

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 scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

Sec. 13. 22 MRSA §7802, sub-§1-A, as enacted by PL 1987, c. 511, Pt. B, §3, is amended to read:

1-A. Consolidation of functions. All staff performing general licensing functions within the Bureau of ~~Social~~ Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

Sec. 14. Transition provision. The Bureau of Child and Family Services shall be the successor in every way to the powers, duties and functions of the former Bureau of Social Services and its predecessor, the Bureau of Resource Development.

See title page for effective date.

CHAPTER 401

H.P. 763 - L.D. 1067

An Act to Amend the Laws Relating to Sex Offenses

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

PART A

Sec. 1. 17-A MRSA c. 11, first 2 lines, as amended, are repealed and the following enacted in their place:

CHAPTER 11

SEXUAL ASSAULTS

Sec. 2. 17-A MRSA §251, sub-§1, ¶B, as enacted by PL 1975, c. 499, §1, is repealed.

Sec. 3. 17-A MRSA §252, as amended by PL 1987, c. 255, §1, is repealed.

Sec. 4. 17-A MRSA §253, as amended by PL 1987, c. 255, §2, is repealed and the following enacted in its place:

§253. Gross sexual assault

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E; or

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years.

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The actor has substantially impaired the other person's power to appraise or control the other

person's sexual acts by administering or employing drugs, intoxicants or other similar means;

B. The actor compels or induces the other person to engage in the sexual act by any threat;

C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent;

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act;

E. The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person;

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student;

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person;

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person; or

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.

3. It is a defense to a prosecution under subsection 2, paragraph A, that the other person voluntarily consumed or allowed administration of the substance with knowledge

of its nature, except that it is no defense when the other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment.

4. Violation of subsection 1 is a Class A crime.

5. Violation of subsection 2, paragraph A, B, C, E or H is a Class B crime. Violation of subsection 2, paragraph D, F, G or I is a Class C crime.

Sec. 5. 17-A MRSA §254, sub-§1, as repealed and replaced by PL 1985, c. 495, §9, is amended to read:

1. A person is guilty of sexual abuse of a minor if:

A. Having attained ~~his 19th birthday~~ he the age of 19 years, the person engages in ~~sexual intercourse or a sexual act with another person, not his the actor's spouse, who has attained his 14th birthday the age of 14 years but has not attained his 16th birthday the age of 16 years~~, provided that the actor is at least 5 years older than the other person; ~~or~~.

B. ~~He engages in sexual intercourse or a sexual act with another person who has not attained his 18th birthday and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person.~~

Sec. 6. 17-A MRSA §255, sub-§1, as amended by PL 1985, c. 247, §3, is further amended to read:

1. A person is guilty of unlawful sexual contact if ~~he~~ the person intentionally subjects another person to any sexual contact, and:

A. The other person has not expressly or impliedly acquiesced in ~~such~~ the sexual contact;

B. The other person is unconscious or otherwise physically incapable of resisting, and has not consented to the sexual contact;

C. The other person, not ~~his the actor's~~ spouse, has not in fact attained ~~his 14th birthday~~ the age of 14 years and the actor is at least 3 years older;

D. The other person suffers from a mental disability that is reasonably apparent or known to the actor which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent;

E. The other person, not ~~his the actor's~~ spouse, is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over ~~such~~ the other person; ~~or~~

F. The other person, not ~~his the actor's~~ spouse, has not in fact attained ~~his 18th birthday~~ the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student; ~~or~~

G. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person.

Sec. 7. 17-A MRSA §556, as amended by PL 1977, c. 510, §57, is further amended to read:

§556. Incest

1. A person is guilty of incest if, being at least 18 years of age, ~~he has that person~~ engages in sexual intercourse with another person ~~as to whom he~~ who the actor knows he is related to the actor within the 2nd degree of consanguinity.

1-A. It is a defense to a prosecution under this section that, at the time ~~he~~ the actor engaged in sexual intercourse with the other person, the actor was legally married to the other person.

1-B. As used in this section "sexual intercourse" means any penetration of the female sex organ by the male sex organ. Emission is not required.

2. Incest is a Class D crime.

PART B

Sec. 1. 15 MRSA §1205, first ¶, as amended by PL 1987, c. 564, is further amended to read:

A hearsay statement made by a person under the age of 16 years, describing any incident involving ~~sexual intercourse~~, a sexual act or sexual contact performed with or on the minor by another, shall not be excluded as evidence in criminal proceedings in courts of this State if:

Sec. 2. 17 MRSA §2921, sub-§5, ¶A, as enacted by PL 1977, c. 628, §1, is amended to read:

A. Sexual ~~intercourse or sexual~~ act, as defined in Title 17-A, section 251, subsection 1, ~~paragraphs B and paragraph C;~~

Sec. 3. 17-A MRSA §851, sub-§1, as enacted by PL 1975, c. 499, §1, is amended to read:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in ~~sexual intercourse or a sexual act~~, as defined in ~~chapter 11~~, section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

Sec. 4. 17-A MRSA §851, sub-§1-A, as enacted by PL 1981, c. 611, §1, is amended to read:

1-A. "Engages a prostitute" means providing or agreeing to provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for ~~sexual intercourse or~~ a sexual act as defined in section 251;

Sec. 5. 17-A MRSA §851, sub-§2, ¶B, as repealed and replaced by PL 1977, c. 671, §25-A, is amended to read:

B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution shall include, but not be limited to, an offer, made in a public place, to engage in ~~sexual intercourse or~~ a sexual act, as defined in ~~chapter 11~~, section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person; or

Sec. 6. 17-A MRSA §854, sub-§1, ¶A, as amended by PL 1975, c. 740, §90, is further amended to read:

A. In a public place;

(1) ~~he~~ The actor engages in ~~sexual intercourse or~~ a sexual act, as defined in ~~chapter 11~~, section 251; or

(2) ~~he~~ The actor knowingly exposes ~~his~~ the actor's genitals under circumstances which, in fact, are likely to cause affront or alarm; or

Sec. 7. 17-A MRSA §854, sub-§1, ¶B, as amended by PL 1975, c. 499, §1, is further amended to read:

B. In a private place, ~~he~~ the actor exposes ~~his~~ the actor's genitals with the intention that ~~he~~ the actor be seen from a public place or from another private place.

See title page for effective date.

CHAPTER 402

S.P. 486 - L.D. 1328

An Act Providing Confidentiality for Public Sector Job Applicants

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

Sec. 1. 5 MRSA §7070, sub-§1, as enacted by PL 1985, c. 785, Pt. B, §38, is repealed and the following enacted in its place:

1. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the appli-

cant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

Sec. 2. 30-A MRSA §503, sub-§1, ¶A, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106; and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

Sec. 3. 30-A MRSA §2702, sub-§1, ¶A, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106; and as