

MAINE STATE LEGISLATURE

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*State Of Maine
122nd Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Criminal Justice and Public Safety*

July 2006

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Sen. John M. Nutting
Sen. Dean F. Clukey*

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Maine State Legislature



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122nd Maine Legislature Second Regular Session

Summary of Legislation Before The Joint Standing Committees

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills considered by the committees. It is arranged alphabetically by committee name and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla/billsumm.htm).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CON RES XXX.....	Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....	Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....	House & Senate disagree; bill died
DIED IN CONCURRENCE.....	One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....	Action incomplete when session ended; bill died
EMERGENCY.....	Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....	Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....	Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....	Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY.....	Ruled out of order by the presiding officers; bill died
INDEF PP.....	Bill Indefinitely Postponed
ONTP.....	Ought Not To Pass report accepted
OTP-ND.....	Committee report Ought To Pass In New Draft
P&S XXX.....	Chapter # of enacted Private & Special Law
PASSED.....	Joint Order passed in both bodies
PUBLIC XXX.....	Chapter # of enacted Public Law
RESOLVE XXX.....	Chapter # of finally passed Resolve
UNSIGNED (Pocket Veto).....	Bill held by Governor
VETO SUSTAINED.....	Legislature failed to override Governor's Veto

Please note that the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is August 23, 2006.

Joint Standing Committee on Criminal Justice and Public Safety

LD 1717

An Act Regarding the Sentencing of Persons Convicted of Gross Sexual Assault against Victims under 12 Years of Age

PUBLIC 673

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-1058
	OTP-AM MIN	

LD 1717 proposed to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the duration of the probation. The bill also proposed to create a mandatory life sentence of imprisonment for a person convicted of gross sexual assault against another person who has not attained 12 years of age if that person has a prior conviction for gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age.

Committee Amendment “C” (H-1058) was the final majority report of the Joint Standing Committee on Criminal Justice and Public Safety. This amendment was adopted after the bill was recommitted to the committee. This amendment proposed to replace the bill and to make the following changes to the sentencing laws.

The amendment proposed to amend the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release of sex offenders, by specifying that supervised release is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The period of supervised release commences on the date the person is released from confinement, runs for the duration of the person's life and must include the best available monitoring technology. The amendment also proposed to specify that if the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and again is subject to revocation, if warranted.

The amendment also proposed to specify that if the State pleads and proves that the crime of gross sexual assault was committed against a person who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, pursuant to Title 17-A, section 1252-C, subsection 1, the amendment proposed that the court shall select a term of at least 20 years.

Committee Amendment “D” (H-1059) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety after the bill was recommitted to the committee. This amendment was the same amendment as the minority report, Committee Amendment “A” (H-794) and was not adopted.

Committee Amendment “A” (H-794) was one of 2 initial minority reports of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to correct a drafting error in the bill in order to reflect the bill's original intent, which was to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for a first offense gross sexual assault against a person who has not attained 12 years of age. This amendment was not adopted.

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Committee Amendment “B” (H-795) proposed to replace the bill and was one of 2 initial minority reports of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to create at least a 25-year minimum mandatory sentence of imprisonment for a 2nd offense of gross sexual assault against a person who has not attained 12 years of age. This amendment was not adopted.

House Amendment “A” (H-837) proposed to replace the bill and to make the following changes to the sentencing laws.

1. The amendment proposed to direct the court to impose a sentencing alternative of a term of imprisonment for any term of years or a term of life for a person convicted of committing gross sexual assault against a person who has not attained 12 years of age.
2. The amendment proposed to require that, if a person does not receive a sentence of imprisonment for life for committing gross sexual assault against a person who has not attained 12 years of age, the court shall then impose a period of supervised release for life following the period of imprisonment. For this offense, a person would be sentenced to supervised release instead of having a sentencing alternative of probation.
3. The amendment proposed to amend the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release for sex offenders, by specifying that supervised release after release from prison is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The amendment also specifies that if the court revoked a period of supervised release the court would have to require the person to serve time in prison under the custody of the Department of Corrections. This time in prison could equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that was not required to be served in prison would remain in effect to be served after the person's release and again would be repeatedly subject to revocation, if warranted. This amendment was not adopted.

House Amendment “A” to Committee Amendment “A” (H-1021) proposed to replace the bill with the essential elements of LD 2108.

