



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1392

S.P. 432

In Senate, April 5, 2011

### **An Act To Increase the Penalty for Sexual Abuse by Certain Offenders**

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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 DIAMOND of Cumberland.

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. "Family or household member" means a parent, stepparent, legal guardian,  
4 sibling, stepsibling, grandparent, stepgrandparent, spouse, former spouse, child,  
5 stepchild, cousin, stepcousin, niece, stepniece, nephew, stepnephew, uncle, stepuncle,  
6 aunt or stepaunt of the victim or a person who bears an equally significant  
7 relationship with the victim or a person who was living in the household of the victim  
8 or who previously had lived in the household of the victim or who has care and  
9 custody of the victim.

10 **Sec. 2. 17-A MRSA §251, sub-§1, ¶I** is enacted to read:

11 I. "Position of authority" means a position in which a person:

12 (1) Has supervisory or disciplinary authority over a probationer, parolee, sex  
13 offender on supervised release, prisoner on supervised community confinement  
14 status or juvenile on community reintegration status, not the person's spouse, or  
15 over a probationer, parolee, sex offender, prisoner or juvenile, not the person's  
16 spouse, who is detained in a hospital, prison or other institution;

17 (2) Is a teacher, employee or other official having instructional, supervisory or  
18 disciplinary authority over a student, not the person's spouse, who has not in fact  
19 attained 18 years of age and is enrolled in a private or public elementary,  
20 secondary or special education school, facility or institution;

21 (3) Is a teacher, employee or other person having instructional, supervisory or  
22 disciplinary authority over another person, not the person's spouse, who has not  
23 attained 18 years of age and is a resident in or attending a children's home, day  
24 care facility, residential child care facility, drug treatment center, youth camp  
25 licensed under Title 22, section 2495 or similar school, facility or institution  
26 regularly providing care or services for children;

27 (4) Is a parent, stepparent, foster parent, guardian or other similar person  
28 responsible for the long-term care and welfare of another person who has not in  
29 fact attained 18 years of age;

30 (5) Is a psychiatrist, a psychologist or licensed as a social worker or purports to  
31 be a psychiatrist, a psychologist or licensed as a social worker for another person,  
32 not the person's spouse, who is a patient or client for mental health therapy. As  
33 used in this subparagraph, "mental health therapy" means psychotherapy or other  
34 treatment modalities intended to change behavior, emotions or attitudes, based  
35 upon an intimate relationship involving trust and dependency with a substantial  
36 potential for vulnerability and abuse; or

37 (6) Owns, operates or is an employee of an organization, program or residence  
38 that is operated, administered, licensed or funded by the Department of Health  
39 and Human Services and the other person, not the person's spouse, receives  
40 services from the organization, program or residence and the organization,

1           program or residence recognizes the other person as a person with mental  
2           retardation.

3           **Sec. 3. 17-A MRSA §253, sub-§8** is enacted to read:

4           8. If the State pleads and proves that the person convicted of a violation of  
5           subsection 1 or 2 was a family or household member of or in a position of authority over  
6           the other person, and being a family or household member of or in a position of authority  
7           over the other person is not an element of the offense:

8           A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the  
9           person was convicted of a violation of subsection 1, the court shall set a definite term  
10           of imprisonment not to exceed 40 years; or

11           B. If the person was convicted of a violation of subsection 2, the sentencing class for  
12           the violation is one class higher than it would otherwise be.

13           **Sec. 4. 17-A MRSA §254, sub-§5** is enacted to read:

14           5. If the State pleads and proves that the person convicted of a violation of  
15           subsection 1 was a family or household member of or in a position of authority over the  
16           other person, and being a family or household member of or in a position of authority  
17           over the other person is not an element of the offense, the sentencing class for the  
18           violation is one class higher than it would otherwise be.

19           **Sec. 5. 17-A MRSA §255-A, sub-§2** is enacted to read:

20           2. If the State pleads and proves that the person convicted of a violation of  
21           subsection 1 was a family or household member of or in a position of authority over the  
22           other person, and being a family or household member of or in a position of authority  
23           over the other person is not an element of the offense:

24           A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the  
25           sentencing class for the violation under subsection 1 is Class A, the court shall set a  
26           definite term of imprisonment not to exceed 40 years; or

27           B. If the sentencing class for the violation under subsection 1 is other than Class A,  
28           the sentencing class for the violation is one class higher than it would otherwise be.

29           **Sec. 6. 17-A MRSA §256, sub-§3** is enacted to read:

30           3. If the State pleads and proves that the person convicted of a violation of  
31           subsection 1 was a family or household member of or in a position of authority over the  
32           other person, the sentencing class for the violation is one class higher than it would  
33           otherwise be.

34           **Sec. 7. 17-A MRSA §258, sub-§4** is enacted to read:

35           4. If the State pleads and proves that the person convicted of a violation of  
36           subsection 1 or 1-A was a family or household member of or in a position of authority

1 over the other person, the sentencing class for the violation is one class higher than it  
2 would otherwise be.

