

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

**Sec. 1. 17-A MRSA §253, sub-§2, ¶F**, as amended by PL 2001, c. 383, §15 and affected by §156, is further amended to read:

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. Violation of this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 2. 17-A MRSA §253, sub-§2, ¶G**, as amended by PL 2001, c. 383, §15 and affected by §156, is further amended to read:

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. Violation of this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

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

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

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

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; or

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

K. The other person, not the actor's spouse, has not in fact attained 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a law enforcement officer who is an employee of or is assigned to perform duties at the private or public elementary, secondary or special education school, facility or institution. Violation of this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess.

**Sec. 6. 17-A MRSA §254, sub-§1, ¶C**, as amended by PL 2001, c. 383, §21 and affected by §156, is further amended to read:

C. The person is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age 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 in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 7. 17-A MRSA §254, sub-§1, ¶E**, as amended by PL 2003, c. 138, §2, is further amended to read:

E. The person violates paragraph C and the actor is at least 10 years older than the student. Violation of this paragraph is a Class D crime; ~~or~~

**Sec. 8. 17-A MRSA §254, sub-§1, ¶F**, as enacted by PL 2003, c. 138, §3, is amended to read:

F. The person intentionally subjects another person, not the actor's spouse, who is either 14 or 15 years of age to any sexual contact and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime; or

**Sec. 9. 17-A MRSA §254, sub-§1, ¶G** is enacted to read:

G. The person is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a law enforcement officer who is an employee of or is assigned to perform duties at the private or public elementary, secondary or special education school, facility or institution. Violation of this paragraph is a Class E crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess.

**Sec. 10. 17-A MRSA §255-A, sub-§1, ¶K,** as enacted by PL 2001, c. 383, §23 and affected by §156, is amended to read:

K. The other person, not the actor's spouse, is in fact less than 18 years of age 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. Violation of this paragraph is a Class D crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 11. 17-A MRSA §255-A, sub-§1, ¶L,** as enacted by PL 2001, c. 383, §23 and affected by §156, is amended to read:

L. The other person, not the actor's spouse, is in fact less than 18 years of age 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 and the sexual contact includes penetration. Violation of this paragraph is a Class C crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 12. 17-A MRSA §255-A, sub-§1, ¶S,** as amended by PL 2005, c. 450, §1, is further amended to read:

S. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 13. 17-A MRSA §255-A, sub-§1, ¶T,** as amended by PL 2005, c. 450, §1, is further amended to read:

T. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration. Violation of this paragraph is a Class D crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

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

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

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

V. 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 of the actor for mental health therapy and the sexual contact includes penetration. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes and 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

**Sec. 16. 17-A MRSA §255-A, sub-§1, ¶W** is enacted to read:

W. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a law enforcement officer who is an employee of or is assigned to perform duties at the private or public elementary, secondary or special education school, facility or institution. Violation of this paragraph is a Class E crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess.

**Sec. 17. 17-A MRSA §260, sub-§1, ¶F**, as enacted by PL 2003, c. 138, §5, is amended to read:

F. The other person, not the actor's spouse, is in fact less than 18 years of age 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. Violation of this paragraph is a Class D crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess;

**Sec. 18. 17-A MRSA §260, sub-§1, ¶J**, as amended by PL 2005, c. 450, §4, is further amended to read:

J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess; or

**Sec. 19. 17-A MRSA §260, sub-§1, ¶K,** as enacted by PL 2005, c. 450, §5, is amended to read:

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

**Sec. 20. 17-A MRSA §260, sub-§1, ¶L** is enacted to read:

L. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a law enforcement officer who is an employee of or is assigned to perform duties at the private or public elementary, secondary or special education school, facility or institution. Violation of this paragraph is a Class D crime. It is not a defense to prosecution under this paragraph that the conduct occurred during a school vacation or summer recess if the actor maintained the status described in this paragraph immediately prior to the vacation or recess.

**Sec. 21. Appropriations and allocations.** The following appropriations and allocations are made.

**CORRECTIONS, DEPARTMENT OF**

**Correctional Impact Reserve N033**

Initiative: Provides funds for estimated incarceration costs to the state correctional facilities.

GENERAL FUND	2007-08	2008-09
All Other	\$0	\$37,945
GENERAL FUND TOTAL	\$0	\$37,945

## **SUMMARY**

This amendment replaces the bill. The amendment clarifies that, for purposes of sexual assault in which the victim of the crime is a student at a private or public elementary, secondary or special education school, facility or institution, the law recognizes that a teacher or other school employee's instructional, supervisory or disciplinary authority over the student does not disappear during school vacations and summer recess. The teacher or other school employee may not raise as a defense to prosecution under the laws related to sexual assault that the conduct occurred during a school vacation or summer recess if the teacher or other school employee maintained that status immediately prior to the vacation or recess. The amendment also specifies that the same standards be applied to law enforcement officers who are employees of or are assigned to perform duties at a private or public elementary, secondary or special education school, facility or institution. The amendment adds an appropriations and allocations section.

## **FISCAL NOTE REQUIRED**

**(See attached)**