As amended, the bill proposed to require a court, in a case involving gross sexual assault against a victim who has not yet attained 12 years of age, to specify a term of imprisonment for any term of years, including a term that exceeds 30 years, which is the maximum allowed for a Class A crime. In making its determination, the court would be required to start with a basic period of imprisonment of 20 years; using that term as a starting point, the court could then increase or decrease the term of imprisonment based upon all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest.

This amendment also proposed to impose probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the duration of the probation. This amendment was not adopted.

House Amendment “A” to Committee Amendment “C” (H-1062) proposed to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the

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duration of the probation. The amendment also proposed to create a mandatory life sentence of imprisonment for a person convicted of gross sexual assault against another person who has not attained 12 years of age if that person has a prior conviction for gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age. This amendment was not adopted.

House Amendment “B” (H-970) proposed to replace the bill and create the new crime of aggravated gross sexual assault. A person would have been guilty of aggravated gross sexual assault if that person engaged in a sexual act with another person who had not yet attained 12 years of age and who submitted as a result of the use of physical force, a threat to use physical force or a combination thereof that made the other person unable to physically repel the actor or produced in that other person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that other person or another human being. The amendment proposed that a violation of aggravated gross sexual assault would be subject to a minimum sentence of incarceration of 25 years, none of which could be suspended. When released from prison, a person convicted of aggravated gross sexual assault would be subject to supervision, including electronic monitoring, by the Department of Corrections for the duration of the probation. This amendment was not adopted.

House Amendment “B” to Committee Amendment “C” (H-1070) proposed to prohibit a person who is convicted and sentenced as a 10-year registrant or as a lifetime registrant under the Sex Offender Registration and Notification Act of 1999 from establishing or maintaining a residence or a domicile in a municipality that does not have its own police department or other law enforcement agency that is capable of responding to any call within 5 minutes. This amendment was not adopted.

House Amendment “C” (H-978) proposed to retain the mandatory minimum sentences of imprisonment specified in the bill of 25 years for a person who is convicted of gross sexual assault when the victim is less than 12 years of age and life for a repeat offender, except that this amendment proposed to allow the court to impose a minimum sentence of 10 years for a first-time offender and a minimum sentence of 25 years for a repeat offender if the prosecuting attorney and the legal guardian of the victim submit a statement that, while a longer term of imprisonment is appropriate, the harm to the victim from requiring the victim to testify exceeds the benefit to society of incarcerating the defendant for a longer period of time. This amendment was not adopted.

House Amendment “C” to Committee Amendment “C” (H-1071) proposed to change the names of the crimes of gross sexual assault and sexual abuse of a minor to rape and child molestation. The amendment also proposed to require the Department of Public Safety, State Bureau of Identification to distribute information contained in the sex offender registry to town clerks of towns that do not have police departments. The amendment also proposed to require a law enforcement agency to notify the bureau by electronic mail if the law enforcement agency has a registrant in its custody. This amendment was not adopted.

House Amendment “D” (H-979) proposed to strike the provisions of the bill that apply a 25-year sentence of imprisonment to a person who commits gross sexual assault against a victim who has not yet attained 12 years of age and a life sentence of imprisonment for a person who has previously been convicted of committing gross sexual assault against a victim who has not yet attained 12 years of age. Under the bill, neither sentence may be suspended by the court.

The amendment proposed instead to authorize a term of imprisonment for any term of years, including a term that exceeds 30 years, the maximum term of imprisonment for a Class A crime.

This amendment proposed to specify that the basic period of imprisonment for a person who commits gross sexual assault against a victim who has not yet attained 12 years of age is 20 years. Under current law, the court may increase or decrease the term of imprisonment based upon all other relevant sentencing factors, both

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aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest. This amendment was not adopted.

House Amendment “D” to Committee Amendment “C” (H-1072) proposed to prohibit a registrant under the Sex Offender Registration and Notification Act of 1999 from residing within 1,000 feet of the residence of any child, a school, a licensed child care facility, a certified home day care provider or a playground. This amendment was not adopted.

