1	L.D. 624
2	Date: (Filing No. S-)
3	CRIMINAL JUSTICE AND PUBLIC SAFETY
4	Reproduced and distributed under the direction of the Secretary of the Senate.
5	STATE OF MAINE
6	SENATE
7	125TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10 11	COMMITTEE AMENDMENT "" to S.P. 205, L.D. 624, Bill, "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"
12 13	Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:
14 15	'Sec. 1. 17-A MRSA §253, sub-§2, ¶I, as amended by PL 2001, c. 383, §16 and affected by §156, is further amended to read:
16 17 18 19 20 21 22 23	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; Θ
24 25	Sec. 2. 17-A MRSA §253, sub-§2, ¶J, as corrected by RR 2003, c. 2, §25, is amended to read:
26 27 28 29 30 31 32 33 34	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-:
35	Sec. 3. 17-A MRSA §253, sub-§2, ¶¶K and L are enacted to read:

Page 1 - 125LR0150(02)-1

1K. The actor owns, operates or is an employee of an organization, program or2residence that is operated, administered, licensed or funded by the Department of3Health and Human Services and the other person, not the actor's spouse, receives4services from the organization, program or residence and suffers from a mental5disability that is reasonably apparent or known to the actor. Violation of this6paragraph is a Class C crime; or

7L. The actor is employed to provide care to a dependent person, who is not the
actor's spouse or domestic partner and who is unable to perform self-care because of
advanced age or physical or mental disease, disorder or defect. For the purposes of
this paragraph, "domestic partners" means 2 unmarried adults who are domiciled
together under a long-term arrangement that evidences a commitment to remain
responsible indefinitely for each other's welfare. Violation of this paragraph is a
Class C crime.

14 Sec. 4. 17-A MRSA §255-A, sub-§1, ¶¶R-1 and R-2 are enacted to read:

15R-1. The actor owns, operates or is an employee of an organization, program or16residence that is operated, administered, licensed or funded by the Department of17Health and Human Services and the other person, not the actor's spouse, receives18services from the organization, program or residence and suffers from a mental19disability that is reasonably apparent or known to the actor. Violation of this20paragraph is a Class D crime;

21R-2. The actor owns, operates or is an employee of an organization, program or22residence that is operated, administered, licensed or funded by the Department of23Health and Human Services and the other person, not the actor's spouse, receives24services from the organization, program or residence and suffers from a mental25disability that is reasonably apparent or known to the actor and the sexual contact26includes penetration. Violation of this paragraph is a Class C crime;

27 Sec. 5. 17-A MRSA §255-A, sub-§1, ¶¶U and V, as enacted by PL 2005, c.
28 450, §2, are amended to read:

29 U. The actor is a psychiatrist, a psychologist or licensed as a social worker or 30 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 31 32 for mental health therapy. As used in this paragraph, "mental health therapy" means 33 psychotherapy or other treatment modalities intended to change behavior, emotions 34 or attitudes and based upon an intimate relationship involving trust and dependency 35 with a substantial potential for vulnerability and abuse. Violation of this paragraph is 36 a Class D crime; or

37 V. The actor is a psychiatrist, a psychologist or licensed as a social worker or 38 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 39 40 for mental health therapy and the sexual contact includes penetration. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment 41 42 modalities intended to change behavior, emotions or attitudes and based upon an intimate relationship involving trust and dependency with a substantial potential for 43 44 vulnerability and abuse. Violation of this paragraph is a Class C crime-;

