A” to H.P. 191, L.D. 220, Bill, “An Act To Clarify and Expand Maine Criminal Laws Related to Sexual Assault”

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

Sec. 1. 17-A MRSA §253, sub-§2, ¶F, as amended by PL 2001, c. 383, §15 and affected by §156, is further amended to read:

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education 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 this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

Sec. 2. 17-A MRSA §253, sub-§2, ¶G, as amended by PL 2001, c. 383, §15 and affected by §156, is further amended to read:

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

Sec. 3. 17-A MRSA §253, sub-§2, ¶I, as amended by PL 2001, c. 383, §16 and affected by §156, is further amended to read:

COMMITTEE AMENDMENT

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

9 **Sec. 4. 17-A MRSA §253, sub-§2, ¶J**, as corrected by RR 2003, c. 2, §25, is
10 amended to read:

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

20 **Sec. 5. 17-A MRSA §253, sub-§2, ¶K** is enacted to read:

21 K. The other person, not the actor's spouse, has not in fact attained 18 years of age
22 and is a student enrolled in a private or public elementary, secondary or special
23 education school, facility or institution and the actor is a law enforcement officer who
24 is an employee of or is assigned to perform duties at the private or public elementary,
25 secondary or special education school, facility or institution. Violation of this
26 paragraph is a Class C crime. It is not a defense to prosecution under this paragraph
27 that the conduct occurred during a school vacation or summer recess if the actor
28 maintained the status described in this paragraph immediately prior to the vacation or
29 recess.

30 **Sec. 6. 17-A MRSA §254, sub-§1, ¶C**, as amended by PL 2001, c. 383, §21 and
31 affected by §156, is further amended to read:

32 C. The person is at least 21 years of age and engages in a sexual act with another
33 person, not the actor's spouse, who is either 16 or 17 years of age and is a student
34 enrolled in a private or public elementary, secondary or special education school,
35 facility or institution and the actor is a teacher, employee or other official in the
36 school district, school union, educational unit, school, facility or institution in which
37 the student is enrolled. Violation of this paragraph is a Class E crime. It is not a
38 defense to prosecution under this paragraph that the conduct occurred during a school
39 vacation or summer recess if the actor maintained the status described in this
40 paragraph immediately prior to the vacation or recess;

41 **Sec. 7. 17-A MRSA §254, sub-§1, ¶E**, as amended by PL 2003, c. 138, §2, is
42 further amended to read:

1 E. The person violates paragraph C and the actor is at least 10 years older than the
2 student. Violation of this paragraph is a Class D crime; or

3 **Sec. 8. 17-A MRSA §254, sub-§1, ¶F**, as enacted by PL 2003, c. 138, §3, is
4 amended to read:

5 F. The person intentionally subjects another person, not the actor's spouse, who is
6 either 14 or 15 years of age to any sexual contact and the actor is at least 10 years
7 older than the other person. Violation of this paragraph is a Class D crime; or

8 **Sec. 9. 17-A MRSA §254, sub-§1, ¶G** is enacted to read:

9 G. The person is at least 21 years of age and engages in a sexual act with another
10 person, not the actor's spouse, who is either 16 or 17 years of age and is a student
11 enrolled in a private or public elementary, secondary or special education school,
12 facility or institution and the actor is a law enforcement officer who is an employee of
13 or is assigned to perform duties at the private or public elementary, secondary or
14 special education school, facility or institution. Violation of this paragraph is a Class
15 E crime. It is not a defense to prosecution under this paragraph that the conduct
16 occurred during a school vacation or summer recess if the actor maintained the status
17 described in this paragraph immediately prior to the vacation or recess.

18 **Sec. 10. 17-A MRSA §255-A, sub-§1, ¶K**, as enacted by PL 2001, c. 383, §23
19 and affected by §156, is amended to read:

20 K. The other person, not the actor's spouse, is in fact less than 18 years of age and is
21 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
23 having instructional, supervisory or disciplinary authority over the student. Violation
24 of this paragraph is a Class D crime. It is not a defense to prosecution under this
25 paragraph that the conduct occurred during a school vacation or summer recess if the
26 actor maintained the status described in this paragraph immediately prior to the
27 vacation or recess;

28 **Sec. 11. 17-A MRSA §255-A, sub-§1, ¶L**, as enacted by PL 2001, c. 383, §23
29 and affected by §156, is amended to read:

30 L. The other person, not the actor's spouse, is in fact less than 18 years of age and is
31 a student enrolled in a private or public elementary, secondary or special education
32 school, facility or institution and the actor is a teacher, employee or other official
33 having instructional, supervisory or disciplinary authority over the student and the
34 sexual contact includes penetration. Violation of this paragraph is a Class C crime. It
35 is not a defense to prosecution under this paragraph that the conduct occurred during
36 a school vacation or summer recess if the actor maintained the status described in this
37 paragraph immediately prior to the vacation or recess;

38 **Sec. 12. 17-A MRSA §255-A, sub-§1, ¶S**, as amended by PL 2005, c. 450, §1,
39 is further amended to read:

40 S. The other person, not the actor's spouse, is in fact less than 18 years of age and is
41 a student enrolled in a private or public elementary, secondary or special education
42 school, facility or institution and the actor, who is at least 21 years of age, is a

