

Title 17-A: MAINE CRIMINAL CODE

Chapter 11: SEX ASSAULTS

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Maine Revised Statutes
Title 17-A: MAINE CRIMINAL CODE
Chapter 11: SEX ASSAULTS

§251. DEFINITIONS AND GENERAL PROVISIONS

1. In this chapter the following definitions apply.

A. "Spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation. [1975, c. 499, §1 (NEW).]

B. [1989, c. 401, Pt. A, §2 (RP).]

C. "Sexual act" means:

(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

(2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

(3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration. [1985, c. 495, §5 (RPR).]

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. [1985, c. 495, §6 (AMD).]

E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.

"Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor. [1991, c. 457, (AMD).]

F. "Safe children zone" means on or within 1,000 feet of the real property comprising a public or private elementary or secondary school or on or within 1,000 feet of the real property comprising a day care center licensed pursuant to Title 22, section 8301-A. [1997, c. 768, §1 (NEW).]

G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire. [2003, c. 138, §1 (NEW).]

[2003, c. 138, §1 (AMD) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §44 (AMD). 1981, c. 252, §1 (AMD). 1985, c. 495, §§5,6 (AMD). 1989, c. 401, §A2 (AMD). 1991, c. 457, (AMD). 1997, c. 768, §1 (AMD). 2003, c. 138, §1 (AMD).

§252. RAPE*(REPEALED)*

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §§45-47 (AMD). 1981, c. 252, §2 (AMD). 1985, c. 247, §1 (AMD). 1985, c. 414, §1 (AMD). 1987, c. 255, §1 (AMD). 1989, c. 401, §A3 (RP).

§253. GROSS SEXUAL ASSAULT

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime; [2003, c. 711, Pt. B, §2 (AMD).]

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or [2003, c. 711, Pt. B, §2 (AMD).]

C. The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime. [2003, c. 711, Pt. B, §2 (NEW).]

[2003, c. 711, Pt. B, §2 (AMD) .]

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, as defined in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime; [2007, c. 474, §1 (AMD).]

B. The actor compels or induces the other person to engage in the sexual act by any threat. Violation of this paragraph is a Class B crime; [2001, c. 383, §15 (AMD); 2001, c. 383, §156 (AFF).]

C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent. Violation of this paragraph is a Class B crime; [2001, c. 383, §15 (AMD); 2001, c. 383, §156 (AFF).]

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. Violation of this paragraph is a Class B crime; [2001, c. 383, §15 (AMD); 2001, c. 383, §156 (AFF).]

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime; [2007, c. 102, §1 (AMD).]

F. The other person, not the actor's spouse, 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; [2015, c. 509, §1 (AMD).]

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, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed under Title 22, section 2495 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; [2013, c. 179, §2 (AMD).]

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime; [2001, c. 383, §16 (AMD); 2001, c. 383, §156 (AFF).]

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 current patient or client of the actor. Violation of this paragraph is a Class C crime; [2011, c. 691, Pt. A, §13 (RPR).]

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 an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime; [2011, c. 542, Pt. A, §11 (AMD).]

K. 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 suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class C crime; or [2011, c. 423, §3 (NEW).]

L. 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. [2011, c. 423, §3 (NEW).]

[2015, c. 509, §1 (AMD).]

3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when:

A. The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or [2007, c. 474, §2 (NEW).]

B. The other person is in fact 14 or 15 years of age. [2007, c. 474, §2 (NEW).]

[2007, c. 474, §2 (RPR).]

4.

[2001, c. 383, §156 (AFF); 2001, c. 383, §18 (RP).]

5.

[2001, c. 383, §156 (AFF); 2001, c. 383, §19 (RP) .]

6. In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the 2nd step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor.

A. When the sentencing class for a prior conviction under this section is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment. [1993, c. 432, §1 (NEW) .]

B. When the sentencing class for a prior conviction under this section is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment. [1993, c. 432, §1 (NEW) .]

C. When the sentencing class for a prior conviction under this section is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment. [1993, c. 432, §1 (NEW) .]

In arriving at the final sentence as the 3rd step in the sentencing process, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.

