

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 220

H.P. 191

House of Representatives, January 16, 2007

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

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GERZOFSKY of Brunswick.  
Cosponsored by Senator SHERMAN of Aroostook and  
Representatives: BLANCHETTE of Bangor, SYKES of Harrison.

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

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

4 F. The other person, not the actor's spouse, has not in fact attained the age of 18  
5 years and is a student enrolled in a private or public elementary, secondary or special  
6 education school, facility or institution and the actor is a teacher, employee or other  
7 official having who has, or will have, instructional, supervisory or disciplinary  
8 authority over the student. Violation of this paragraph is a Class C crime;

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

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

19 **Sec. 3. 17-A MRSA §253, sub-§2, ¶J**, as corrected by RR 2003, c. 2, §25, is  
20 amended to read:

21 J. The actor owns, operates or is an employee of an organization, program or  
22 residence that is operated, administered, licensed or funded by the Department of  
23 Health and Human Services and the other person, not the actor's spouse, receives  
24 services from the organization, program or residence and the organization, program  
25 or residence recognizes the other person as a person with mental retardation. It is an  
26 affirmative defense to prosecution under this paragraph that the actor receives  
27 services for mental retardation or is a person with mental retardation as defined in  
28 Title 34-B, section 5001, subsection 3. Violation of this paragraph is a Class C  
29 crime; or

30 **Sec. 4. 17-A MRSA §253, sub-§2, ¶K** is enacted to read:

31 K. The other person, not the actor's spouse, has not in fact attained the age of 18  
32 years of age and is a student enrolled in a private or public elementary, secondary or  
33 special education school, facility or institution and the actor is a law enforcement  
34 officer having law enforcement authority in the jurisdiction in which the other person  
35 is enrolled or resides. Violation of this paragraph is a Class C crime.

36 **Sec. 5. 17-A MRSA §254, sub-§1, ¶C**, as amended by PL 2001, c. 383, §21 and  
37 affected by §156, is further amended to read:

38 C. The person is at least 21 years of age and engages in a sexual act with another  
39 person, not the actor's spouse, who is either 16 or 17 years of age and is a student  
40 enrolled in a private or public elementary, secondary or special education school,

1 facility or institution and the actor is, or will be, a teacher, employee or other official  
2 in the school district, school union, educational unit, school, facility or institution in  
3 which the student is enrolled. Violation of this paragraph is a Class E crime;

4 **Sec. 6. 17-A MRSA §254, sub-§1, ¶E**, as amended by PL 2003, c. 138, §2, is  
5 further amended to read:

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

8 **Sec. 7. 17-A MRSA §254, sub-§1, ¶F**, as enacted by PL 2003, c. 138, §3, is  
9 amended to read:

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

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

14 G. The person is at least 21 years of age and engages in a sexual act with another  
15 person, not the actor's spouse, who is either 16 or 17 years of age and is a student  
16 enrolled in a private or public elementary, secondary or special education school,  
17 facility or institution and the actor is a law enforcement officer having law  
18 enforcement authority in the jurisdiction in which the other person is enrolled or  
19 resides. Violation of this paragraph is a Class E crime.

20 **Sec. 9. 17-A MRSA §255-A, sub-§1, ¶S**, as amended by PL 2005, c. 450, §1, is  
21 further amended to read:

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

28 **Sec. 10. 17-A MRSA §255-A, sub-§1, ¶T**, as amended by PL 2005, c. 450, §1,  
29 is further amended to read:

30 T. 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, who is at least 21 years of age, is, or will  
33 be, a teacher, employee or other official in the school district, school union,  
34 educational unit, school, facility or institution in which the student is enrolled and the  
35 sexual contact includes penetration. Violation of this paragraph is a Class D crime;

36 **Sec. 11. 17-A MRSA §255-A, sub-§1, ¶U**, as enacted by PL 2005, c. 450, §2, is  
37 amended to read:

38 U. The actor is a psychiatrist, a psychologist or licensed as a social worker or  
39 purports to be a psychiatrist, a psychologist or licensed as a social worker to the other

1 person and the other person, not the actor's spouse, is a patient or client of the actor  
2 for mental health therapy. As used in this paragraph, "mental health therapy" means  
3 psychotherapy or other treatment modalities intended to change behavior, emotions  
4 or attitudes and based upon an intimate relationship involving trust and dependency  
5 with a substantial potential for vulnerability and abuse. Violation of this paragraph is  
6 a Class D crime; ~~or~~

7 **Sec. 12. 17-A MRSA §255-A, sub-§1, ¶V**, as enacted by PL 2005, c. 450, §2, is  
8 amended to read:

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

17 **Sec. 13. 17-A MRSA §255-A, sub-§1, ¶W** is enacted to read:

18 W. The other person, not the actor's spouse, is in fact less than 18 years of age and  
19 is a student enrolled in a private or public elementary, secondary or special education  
20 school, facility or institution and the actor, who is at least 21 years of age, is a law  
21 enforcement officer having law enforcement authority in the jurisdiction in which the  
22 other person is enrolled or resides. Violation of this paragraph is a Class E crime; or

23 **Sec. 14. 17-A MRSA §255-A, sub-§1, ¶X** is enacted to read:

24 X. The other person, not the actor's spouse, is in fact less than 18 years of age and is  
25 a student enrolled in a private or public elementary, secondary or special education  
26 school, facility or institution and the actor, who is at least 21 years of age, is a law  
27 enforcement officer having law enforcement authority in the jurisdiction in which the  
28 other person is enrolled or resides and the sexual contact includes penetration.  
29 Violation of this paragraph is a Class D crime.

### 30 SUMMARY

31 The bill clarifies and expands criminal laws relating to sexual assault in which the  
32 victim of the crime is a student at a private or public elementary, secondary or special  
33 education school, facility or institution and the perpetrator of the crime either is, or will  
34 be, a teacher, employee or other official where the victim is enrolled or is a law  
35 enforcement officer where the student resides or is enrolled.