

MAINE STATE LEGISLATURE

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DMC
ROPS

L.D. 624

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Date: 6-9-11

(Filing No. S-286)

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE

6

SENATE

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125TH LEGISLATURE

8

FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to S.P. 205, L.D. 624, Bill, "An Act To
Require a Person Who Commits a Sex Offense against a Dependent or Incapacitated
Adult To Register under the Sex Offender Registration and Notification Act of 1999"

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

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Sec. 1. 17-A MRSA §253, sub-§2, ¶I, as amended by PL 2001, c. 383, §16 and
affected by §156, is further amended to read:

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I. 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 for mental health
therapy of the actor. As used in this paragraph, "mental health therapy" means
psychotherapy or other treatment modalities intended to change behavior, emotions
or attitudes, which therapy is based upon an intimate relationship involving trust and
dependency with a substantial potential for vulnerability and abuse. Violation of this
paragraph is a Class C crime; or

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

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

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Sec. 3. 17-A MRSA §253, sub-§2, ¶¶K and L are enacted to read:

1 K. The actor owns, operates or is an employee of an organization, program or
2 residence that is operated, administered, licensed or funded by the Department of
3 Health and Human Services and the other person, not the actor's spouse, receives
4 services from the organization, program or residence and suffers from a mental
5 disability that is reasonably apparent or known to the actor. Violation of this
6 paragraph is a Class C crime; or

7 L. The actor is employed to provide care to a dependent person, who is not the
8 actor's spouse or domestic partner and who is unable to perform self-care because of
9 advanced age or physical or mental disease, disorder or defect. For the purposes of
10 this paragraph, "domestic partners" means 2 unmarried adults who are domiciled
11 together under a long-term arrangement that evidences a commitment to remain
12 responsible indefinitely for each other's welfare. Violation of this paragraph is a
13 Class C crime.

14 **Sec. 4. 17-A MRSA §255-A, sub-§1, ¶¶R-1 and R-2 are enacted to read:**

15 R-1. The actor owns, operates or is an employee of an organization, program or
16 residence that is operated, administered, licensed or funded by the Department of
17 Health and Human Services and the other person, not the actor's spouse, receives
18 services from the organization, program or residence and suffers from a mental
19 disability that is reasonably apparent or known to the actor. Violation of this
20 paragraph is a Class D crime;

21 R-2. 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 suffers from a mental
25 disability that is reasonably apparent or known to the actor and the sexual contact
26 includes penetration. Violation of this paragraph is a Class C crime;

27 **Sec. 5. 17-A MRSA §255-A, sub-§1, ¶¶U and V, as enacted by PL 2005, c.**
28 **450, §2, are amended to read:**

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

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

1 **Sec. 6. 17-A MRSA §255-A, sub-§1, ¶¶W and X** are enacted to read:

2 W. The actor is employed to provide care to a dependent person, who is not the
3 actor's spouse or domestic partner and who is unable to perform self-care because of
4 advanced age or physical or mental disease, disorder or defect. For the purposes of
5 this paragraph, "domestic partners" means 2 unmarried adults who are domiciled
6 together under a long-term arrangement that evidences a commitment to remain
7 responsible indefinitely for each other's welfare. Violation of this paragraph is a
8 Class D crime; or

9 X. The actor is employed to provide care to a dependent person, who is not the
10 actor's spouse or domestic partner and who is unable to perform self-care because of
11 advanced age or physical or mental disease, disorder or defect and the sexual contact
12 includes penetration. For the purposes of this paragraph, "domestic partners" means
13 2 unmarried adults who are domiciled together under a long-term arrangement that
14 evidences a commitment to remain responsible indefinitely for each other's welfare.
15 Violation of this paragraph is a Class C crime.