House Amendment “E” to Committee Amendment “C” (H-1073) proposed to provide a procedure for the commitment of a person determined to be a sexually violent predator if a court finds that the person has a mental abnormality or personality disorder that makes it likely that the person will engage in predatory acts of sexual violence if not confined in a secure facility. The amendment proposed to provide protections, care and treatment to a person who is committed and to provide an annual review of each case. The amendment proposed that notice of release or discharge is required for victims, witnesses and other persons identified by the prosecuting attorney. This amendment proposed to designate the Commissioner of Corrections and the Commissioner of Health and Human Services as responsible for providing secure facilities for sexually violent predators. This amendment proposed to coordinate release from a secure facility for sexually violent predators with supervised release for sex offenders under the Maine Revised Statutes, Title 17-A, chapter 50. The amendment also proposed to add an appropriations and allocations section. This amendment was not adopted.

House Amendment “F” to Committee Amendment “C” (H-1075) proposed to create the new crime of aggravated gross sexual assault. A person would have been guilty of aggravated gross sexual assault if that person engaged in a sexual act with another person who had not yet attained 12 years of age and who submitted as a result of the use of physical force, a threat to use physical force or a combination thereof that made the other person unable to physically repel the actor or produced in that other person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that other person or another human being. The amendment proposed that a violation of aggravated gross sexual assault would be subject to a minimum sentence of incarceration of 25 years, none of which could be suspended. When released from prison, a person convicted of aggravated gross sexual assault would be subject to supervision, including electronic monitoring, by the Department of Corrections for the duration of the probation. This amendment was not adopted.

Enacted law summary

Public Law 2005, chapter 673 amends the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release of sex offenders, by specifying that supervised release is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The period of supervised release commences on the date the person is released from confinement, runs for the duration of the person's life and must include the best available monitoring technology. Public Law 2005, chapter 673 specifies that if the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and again is subject to revocation, if warranted.

Public Law 2005, chapter 673 also specifies that if the State pleads and proves that the crime of gross sexual assault was committed against a person who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the

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sentencing process, pursuant to Title 17-A, section 1252-C, subsection 1, the court shall select a term of at least 20 years.

LD 1718 **An Act To Amend the Law Relating to the Crime of Visual Sexual Aggression against a Child** **PUBLIC 655**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-766 H-826 BLANCHETTE

LD 1718 proposed to amend the violation of privacy law to make it a Class C crime if the victim of the crime has not in fact attained 16 years of age at the time of the offense. Violation of privacy is currently a Class D crime.

Committee Amendment “A” (H-766) proposed to replace the bill and amend the crime of visual sexual aggression against a child, instead of amending the crime of violation of privacy. This amendment proposed to create a new version of visual sexual aggression against a child that requires that, for the purpose of arousing or gratifying sexual desire, a person at least 18 years of age intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person in a private place. The crime also proposed to provide that the victim is not the actor's spouse and has not in fact attained 14 years of age, and that the act is carried out under circumstances in which a reasonable person would expect to be safe from such visual surveillance. The amendment proposed that the new crime is a Class D crime, unless committed against a person who has not attained 12 years of age, in which case it is a Class C crime.

The crime of visual sexual aggression against a child falls within chapter 11 of the Maine Criminal Code, which means that a person convicted of the Class D version, as well as the Class C version of this crime, may be subject to the sentencing alternative of probation. As proposed this amendment also makes the person convicted of this prohibited conduct subject to the requirements of the Sex Offender Registration and Notification Act of 1999.

House Amendment “A” to Committee Amendment “A” (H-826) proposed to restore language that was inadvertently omitted from the committee amendment.

Enacted law summary

Public Law 2005, chapter 655 creates a new version of visual sexual aggression against a child that requires that, for the purpose of arousing or gratifying sexual desire, a person at least 18 years of age intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person in a private place. The crime also provides that the victim is not the actor's spouse and has not in fact attained 14 years of age, and that the act is carried out under circumstances in which a reasonable person would expect to be safe from such visual surveillance. This new crime is a Class D crime, unless committed against a person who has not attained 12 years of age, in which case it is a Class C crime.

The crime of visual sexual aggression against a child falls within chapter 11 of the Maine Criminal Code, which means that a person convicted of the Class D version, as well as the Class C version of this crime, may be subject to the sentencing alternative of probation. This amendment also makes the person convicted of this prohibited conduct subject to the requirements of the Sex Offender Registration and Notification Act of 1999.