[2001, c. 383, §20 (AMD); 2001, c. 383, §156 (AFF) .]

7. If the State pleads and proves that a violation of subsection 1 or subsection 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.

[1997, c. 768, §2 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §§48,49 (AMD). 1979, c. 701, §21 (AMD). 1981, c. 252, §3 (AMD). 1983, c. 326, §§1-4 (AMD). 1985, c. 247, §2 (AMD). 1985, c. 414, §§2,3 (AMD). 1985, c. 495, §§7,8 (AMD). 1985, c. 544, (AMD). 1985, c. 737, §A41 (AMD). 1987, c. 255, §2 (AMD). 1989, c. 401, §A4 (RPR). 1991, c. 569, (AMD). 1993, c. 432, §1 (AMD). 1993, c. 687, §§1-3 (AMD). 1995, c. 429, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 768, §2 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 383, §§14-20 (AMD). 2001, c. 383, §156 (AFF). RR 2003, c. 2, §25 (COR). 2003, c. 711, §B2 (AMD). 2007, c. 102, §1 (AMD). 2007, c. 474, §§1, 2 (AMD). 2009, c. 211, Pt. B, §15 (AMD). 2011, c. 423, §§1-3 (AMD). 2011, c. 464, §5 (AMD). 2011, c. 542, Pt. A, §11 (AMD). 2011, c. 691, Pt. A, §13 (AMD). 2013, c. 179, §2 (AMD). 2015, c. 509, §1 (AMD).

§254. SEXUAL ABUSE OF MINORS

1. A person is guilty of sexual abuse of a minor if:

A. The person engages in a sexual act with another person, not the actor's spouse, who is either 14 or 15 years of age and the actor is at least 5 years older than the other person. Violation of this paragraph is a Class D crime; [2001, c. 383, §21 (AMD); 2001, c. 383, §156 (AFF).]

A-1. The person violates paragraph A and the actor knows that the other person is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class C crime; [2001, c. 383, §21 (NEW); 2001, c. 383, §156 (AFF).]

A-2. The person violates paragraph A and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class C crime; [2001, c. 383, §21 (NEW); 2001, c. 383, §156 (AFF).]

B. [1989, Pt. A, §5 (RP).]

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; [2001, c. 383, §21 (AMD); 2001, c. 383, §156 (AFF).]

D. The person violates paragraph C and the actor knows that the student is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class D crime; or [2011, c. 464, §6 (AMD).]

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. [2011, c. 464, §7 (AMD).]

F. [2011, c. 464, §8 (RP).]

[2011, c. 464, §§6-8 (AMD) .]

2. It is a defense to a prosecution under subsection 1, paragraphs A, A-1, A-2 and F, that the actor reasonably believed the other person is at least 16 years of age.

[2003, c. 138, §4 (AMD) .]

3.

[2001, c. 383, §156 (AFF); 2001, c. 383, §21 (RP) .]

4. As used in this section, "related to the actor within the 2nd degree of consanguinity" has the meaning set forth in section 556.

[2001, c. 383, §21 (NEW); 2001, c. 383, §156 (AFF) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §50 (AMD). 1985, c. 495, §§9,10 (AMD). 1989, c. 401, §A5 (AMD). 1993, c. 451, §1 (AMD). 1995, c. 104, §§1-3 (AMD). 1997, c. 460, §§2,3 (AMD). 2001, c. 383, §21 (AMD). 2001, c. 383, §156 (AFF). 2003, c. 138, §§2-4 (AMD). 2011, c. 464, §§6-8 (AMD).

§254-A. WRITTEN NOTIFICATION NOT TO PURSUE CHARGES FOR SEXUAL ABUSE OF A MINOR

A prosecutor who elects not to commence a criminal proceeding for an alleged violation of section 254 shall, at the request of a parent, surrogate parent or guardian of the alleged victim, inform that person in writing of the reason for not commencing the proceeding. [2005, c. 328, §14 (AMD).]

SECTION HISTORY

1995, c. 308, §1 (NEW). 2005, c. 328, §14 (AMD).

