

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1392

S.P. 432

In Senate, April 5, 2011

An Act To Increase the Penalty for Sexual Abuse by Certain Offenders

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 DIAMOND of Cumberland.

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. "Family or household member" means a parent, stepparent, legal guardian,
4 sibling, stepsibling, grandparent, stepgrandparent, spouse, former spouse, child,
5 stepchild, cousin, stepcousin, niece, stepniece, nephew, stepnephew, uncle, stepuncle,
6 aunt or stepaunt of the victim or a person who bears an equally significant
7 relationship with the victim or a person who was living in the household of the victim
8 or who previously had lived in the household of the victim or who has care and
9 custody of the victim.

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

11 I. "Position of authority" means a position in which a person:

12 (1) Has supervisory or disciplinary authority over a probationer, parolee, sex
13 offender on supervised release, prisoner on supervised community confinement
14 status or juvenile on community reintegration status, not the person's spouse, or
15 over a probationer, parolee, sex offender, prisoner or juvenile, not the person's
16 spouse, who is detained in a hospital, prison or other institution;

17 (2) Is a teacher, employee or other official having instructional, supervisory or
18 disciplinary authority over a student, not the person's spouse, who has not in fact
19 attained 18 years of age and is enrolled in a private or public elementary,
20 secondary or special education school, facility or institution;

21 (3) Is a teacher, employee or other person having instructional, supervisory or
22 disciplinary authority over another person, not the person's spouse, who has not
23 attained 18 years of age and is a resident in or attending a children's home, day
24 care facility, residential child care facility, drug treatment center, youth camp
25 licensed under Title 22, section 2495 or similar school, facility or institution
26 regularly providing care or services for children;

27 (4) Is a parent, stepparent, foster parent, guardian or other similar person
28 responsible for the long-term care and welfare of another person who has not in
29 fact attained 18 years of age;

30 (5) Is a psychiatrist, a psychologist or licensed as a social worker or purports to
31 be a psychiatrist, a psychologist or licensed as a social worker for another person,
32 not the person's spouse, who is a patient or client for mental health therapy. As
33 used in this subparagraph, "mental health therapy" means psychotherapy or other
34 treatment modalities intended to change behavior, emotions or attitudes, based
35 upon an intimate relationship involving trust and dependency with a substantial
36 potential for vulnerability and abuse; or

37 (6) Owns, operates or is an employee of an organization, program or residence
38 that is operated, administered, licensed or funded by the Department of Health
39 and Human Services and the other person, not the person's spouse, receives
40 services from the organization, program or residence and the organization,

1 program or residence recognizes the other person as a person with mental
2 retardation.

3 **Sec. 3. 17-A MRSA §253, sub-§8** is enacted to read:

4 8. If the State pleads and proves that the person convicted of a violation of
5 subsection 1 or 2 was a family or household member of or in a position of authority over
6 the other person, and being a family or household member of or in a position of authority
7 over the other person is not an element of the offense:

8 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the
9 person was convicted of a violation of subsection 1, the court shall set a definite term
10 of imprisonment not to exceed 40 years; or

11 B. If the person was convicted of a violation of subsection 2, the sentencing class for
12 the violation is one class higher than it would otherwise be.

13 **Sec. 4. 17-A MRSA §254, sub-§5** is enacted to read:

14 5. If the State pleads and proves that the person convicted of a violation of
15 subsection 1 was a family or household member of or in a position of authority over the
16 other person, and being a family or household member of or in a position of authority
17 over the other person is not an element of the offense, the sentencing class for the
18 violation is one class higher than it would otherwise be.

19 **Sec. 5. 17-A MRSA §255-A, sub-§2** is enacted to read:

20 2. If the State pleads and proves that the person convicted of a violation of
21 subsection 1 was a family or household member of or in a position of authority over the
22 other person, and being a family or household member of or in a position of authority
23 over the other person is not an element of the offense:

24 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the
25 sentencing class for the violation under subsection 1 is Class A, the court shall set a
26 definite term of imprisonment not to exceed 40 years; or

27 B. If the sentencing class for the violation under subsection 1 is other than Class A,
28 the sentencing class for the violation is one class higher than it would otherwise be.

29 **Sec. 6. 17-A MRSA §256, sub-§3** is enacted to read:

30 3. If the State pleads and proves that the person convicted of a violation of
31 subsection 1 was a family or household member of or in a position of authority over the
32 other person, the sentencing class for the violation is one class higher than it would
33 otherwise be.

34 **Sec. 7. 17-A MRSA §258, sub-§4** is enacted to read:

35 4. If the State pleads and proves that the person convicted of a violation of
36 subsection 1 or 1-A was a family or household member of or in a position of authority

1 over the other person, the sentencing class for the violation is one class higher than it
2 would otherwise be.