3 **Sec. 8. 17-A MRSA §259, sub-§4** is enacted to read:

4 4. If the State pleads and proves that the person convicted of a violation of  
5 subsection 1-A or 1-B was a family or household member of or in a position of authority  
6 over the other person, the sentencing class for the violation is one class higher than it  
7 would otherwise be.

8 **Sec. 9. 17-A MRSA §260, sub-§2** is enacted to read:

9 2. If the State pleads and proves that the person convicted of a violation of  
10 subsection 1 was a family or household member of or in a position of authority over the  
11 other person, and being a family or household member of or in a position of authority  
12 over the other person is not an element of the offense, the sentencing class for the  
13 violation is one class higher than it would otherwise be.

14 **Sec. 10. 17-A MRSA §261, sub-§5** is enacted to read:

15 5. If the State pleads and proves that the person convicted of a violation of  
16 subsection 1 or 2 was a family or household member of or in a position of authority over  
17 the other person, the sentencing class for the violation is one class higher than it would  
18 otherwise be.

19 **Sec. 11. 17-A MRSA §281, sub-§1-A** is enacted to read:

20 1-A. "Family or household member" has the same meaning as in section 251,  
21 subsection 1, paragraph H.

22 **Sec. 12. 17-A MRSA §281, sub-§3-A** is enacted to read:

23 3-A. "Position of authority" means a position in which a person:

24 A. Has supervisory or disciplinary authority over a probationer, parolee, sex offender  
25 on supervised release, prisoner on supervised community confinement status or  
26 juvenile on community reintegration status, not the person's spouse, or over a  
27 probationer, parolee, sex offender, prisoner or juvenile, not the person's spouse, who  
28 is detained in a hospital, prison or other institution;

29 B. Is a teacher, employee or other official having instructional, supervisory or  
30 disciplinary authority over a student, not the person's spouse, who is a minor and is  
31 enrolled in a private or public elementary, secondary or special education school,  
32 facility or institution;

33 C. Is a teacher, employee or other person having instructional, supervisory or  
34 disciplinary authority over another person, not the person's spouse, who is a minor  
35 and is a resident in or attending a children's home, day care facility, residential child  
36 care facility, drug treatment center, youth camp licensed under Title 22, section 2495  
37 or similar school, facility or institution regularly providing care or services for  
38 children;

1 D. Is a parent, stepparent, foster parent, guardian or other similar person responsible  
2 for the long-term care and welfare of another person who is a minor;

3 E. Is a psychiatrist, a psychologist or licensed as a social worker or purports to be a  
4 psychiatrist, a psychologist or licensed as a social worker for another person, not the  
5 person's spouse, who is a patient or client for mental health therapy. As used in this  
6 paragraph, "mental health therapy" means psychotherapy or other treatment  
7 modalities intended to change behavior, emotions or attitudes, based upon an intimate  
8 relationship involving trust and dependency with a substantial potential for  
9 vulnerability and abuse; or

10 F. Owns, operates or is an employee of an organization, program or residence that is  
11 operated, administered, licensed or funded by the Department of Health and Human  
12 Services and the other person, not the person's spouse, receives services from the  
13 organization, program or residence and the organization, program or residence  
14 recognizes the other person as a person with mental retardation.

15 **Sec. 13. 17-A MRSA §282, sub-§3** is enacted to read:

16 3. If the State pleads and proves that the person convicted of a violation of  
17 subsection 1 was a family or household member of or in a position of authority over the  
18 other person, and being a family or household member of the other person is not an  
19 element of the offense:

20 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the  
21 sentencing class for the violation under subsection 1 is Class A, the court shall set a  
22 definite term of imprisonment not to exceed 40 years; or

23 B. If the sentencing class for the violation under subsection 1 is other than Class A,  
24 the sentencing class for the violation is one class higher than it would otherwise be.

25 **Sec. 14. 17-A MRSA §283, sub-§4** is enacted to read:

26 4. If the State pleads and proves that the person convicted of a violation of  
27 subsection 1 was a family or household member of or in a position of authority over the  
28 other person:

29 A. Notwithstanding the provisions of section 1252, subsection 2, paragraph A, if the  
30 sentencing class for the violation under subsection 1 is Class A, the court shall set a  
31 definite term of imprisonment not to exceed 40 years; or

32 B. If the sentencing class for the violation under subsection 1 is other than Class A,  
33 the sentencing class for the violation is one class higher than it would otherwise be.

34 **Sec. 15. 17-A MRSA §284, sub-§6** is enacted to read:

35 6. If the State pleads and proves that the person convicted of a violation of  
36 subsection 1 was a family or household member of or in a position of authority over the  
37 other person, the sentencing class for the violation is one class higher than it would  
38 otherwise be.

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## **SUMMARY**

This bill increases the sentencing class of a sex offense by one class or, for a Class A offense, increases the maximum term of imprisonment from 30 to 40 years if the offender is a family or household member of or in a position of authority over the victim and being a family or household member of or in a position of authority over the victim is not an element of the offense.