§255. UNLAWFUL SEXUAL CONTACT**(REPEALED)**

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §51 (AMD). 1979, c. 701, §22 (AMD). 1983, c. 326, §§5-7 (AMD). 1985, c. 247, §3 (AMD). 1989, c. 401, §A6 (AMD). 1993, c. 451, §2 (AMD). 1993, c. 453, §§1-4 (AMD). 1993, c. 687, §§4-7 (AMD). 1993, c. 717, §1 (AMD). 1995, c. 104, §§4-7 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 460, §4 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 383, §156 (AFF). 2001, c. 383, §22 (RP).

§255-A. UNLAWFUL SEXUAL CONTACT

1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:

- A. The other person has not expressly or impliedly acquiesced in the sexual contact. Violation of this paragraph is a Class D crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- B. The other person has not expressly or impliedly acquiesced in the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- C. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. Violation of this paragraph is a Class D crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- E. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- E-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class B crime; [2003, c. 711, Pt. B, §3 (NEW).]
- F. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- F-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class A crime; [2003, c. 711, Pt. B, §3 (NEW).]
- F-2. The other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime; [2011, c. 464, §9 (NEW).]
- G. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]

- H. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; [2007, c. 102, §2 (AMD).]
- J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2007, c. 102, §3 (AMD).]
- K. The other person, not the actor's spouse, 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; [2015, c. 509, §2 (AMD).]
- L. The other person, not the actor's spouse, 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; [2015, c. 509, §2 (AMD).]
- M. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- N. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- O. The other person submits as a result of compulsion. Violation of this paragraph is a Class C crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- P. The other person submits as a result of compulsion and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [2001, c. 383, §23 (NEW); 2001, c. 383, §156 (AFF).]
- Q. 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 that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime; [2011, c. 542, Pt. A, §12 (AMD).]
- R. 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 that other person as a person with an intellectual disability or autism and the sexual contact includes penetration. It is an affirmative defense to prosecution under

this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime; [2011, c. 542, Pt. A, §12 (AMD).]

R-1. 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 suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; [2011, c. 423, §4 (NEW).]

R-2. 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 suffers from a mental disability that is reasonably apparent or known to the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2011, c. 423, §4 (NEW).]

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; [2005, c. 450, §1 (AMD).]

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; [2005, c. 450, §1 (AMD).]

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 current patient or client of the actor. Violation of this paragraph is a Class D crime; [2011, c. 691, Pt. A, §14 (RPR).]

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 current patient or client of the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [2011, c. 691, Pt. A, §15 (RPR).]

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 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 D crime; or [2011, c. 423, §6 (NEW).]

X. 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 and the sexual contact includes penetration. 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. [2011, c. 423, §6 (NEW).]

[2015, c. 509, §2 (AMD).]

SECTION HISTORY

2001, c. 354, §3 (AMD). 2001, c. 383, §23 (NEW). 2001, c. 383, §156 (AFF). RR 2003, c. 2, §26 (COR). 2003, c. 711, §B3 (AMD). 2005, c. 450, §§1,2 (AMD). 2007, c. 102, §§2, 3 (AMD). 2011, c. 423, §§4-6 (AMD). 2011, c. 464, §§9-11 (AMD). 2011, c. 542, Pt. A, §12 (AMD). 2011, c. 691, Pt. A, §§14, 15 (AMD). 2015, c. 509, §2 (AMD).

§256. VISUAL SEXUAL AGGRESSION AGAINST CHILD

1. A person is guilty of visual sexual aggression against a child if:

A. For the purpose of arousing or gratifying sexual desire or for the purpose of causing affront or alarm, the actor, having in fact attained 18 years of age, exposes the actor's genitals to another person or causes the other person to expose that person's genitals to the actor and the other person, not the actor's spouse, has not in fact attained 14 years of age. Violation of this paragraph is a Class D crime; [2005, c. 655, §1 (AMD).]

B. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, exposes the actor's genitals to another person or causes the other person to expose that person's genitals to the actor and the other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class C crime; [2005, c. 655, §1 (AMD).]

C. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person, not the actor's spouse and not having in fact attained 14 years of age, under circumstances in which a reasonable person would expect to be safe from such visual surveillance. Violation of this paragraph is a Class D crime; or [2007, c. 688, §1 (AMD).]

D. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person, not the actor's spouse and not having in fact attained 12 years of age, under circumstances in which a reasonable person would expect to be safe from such visual surveillance. Violation of this paragraph is a Class C crime. [2007, c. 688, §1 (AMD).]

[2007, c. 688, §1 (AMD) .]

2.

[2003, c. 711, Pt. B, §4 (RP) .]

SECTION HISTORY

1995, c. 72, §1 (NEW). 2003, c. 711, §B4 (RPR). 2005, c. 655, §1 (AMD). 2007, c. 688, §1 (AMD).

§257. FACTORS AIDING IN PREDICTING HIGH-RISK SEX OFFENDERS FOR SENTENCING PURPOSES

1. In assessing for sentencing purposes the risk of repeat offenses by a person convicted of a crime under chapter 11, a court shall treat each of the following factors, if present, as increasing that risk:

A. The victim of the crime is prepubescent; [1995, c. 429, §2 (NEW).]

B. The victim of the crime is the same gender as the offender; [1995, c. 429, §2 (NEW).]

C. The victim of the crime is a total stranger to the offender; and [1995, c. 429, §2 (NEW).]

D. The offender has been previously convicted of a crime under chapter 11 or previously convicted in another jurisdiction for conduct substantially similar to that contained in chapter 11. [2007, c. 476, §3 (AMD).]

A court may also utilize any other factor found by that court to increase the risk of repeat offenses by a person convicted of a crime under chapter 11.

[2007, c. 476, §3 (AMD) .]

SECTION HISTORY

1995, c. 429, §2 (NEW). 2007, c. 476, §3 (AMD). 2007, c. 476, §3 (AMD).

§258. SEXUAL MISCONDUCT WITH A CHILD UNDER 14 YEARS OF AGE

1. A person is guilty of sexual misconduct with a child under 14 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained the age of 14 years, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class D crime.

[2003, c. 711, Pt. B, §5 (AMD) .]

1-A. A person is guilty of sexual misconduct with a child under 12 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained 12 years of age, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class C crime.

[2003, c. 711, Pt. B, §6 (NEW) .]

2. As used in this section, "sexually explicit materials" means any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts a person, minor or adult, engaging in sexually explicit conduct, as that term is defined in section 281.

[2003, c. 711, Pt. B, §7 (AMD) .]

3.

[2003, c. 711, Pt. B, §8 (RP) .]

SECTION HISTORY

1997, c. 143, §1 (NEW). 2003, c. 711, §§B5-8 (AMD).

§259. SOLICITATION OF CHILD BY COMPUTER TO COMMIT A PROHIBITED ACT

(REPEALED)

SECTION HISTORY

1999, c. 349, §3 (NEW). 2001, c. 383, §§24,25 (AMD). 2001, c. 383, §156 (AFF). 2003, c. 711, §§B9-11 (AMD). 2011, c. 597, §2 (RP).

§259-A. SOLICITATION OF A CHILD TO COMMIT A PROHIBITED ACT

1. A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- (1) Is at least 16 years of age;
- (2) Knows or believes that the other person is less than 14 years of age; and
- (3) Is at least 3 years older than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or [2011, c. 597, §3 (NEW).]

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- (1) Is at least 16 years of age;
- (2) Knows or believes that the other person is less than 12 years of age; and
- (3) Is at least 3 years older than the age expressed by the other person.

Violation of this paragraph is a Class C crime. [2011, c. 597, §3 (NEW).]

[2011, c. 597, §3 (NEW).]

2. For purposes of this section, "prohibited act" means:

- A. A sexual act; [2011, c. 597, §3 (NEW).]
- B. Sexual contact; or [2011, c. 597, §3 (NEW).]
- C. Sexual exploitation of a minor pursuant to section 282. [2011, c. 597, §3 (NEW).]

[2011, c. 597, §3 (NEW).]

SECTION HISTORY

2011, c. 597, §3 (NEW).

