

MAINE STATE LEGISLATURE

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Date: 3/6/08

L.D. 2013
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JUDICIARY

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

COMMITTEE AMENDMENT "A" to H.P. 1397, L.D. 2013, Bill, "An Act To
Extend the Application of Certain Rebuttable Presumptions in the Child Protection Laws"

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

Sec. 1. 18-A MRSA §9-304, sub-§(b-1), ¶(1), as enacted by PL 2005, c. 366,
§1, is amended to read:

(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, or an offense in another jurisdiction that involves conduct that is
substantially similar to that contained in 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

Sec. 2. 19-A MRSA §1653, sub-§6-A, ¶A, as amended by PL 2005, c. 366, §2,
is further amended to read:

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

- (1) Sexual exploitation of a minor, under Title 17-A, section 282;
- (2) Gross sexual assault, under Title 17-A, section 253;
- (3) Sexual abuse of a minor, under Title 17-A, section 254;
- (4) Unlawful sexual contact, under Title 17-A, section 255-A or former section
255;

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- 1 (5) Visual sexual aggression against a child, under Title 17-A, section 256;
- 2 (6) Sexual misconduct with a child under 14 years of age, under Title 17-A,
- 3 section 258;
- 4 (6-A) Solicitation of a child by computer to commit a prohibited act, under Title
- 5 17-A, section 259; or
- 6 (7) An offense in another jurisdiction, ~~including, but not limited to, that of a~~
- 7 ~~state, federal, military or tribal court, that includes the essential elements of an~~
- 8 ~~offense listed that involves conduct that is substantially similar to that contained~~
- 9 ~~in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). For purposes of this~~
- 10 ~~subparagraph, "another jurisdiction" means the Federal Government, the United~~
- 11 ~~States military, the District of Columbia, the Commonwealth of Puerto Rico, the~~
- 12 ~~Commonwealth of the Northern Mariana Islands, the United States Virgin~~
- 13 ~~Islands, Guam, American Samoa and each of the several states except Maine.~~
- 14 ~~"Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has~~
- 15 ~~acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and~~
- 16 ~~the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-~~
- 17 ~~B, subsection 1, paragraph A or B.~~

18 **Sec. 3. 19-A MRSA §1653, sub-§6-B, ¶A,** as enacted by PL 2005, c. 366, §3, is
19 amended to read:

20 A. Has been convicted of an offense listed in ~~Title 19-A, section 1653,~~ subsection
21 6-A, paragraph A in which the victim was a minor at the time of the offense and the
22 person was at least 5 years older than the minor at the time of the offense except that,
23 if the offense was gross sexual assault under Title 17-A, section 253, subsection 1,
24 paragraph B or C, or an offense in another jurisdiction that involves conduct that is
25 substantially similar to that contained in Title 17-A, section 253, subsection 1,
26 paragraph B or C, and the minor victim submitted as a result of compulsion, the
27 presumption applies regardless of the ages of the person and the minor victim at the
28 time of the offense; or

29 **Sec. 4. 19-A MRSA §1803, sub-§8, ¶A,** as enacted by PL 2005, c. 366, §4, is
30 amended to read:

31 A. Has been convicted of an offense listed in ~~Title 19-A,~~ section 1653, subsection
32 6-A, paragraph A in which the victim was a minor at the time of the offense and the
33 grandparent was at least 5 years older than the minor at the time of the offense except
34 that, if the offense was gross sexual assault under Title 17-A, section 253, subsection
35 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is
36 substantially similar to that contained in Title 17-A, section 253, subsection 1,
37 paragraph B or C, and the minor victim submitted as a result of compulsion, the
38 presumption applies regardless of the ages of the grandparent and the minor victim at
39 the time of the offense; or

40 **Sec. 5. 22 MRSA §4005-E, sub-§3, ¶A,** as amended by PL 2007, c. 371, §2, is
41 further amended to read:

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COMMITTEE AMENDMENT "A" to H.P. 1397, L.D. 2013

A. 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 relative 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, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in 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 relative and the minor victim at the time of the offense; or

Sec. 6. 22 MRSA §4035, sub-§2-A, ¶A, as enacted by PL 2005, c. 366, §7, is amended to read:

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

(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 person 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, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in 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 person 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 person seeking custody or contact with the child may produce evidence to rebut the presumption; and'

SUMMARY

This amendment replaces the bill but carries out the original intent to allow criminal convictions from other jurisdictions to be used as the basis of a rebuttable presumption in various court situations involving contact with children.

Current law already allows consideration of offenses in another jurisdiction, including, but not limited to, that of a state, federal, military or tribal court, that include the essential elements of an offense listed in the Maine Revised Statutes, Title 19-A, section 1653, subsection 6-A, paragraph A. This amendment allows the use of a rebuttable presumption that jeopardy exists when a child has contact with a person who was convicted of an offense that includes engaging in substantially similar conduct as gross sexual assault regardless of the ages of the person and the victim, if the minor victim submitted to the sexual act as a result of compulsion.

This amendment amends Title 19-A, section 1653 to use language consistent with Maine Criminal Code terminology when referring to offenses in other jurisdictions, including a definition of "another jurisdiction."