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1 teacher, employee or other official in the school district, school union, educational
2 unit, school, facility or institution in which the student is enrolled. Violation of this
3 paragraph is a Class E crime. It is not a defense to prosecution under this paragraph
4 that the conduct occurred during a school vacation or summer recess if the actor
5 maintained the status described in this paragraph immediately prior to the vacation or
6 recess;

7 **Sec. 13. 17-A MRSA §255-A, sub-§1, ¶T**, as amended by PL 2005, c. 450, §1,
8 is further amended to read:

9 T. The other person, not the actor's spouse, is in fact less than 18 years of age and is
10 a student enrolled in a private or public elementary, secondary or special education
11 school, facility or institution and the actor, who is at least 21 years of age, is a
12 teacher, employee or other official in the school district, school union, educational
13 unit, school, facility or institution in which the student is enrolled and the sexual
14 contact includes penetration. Violation of this paragraph is a Class D crime. It is not
15 a defense to prosecution under this paragraph that the conduct occurred during a
16 school vacation or summer recess if the actor maintained the status described in this
17 paragraph immediately prior to the vacation or recess;

18 **Sec. 14. 17-A MRSA §255-A, sub-§1, ¶U**, as enacted by PL 2005, c. 450, §2, is
19 amended to read:

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

28 **Sec. 15. 17-A MRSA §255-A, sub-§1, ¶V**, as enacted by PL 2005, c. 450, §2, is
29 amended to read:

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

38 **Sec. 16. 17-A MRSA §255-A, sub-§1, ¶W** is enacted to read:

39 W. The other person, not the actor's spouse, is in fact less than 18 years of age and is
40 a student enrolled in a private or public elementary, secondary or special education
41 school, facility or institution and the actor, who is at least 21 years of age, is a law
42 enforcement officer who is an employee of or is assigned to perform duties at the
43 private or public elementary, secondary or special education school, facility or

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1 institution. Violation of this paragraph is a Class E crime. It is not a defense to
2 prosecution under this paragraph that the conduct occurred during a school vacation
3 or summer recess if the actor maintained the status described in this paragraph
4 immediately prior to the vacation or recess.

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

7 F. The other person, not the actor's spouse, is in fact less than 18 years of age and is
8 a student enrolled in a private or public elementary, secondary or special education
9 school, facility or institution and the actor is a teacher, employee or other official
10 having instructional, supervisory or disciplinary authority over the student. Violation
11 of this paragraph is a Class D crime. It is not a defense to prosecution under this
12 paragraph that the conduct occurred during a school vacation or summer recess if the
13 actor maintained the status described in this paragraph immediately prior to the
14 vacation or recess;

15 **Sec. 18. 17-A MRSA §260, sub-§1, ¶J**, as amended by PL 2005, c. 450, §4, is
16 further amended to read:

17 J. The other person, not the actor's spouse, is in fact less than 18 years of age and is
18 a student enrolled in a private or public elementary, secondary or special education
19 school, facility or institution and the actor, who is at least 21 years of age, is a
20 teacher, employee or other official in the school district, school union, educational
21 unit, school, facility or institution in which the student is enrolled. Violation of this
22 paragraph is a Class E crime. It is not a defense to prosecution under this paragraph
23 that the conduct occurred during a school vacation or summer recess if the actor
24 maintained the status described in this paragraph immediately prior to the vacation or
25 recess; or

26 **Sec. 19. 17-A MRSA §260, sub-§1, ¶K**, as enacted by PL 2005, c. 450, §5, is
27 amended to read:

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

36 **Sec. 20. 17-A MRSA §260, sub-§1, ¶L** is enacted to read:

37 L. The other person, not the actor's spouse, is in fact less than 18 years of age and is
38 a student enrolled in a private or public elementary, secondary or special education
39 school, facility or institution and the actor is a law enforcement officer who is an
40 employee of or is assigned to perform duties at the private or public elementary,
41 secondary or special education school, facility or institution. Violation of this
42 paragraph is a Class D crime. It is not a defense to prosecution under this paragraph
43 that the conduct occurred during a school vacation or summer recess if the actor

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1 maintained the status described in this paragraph immediately prior to the vacation or
2 recess.'

3 **SUMMARY**

4 This amendment replaces the bill. The amendment clarifies that for purposes of
5 sexual assault in which the victim of the crime is a student at a private or public
6 elementary, secondary or special education school, facility or institution, the law
7 recognizes that a teacher or other school employee's instructional, supervisory or
8 disciplinary authority over the student does not disappear during school vacations and
9 summer recess. The teacher or other school employee may not raise as a defense to
10 prosecution that the conduct occurred during a school vacation or summer recess if the
11 teacher or other school employee maintained that status immediately prior to the vacation
12 or recess. The amendment also specifies that the same standards be applied to law
13 enforcement officers who are employees of or are assigned to perform duties at a private
14 or public elementary, secondary or special education school, facility or institution.

15 **FISCAL NOTE REQUIRED**
16 **(See attached)**



123rd MAINE LEGISLATURE

LD 220

LR 495(02)

An Act To Clarify and Expand Maine Criminal Laws Related to Sexual Assault

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class C, D and E crimes; increases correctional and judicial costs