§260. UNLAWFUL SEXUAL TOUCHING

1. Unlawful sexual touching. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:

- A. The other person has not expressly or impliedly acquiesced in the sexual touching. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]
- B. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]
- C. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]
- D. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]
- E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; [2007, c. 102, §4 (AMD).]

F. The other person, not the actor's spouse, 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; [2015, c. 509, §3 (AMD).]

G. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]

H. The other person submits as a result of compulsion. Violation of this paragraph is a Class D crime; [2003, c. 138, §5 (NEW).]

I. 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 that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime; [2011, c. 542, Pt. A, §13 (AMD).]

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; [2011, c. 423, §7 (AMD).]

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 current patient or client of the actor. Violation of this paragraph is a Class D crime; [2011, c. 691, Pt. A, §16 (RPR).]

L. 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 suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; or [2011, c. 423, §9 (NEW).]

M. 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 D crime. [2011, c. 423, §9 (NEW).]

[2015, c. 509, §3 (AMD) .]

SECTION HISTORY

RR 2003, c. 2, §27 (COR). 2003, c. 138, §5 (NEW). 2005, c. 450, §§3-5 (AMD). 2007, c. 102, §4 (AMD). 2011, c. 423, §§7-9 (AMD). 2011, c. 464, §12 (AMD). 2011, c. 542, Pt. A, §13 (AMD). 2011, c. 691, Pt. A, §16 (AMD). 2015, c. 509, §3 (AMD).

§261. PROHIBITED CONTACT WITH A MINOR; SEX OFFENDER RESTRICTED ZONE

1. A person is guilty of prohibited contact with a minor if that person:

A. Was convicted on or after June 30, 1992 of an offense under this chapter or chapter 12 against another person who had not in fact attained 14 years of age or was convicted on or after June 30, 1992 in another jurisdiction for conduct substantially similar to that contained in this chapter or chapter 12 against another person who had not in fact attained 14 years of age; and [2009, c. 365, Pt. A, §1 (AMD).]

B. [2009, c. 365, Pt. A, §1 (RP).]

C. Intentionally or knowingly initiates direct or indirect contact with another person who has not in fact attained 14 years of age. [2009, c. 365, Pt. A, §1 (AMD).]

Violation of this subsection is a Class E crime.

[2009, c. 365, Pt. A, §1 (AMD) .]

2. A person is guilty of prohibited contact with a minor in a sex offender restricted zone if that person:

A. Was convicted on or after June 30, 1992 of an offense under this chapter or chapter 12 against another person who had not in fact attained 14 years of age or was convicted on or after June 30, 1992 in another jurisdiction for conduct substantially similar to that contained in this chapter or chapter 12 against another person who had not in fact attained 14 years of age; and [2009, c. 365, Pt. A, §2 (AMD).]

B. [2009, c. 365, Pt. A, §2 (RP).]

C. Intentionally or knowingly initiates direct or indirect contact in a sex offender restricted zone with another person who has not in fact attained 14 years of age. [2009, c. 365, Pt. A, §2 (AMD).]

Violation of this subsection is a Class D crime.

[2009, c. 365, Pt. A, §2 (AMD) .]

3. It is an affirmative defense to prosecution under this section that the parent, foster parent, guardian or other similar person responsible for the person who had not in fact attained 14 years of age, knowing the conviction status described in subsections 1 and 2, gave consent that the defendant initiate, have or continue direct or indirect contact. It is also an affirmative defense to prosecution under this section that any contact is incidental to and directly related to the defendant's employment.

[2007, c. 393, §1 (NEW) .]

4. For purposes of this section, "sex offender restricted zone" means the real property comprising a public or private elementary or middle school; the real property comprising a child care center, a child care facility, a day care operated by a family child care provider, a nursery school or a small child care facility as defined under Title 22, section 8301-A; or an athletic field, park, playground, recreational facility, youth camp licensed under Title 22, section 2495 or other place where children are the primary users.

[2009, c. 211, Pt. B, §16 (AMD) .]

SECTION HISTORY

2007, c. 393, §1 (NEW). 2007, c. 518, §6 (AMD). 2009, c. 211, Pt. B, §16 (AMD). 2009, c. 365, Pt. A, §§1, 2 (AMD).

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