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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 346, L.D. 527, Bill, “An Act To Protect Elders and Vulnerable Adults from Exploitation”

Amend the bill by striking out the title and substituting the following:

'An Act To Protect Vulnerable Adults from Exploitation'

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

'Sec. 1. 17-A MRSA §109, sub-§3, ¶B, as enacted by PL 1981, c. 324, §27, is amended to read:

B. It is given by a person who, by reason of intoxication, physical illness, mental illness or mental defect, including, but not limited to, dementia and other cognitive impairments, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or

Sec. 2. 17-A MRSA §109, sub-§3, ¶C, as enacted by PL 1981, c. 324, §27, is amended to read:

C. It is induced by force, duress or deception or undue influence.

Sec. 3. 17-A MRSA §109, sub-§4 is enacted to read:

4. As used in this section, "undue influence" means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is an incapacitated adult as defined in Title 22, section 3472, subsection 10 or is a dependent adult as defined in Title 22, section 3472, subsection 6 and who is wholly or partially dependent upon that person or others for care or support, either emotional or physical.

Sec. 4. 17-A MRSA §361-A, sub-§3 is enacted to read:

3. Proof that a defendant possessed or controlled property of a person who, by reason of physical illness or mental illness or mental defect, including, but not limited to,

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1 dementia and other cognitive impairments, is manifestly unable or known by the
2 defendant to be unable to make a reasonable judgment with respect to the disposition of
3 the property or proof that a defendant obtained possession or control of the property by
4 undue influence gives rise to a permissible inference under the Maine Rules of Evidence,
5 Rule 303 that the defendant obtained or exercised unauthorized control over the property
6 with the intent to deprive the owner of the property. As used in this subsection, "undue
7 influence" has the same meaning as in section 109, subsection 4.

8 **Sec. 5. 17-A MRSA §903**, as enacted by PL 1975, c. 499, §1, is amended to read:

9 **§903. Misuse of entrusted property**

10 **1.** A person is guilty of misuse of entrusted property if ~~he~~ that person deals with
11 property that has been entrusted to ~~him~~ that person as a fiduciary, or property of the
12 government or of a financial institution, in a manner ~~which he~~ that that person knows is a
13 violation of ~~his~~ that person's duty and ~~which that~~ that involves a substantial risk of loss to the
14 owner or to a person for whose benefit the property was entrusted.

15 **2.** As used in this section "fiduciary" includes any person carrying on fiduciary
16 functions on behalf of an organization ~~which~~ that is a fiduciary.

17 **3.** ~~Misuse~~ Except as provided in subsection 4, misuse of entrusted property is a Class
18 D crime.

19 **4.** If a misuse of entrusted property results in the loss of a vulnerable person's
20 property or the loss of property entrusted to a person for the benefit of a vulnerable
21 person and, at the time of the offense, the owner or the beneficiary of the property is a
22 vulnerable person:

23 A. If the value of the property is more than \$1,000 but not more than \$10,000,
24 the misuse of entrusted property is a Class C crime; and

25 B. If the value of the property is more than \$10,000, the misuse of entrusted
26 property is a Class B crime.

27 As used in this subsection, "vulnerable person" means an incapacitated adult as defined in
28 Title 22, section 3472, subsection 10 or a dependent adult as defined in Title 22, section
29 3472, subsection 6.'

30 **SUMMARY**

31 This amendment replaces the bill and does the following.

32 1. Current law provides that consent is not a defense against a charge involving a
33 crime against the person or property of another if the consent is given by a person who
34 for certain reasons, including mental illness or defect, is unable to make a reasonable
35 judgment regarding the conduct that constitutes the crime. This amendment includes
36 physical illness among these reasons and clarifies that mental illness or defect includes
37 dementia and other cognitive impairments.

38 2. It creates a permissible inference under the Maine Rules of Evidence, Rule 303
39 that a defendant exercised unauthorized control of a property with the intent to deprive a
40 person of that property if there is proof that the defendant possessed or controlled the

1 property of a person who, by reason of physical illness or mental illness or defect, is
2 manifestly unable or known by the defendant to be unable to make a reasonable judgment
3 with respect to the disposition of that property or there is proof that the defendant
4 obtained possession or control of the property by undue influence.

5 3. It defines "undue influence" to mean the misuse of real or apparent authority or
6 the use of manipulation by a person in a trusting, confidential or fiduciary relationship
7 with an incapacitated adult or a dependent adult who is wholly or partially dependent
8 upon that person or others for care or support.

9 4. It provides that a person who is guilty of misuse of entrusted property against a
10 vulnerable person commits a Class C crime if the property is valued at more than \$1,000
11 but not more than \$10,000 and commits a Class B crime if the property is valued at more
12 than \$10,000.

13 5. It defines "vulnerable person" to mean an incapacitated adult as defined in the
14 Maine Revised Statutes, Title 22, section 3472, subsection 10 or a dependent adult as
15 defined in Title 22, section 3472, subsection 6.