Page 2 - 125LR0150(02)-1

Sec. 6. 17-A MRSA §255-A, sub-§1, ¶¶W and X are enacted to read: 1 2 W. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of 3 advanced age or physical or mental disease, disorder or defect. For the purposes of 4 this paragraph, "domestic partners" means 2 unmarried adults who are domiciled 5 6 together under a long-term arrangement that evidences a commitment to remain 7 responsible indefinitely for each other's welfare. Violation of this paragraph is a 8 Class D crime; or 9 X. The actor is employed to provide care to a dependent person, who is not the 10 actor's spouse or domestic partner and who is unable to perform self-care because of 11 advanced age or physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic partners" means 12 2 unmarried adults who are domiciled together under a long-term arrangement that 13 evidences a commitment to remain responsible indefinitely for each other's welfare. 14 15 Violation of this paragraph is a Class C crime. 16 Sec. 7. 17-A MRSA §260, sub-§1, ¶J, as amended by PL 2005, c. 450, §4, is 17 further amended to read: 18 J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a 19 student enrolled in a private or public elementary, secondary or special education 20 school, facility or institution and the actor, who is at least 21 years of age, is a 21 teacher, employee or other official in the school district, school union, educational 22 unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime; or 23 24 Sec. 8. 17-A MRSA §260, sub-§1, ¶K, as enacted by PL 2005, c. 450, §5, is 25 amended to read: 26 K. The actor is a psychiatrist, a psychologist or licensed as a social worker or 27 purports to be a psychiatrist, a psychologist or licensed as a social worker to the other 28 person and the other person, not the actor's spouse, is a patient or client of the actor 29 for mental health therapy. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions 30 31 or attitudes and based upon an intimate relationship involving trust and dependency 32 with a substantial potential for vulnerability and abuse. Violation of this paragraph is 33 a Class D crime-; 34 Sec. 9. 17-A MRSA §260, sub-§1, ¶¶L and M are enacted to read: 35 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 36 Health and Human Services and the other person, not the actor's spouse, receives 37 38 services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this 39 paragraph is a Class D crime; or 40 M. The actor is employed to provide care to a dependent person, who is not the 41 42 actor's spouse or domestic partner and who is unable to perform self-care because of 43 advanced age or physical or mental disease, disorder or defect. For the purposes of

Page 3 - 125LR0150(02)-1

22

1	this paragraph, "domestic partners" means 2 unmarried adults who are domiciled
2	together under a long-term arrangement that evidences a commitment to remain
3	responsible indefinitely for each other's welfare. Violation of this paragraph is a
4	Class D crime.
5	Sec. 10. 34-A MRSA §11203, sub-§6-A is enacted to read:
6	6-A. Sex offense; after October 1, 2011. For persons convicted and sentenced on
7	or after October 1, 2011, "sex offense" means, in addition to the offenses listed in
8	subsection 6, a conviction for one of the following offenses or for an attempt or
9	solicitation of one of the following offenses, without regard to the age of the victim:
10	A. Title 17-A, section 253, subsection 2, paragraphs J, K and L and Title 17-A,
11	section 255-A, subsection 1, paragraphs C, G, Q, R, R-1, R-2, W and X;
12	B. A violation in another jurisdiction that includes the essential elements of an
13	offense listed in paragraph A; or
14	C. A conviction for a military, tribal or federal offense requiring registration
15	pursuant to:
16	(1) The Jacob Wetterling Crimes Against Children and Sexually Violent
17	Offender Registration Act, also known as the Jacob Wetterling Act, Section
18	170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public
19	Law 103-322, as amended; or
20	(2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law
21	109-248.'

SUMMARY

23 This amendment replaces the bill. The amendment criminalizes sexual conduct 24 between incapacitated adults and caregivers that is not already criminal. Specifically, the amendment creates new versions of gross sexual assault, unlawful sexual contact and 25 unlawful sexual touching. This amendment criminalizes conduct that is committed 26 27 against a person who has a mental disability that is reasonably apparent or is known to the actor. The amendment codifies this misconduct in situations where the person with the 28 29 mental disability either is cared for in a facility licensed or funded by the Department of 30 Health and Human Services or is cared for by a person privately employed to do so. The amendment recognizes that there are other incapacitated adults who may not have mental 31 32 retardation but are vulnerable to sexual abuse.

33 The amendment also expands the list of sex offenses for which a person must register 34 under the Sex Offender Registration and Notification Act of 1999. Specifically, the 35 amendment directs persons to register for 10 years if convicted and sentenced on or after October 1, 2011 of a sex offense, which includes, in addition to the offenses listed in the 36 37 Maine Revised Statutes, Title 34-A, section 11203, subsection 6, a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses, 38 39 without regard to the age of the victim: Title 17-A, section 253, subsection 2, paragraphs 40 J, K and L and Title 17-A, section 255-A, subsection 1, paragraphs C, G, O, R, R-1, R-2, W and X. 41

Page 4 - 125LR0150(02)-1

COMMITTEE AMENDMENT " " to S.P. 205, L.D. 624

Page 5 - 125LR0150(02)-1