

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 624

S.P. 205

In Senate, February 17, 2011

**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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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.  
Cosponsored by Representative DION of Portland and  
Senators: BLISS of Cumberland, DIAMOND of Cumberland, Representatives: BRYANT of  
Windham, CEBRA of Naples, CLARKE of Bath, HASKELL of Portland, PLUMMER of  
Windham, WEBSTER of Freeport.

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

2 **Sec. 1. 17-A MRSA §251, sub-§1, ¶H** is enacted to read:

3 H. "Dependent adult" means an adult who has a physical or mental condition that  
4 substantially impairs the adult's ability to adequately provide for that adult's daily  
5 needs. "Dependent adult" includes, but is not limited to, the following:

6 (1) A resident of a nursing home licensed or required to be licensed under Title  
7 22, section 1817;

8 (2) A resident of a facility providing assisted living services licensed or required  
9 to be licensed pursuant to Title 22, section 7801; and

10 (3) A person considered a dependent person under section 555.

11 **Sec. 2. 17-A MRSA §251, sub-§1, ¶I** is enacted to read:

12 I. "Incapacitated adult" means an adult who is impaired by reason of mental illness,  
13 mental deficiency, physical illness or disability to the extent that the adult lacks  
14 sufficient understanding or capacity to make or communicate responsible decisions  
15 concerning that adult's person, or to the extent that the adult cannot effectively  
16 manage or apply that adult's estate to necessary ends.

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

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

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

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

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

1           K. The other person is a dependent adult or incapacitated adult, which is reasonably  
2           apparent or known to the actor, and the actor is employed as a caregiver or otherwise  
3           provides care to the person. Violation of this paragraph is a Class C crime.

4           **Sec. 6. 17-A MRSA §255-A, sub-§1, ¶U**, as enacted by PL 2005, c. 450, §2, is  
5 amended to read:

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

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

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

24          **Sec. 8. 17-A MRSA §255-A, sub-§1, ¶W** is enacted to read:

25          W. The other person is a dependent adult or incapacitated adult, which is reasonably  
26          apparent or known to the actor, and the actor is employed as a caregiver or otherwise  
27          provides care to the person. Violation of this paragraph is a Class D crime; or

28          **Sec. 9. 17-A MRSA §255-A, sub-§1, ¶X** is enacted to read:

29          X. The other person is a dependent adult or incapacitated adult, which is reasonably  
30          apparent or known to the actor, and the actor is employed as a caregiver or otherwise  
31          provides care to the person and the sexual contact includes penetration. Violation of  
32          this paragraph is a Class C crime.

33          **Sec. 10. 34-A MRSA §11203, sub-§6**, as amended by PL 2009, c. 365, Pt. B,  
34          §§10 to 12 and affected by §22, is further amended to read:

35          **6. Sex offense.** "Sex offense" means a conviction for one of the following offenses  
36          or for an attempt or solicitation of one of the following offenses if the victim was less  
37          than 18 years of age at the time of the criminal conduct or if the victim was a dependent  
38          or incapacitated adult at the time of the conduct:

39          B. A violation under former Title 17, section 2922; former Title 17, section 2923;  
40          former Title 17, section 2924; Title 17-A, section 253, subsection 2, paragraph E, F,

1 G, H, I ~~or~~ J or K; Title 17-A, section 254; former Title 17-A, section 255, subsection  
2 1, paragraph A, E, F, G, I or J; former Title 17-A, section 255, subsection 1,  
3 paragraph B or D if the crime was not elevated a class under former Title 17-A,  
4 section 255, subsection 3; Title 17-A, section 255-A, subsection 1, paragraph A, B,  
5 C, G, I, J, K, L, M, N, Q, R, S ~~or~~ T, W or X; Title 17-A, section 256; Title 17-A,  
6 section 258; Title 17-A, section 259; Title 17-A, section 282; Title 17-A, section 283;  
7 Title 17-A, section 284; Title 17-A, section 301, subsection 1, paragraph A,  
8 subparagraph (3), unless the actor is a parent of the victim; Title 17-A, section 511,  
9 subsection 1, paragraph D; Title 17-A, section 556; Title 17-A, section 852,  
10 subsection 1, paragraph B; or Title 17-A, section 855;

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

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

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

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

21 **Sec. 11. 34-A MRSA §11203, sub-§10** is enacted to read:

22 **10. Dependent adult.** "Dependent adult" means an adult who has a physical or  
23 mental condition that substantially impairs the adult's ability to adequately provide for  
24 that adult's daily needs. "Dependent adult" includes, but is not limited to, the following:

25 A. A resident of a nursing home licensed or required to be licensed under Title 22,  
26 section 1817;

27 B. A resident of a facility providing assisted living services licensed or required to be  
28 licensed pursuant to Title 22, section 7801; and

29 C. A person considered a dependent person under Title 17-A, section 555.

30 **Sec. 12. 34-A MRSA §11203, sub-§11** is enacted to read:

31 **11. Incapacitated adult.** "Incapacitated adult" means an adult who is impaired by  
32 reason of mental illness, mental deficiency, physical illness or disability to the extent that  
33 the adult lacks sufficient understanding or capacity to make or communicate responsible  
34 decisions concerning that adult's person, or to the extent that the adult cannot effectively  
35 manage or apply that adult's estate to necessary ends.

36 **Sec. 13. Effective date.** This Act takes effect October 1, 2011.

1

**SUMMARY**

2           This bill specifies that an actor who is employed as a caregiver or otherwise provides  
3 care to a person who is a dependent adult or incapacitated adult and who commits gross  
4 sexual assault or unlawful sexual contact against the person whose dependency or  
5 incapacity is reasonably apparent or known to the actor is guilty of committing a sex  
6 offense as defined in the Sex Offender Registration and Notification Act of 1999  
7 requiring a 10-year registration. Registration requirements for persons who commit these  
8 new crimes in the Maine Revised Statutes, Title 17-A, section 253, subsection 2,  
9 paragraph K or Title 17-A, section 255-A, subsection 1, paragraph W or paragraph X do  
10 not apply until October 1, 2011.