16 **Sec. 7. 17-A MRSA §260, sub-§1, ¶J**, as amended by PL 2005, c. 450, §4, is
17 further amended to read:

18 J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a
19 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
21 teacher, employee or other official in the school district, school union, educational
22 unit, school, facility or institution in which the student is enrolled. Violation of this
23 paragraph is a Class E crime; or

24 **Sec. 8. 17-A MRSA §260, sub-§1, ¶K**, as enacted by PL 2005, c. 450, §5, is
25 amended to read:

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

34 **Sec. 9. 17-A MRSA §260, sub-§1, ¶¶L and M** are enacted to read:

35 L. The actor owns, operates or is an employee of an organization, program or
36 residence that is operated, administered, licensed or funded by the Department of
37 Health and Human Services and the other person, not the actor's spouse, receives
38 services from the organization, program or residence and suffers from a mental
39 disability that is reasonably apparent or known to the actor. Violation of this
40 paragraph is a Class D crime; or

41 M. The actor is employed to provide care to a dependent person, who is not the
42 actor's spouse or domestic partner and who is unable to perform self-care because of
43 advanced age or physical or mental disease, disorder or defect. For the purposes of

1 this paragraph, "domestic partners" means 2 unmarried adults who are domiciled
2 together under a long-term arrangement that evidences a commitment to remain
3 responsible indefinitely for each other's welfare. Violation of this paragraph is a
4 Class D crime.

5 **Sec. 10. 34-A MRSA §11203, sub-§6-A** is enacted to read:

6 **6-A. Sex offense; after October 1, 2011.** For persons convicted and sentenced on
7 or after October 1, 2011, "sex offense" means, in addition to the offenses listed in
8 subsection 6, a conviction for one of the following offenses or for an attempt or
9 solicitation of one of the following offenses, without regard to the age of the victim:

10 A. Title 17-A, section 253, subsection 2, paragraphs J, K and L and Title 17-A,
11 section 255-A, subsection 1, paragraphs C, G, Q, R, R-1, R-2, W and X;

12 B. A violation in another jurisdiction that includes the essential elements of an
13 offense listed in paragraph A; or

14 C. A conviction for a military, tribal or federal offense requiring registration
15 pursuant to:

16 (1) The Jacob Wetterling Crimes Against Children and Sexually Violent
17 Offender Registration Act, also known as the Jacob Wetterling Act, Section
18 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public
19 Law 103-322, as amended; or

20 (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law
21 109-248.'

22 **SUMMARY**

23 This amendment replaces the bill. The amendment criminalizes sexual conduct
24 between incapacitated adults and caregivers that is not already criminal. Specifically, the
25 amendment creates new versions of gross sexual assault, unlawful sexual contact and
26 unlawful sexual touching. This amendment criminalizes conduct that is committed
27 against a person who has a mental disability that is reasonably apparent or is known to the
28 actor. The amendment codifies this misconduct in situations where the person with the
29 mental disability either is cared for in a facility licensed or funded by the Department of
30 Health and Human Services or is cared for by a person privately employed to do so. The
31 amendment recognizes that there are other incapacitated adults who may not have mental
32 retardation but are vulnerable to sexual abuse.

33 The amendment also expands the list of sex offenses for which a person must register
34 under the Sex Offender Registration and Notification Act of 1999. Specifically, the
35 amendment directs persons to register for 10 years if convicted and sentenced on or after
36 October 1, 2011 of a sex offense, which includes, in addition to the offenses listed in the
37 Maine Revised Statutes, Title 34-A, section 11203, subsection 6, a conviction for one of
38 the following offenses or for an attempt or solicitation of one of the following offenses,
39 without regard to the age of the victim: Title 17-A, section 253, subsection 2, paragraphs
40 J, K and L and Title 17-A, section 255-A, subsection 1, paragraphs C, G, Q, R, R-1, R-2,
41 W and X.

FISCAL NOTE REQUIRED
(See attached)



Approved: 06/07/11 *MAC*

125th MAINE LEGISLATURE

LD 624

LR 150(02)

**An Act To Require a Person Who Commits a Sex Offense against a Dependent or Incapacitated Adult
To Register under the Sex Offender Registration and Notification Act of 1999**

Fiscal Note for Bill as Amended by Committee Amendment "A" S-286

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 and Class D crimes; increases correctional and judicial costs

Fiscal Detail and Notes

The General Fund cost to incarcerate individual convicted of the new crimes contained in this bill can not be estimated at this time. The number of cases that may be prosecuted under these new offenses is estimated to be one to two every five years.