



125th MAINE LEGISLATURE

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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**

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.

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SUMMARY

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