3 **Sec. 8. 17-A MRSA §259, sub-§4** is enacted to read:

4 4. If the State pleads and proves that the person convicted of a violation of
5 subsection 1-A or 1-B was a family or household member of or in a position of authority
6 over the other person, the sentencing class for the violation is one class higher than it
7 would otherwise be.

8 **Sec. 9. 17-A MRSA §260, sub-§2** is enacted to read:

9 2. If the State pleads and proves that the person convicted of a violation of
10 subsection 1 was a family or household member of or in a position of authority over the
11 other person, and being a family or household member of or in a position of authority
12 over the other person is not an element of the offense, the sentencing class for the
13 violation is one class higher than it would otherwise be.

14 **Sec. 10. 17-A MRSA §261, sub-§5** is enacted to read:

15 5. If the State pleads and proves that the person convicted of a violation of
16 subsection 1 or 2 was a family or household member of or in a position of authority over
17 the other person, the sentencing class for the violation is one class higher than it would
18 otherwise be.

19 **Sec. 11. 17-A MRSA §281, sub-§1-A** is enacted to read:

20 1-A. "Family or household member" has the same meaning as in section 251,
21 subsection 1, paragraph H.

22 **Sec. 12. 17-A MRSA §281, sub-§3-A** is enacted to read:

23 3-A. "Position of authority" means a position in which a person:

24 A. Has supervisory or disciplinary authority over a probationer, parolee, sex offender
25 on supervised release, prisoner on supervised community confinement status or
26 juvenile on community reintegration status, not the person's spouse, or over a
27 probationer, parolee, sex offender, prisoner or juvenile, not the person's spouse, who
28 is detained in a hospital, prison or other institution;

29 B. Is a teacher, employee or other official having instructional, supervisory or
30 disciplinary authority over a student, not the person's spouse, who is a minor and is
31 enrolled in a private or public elementary, secondary or special education school,
32 facility or institution;

33 C. Is a teacher, employee or other person having instructional, supervisory or
34 disciplinary authority over another person, not the person's spouse, who is a minor
35 and is a resident in or attending a children's home, day care facility, residential child
36 care facility, drug treatment center, youth camp licensed under Title 22, section 2495
37 or similar school, facility or institution regularly providing care or services for
38 children;

1 D. Is a parent, stepparent, foster parent, guardian or other similar person responsible
2 for the long-term care and welfare of another person who is a minor;

3 E. Is a psychiatrist, a psychologist or licensed as a social worker or purports to be a
4 psychiatrist, a psychologist or licensed as a social worker for another person, not the
5 person's spouse, who is a patient or client for mental health therapy. As used in this
6 paragraph, "mental health therapy" means psychotherapy or other treatment
7 modalities intended to change behavior, emotions or attitudes, based upon an intimate
8 relationship involving trust and dependency with a substantial potential for
9 vulnerability and abuse; or

10 F. Owns, operates or is an employee of an organization, program or residence that is
11 operated, administered, licensed or funded by the Department of Health and Human
12 Services and the other person, not the person's spouse, receives services from the
13 organization, program or residence and the organization, program or residence
14 recognizes the other person as a person with mental retardation.

15 **Sec. 13. 17-A MRSA §282, sub-§3** is enacted to read:

16 3. If the State pleads and proves that the person convicted of a violation of
17 subsection 1 was a family or household member of or in a position of authority over the
18 other person, and being a family or household member of the other person is not an
19 element of the offense:

20 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the
21 sentencing class for the violation under subsection 1 is Class A, the court shall set a
22 definite term of imprisonment not to exceed 40 years; or

23 B. If the sentencing class for the violation under subsection 1 is other than Class A,
24 the sentencing class for the violation is one class higher than it would otherwise be.

25 **Sec. 14. 17-A MRSA §283, sub-§4** is enacted to read:

26 4. If the State pleads and proves that the person convicted of a violation of
27 subsection 1 was a family or household member of or in a position of authority over the
28 other person:

29 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the
30 sentencing class for the violation under subsection 1 is Class A, the court shall set a
31 definite term of imprisonment not to exceed 40 years; or

32 B. If the sentencing class for the violation under subsection 1 is other than Class A,
33 the sentencing class for the violation is one class higher than it would otherwise be.

34 **Sec. 15. 17-A MRSA §284, sub-§6** is enacted to read:

35 6. If the State pleads and proves that the person convicted of a violation of
36 subsection 1 was a family or household member of or in a position of authority over the
37 other person, the sentencing class for the violation is one class higher than it would
38 otherwise be.

1
2
3
4
5
6

SUMMARY

This bill increases the sentencing class of a sex offense by one class or, for a Class A offense, increases the maximum term of imprisonment from 30 to 40 years if the offender is a family or household member of or in a position of authority over the victim and being a family or household member of or in a position of authority over the victim is not an element of the offense.