

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 17-A MRSA §251, sub-§1, ¶H is enacted to read:

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

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

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

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

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

(3) Is a teacher, employee or other person having instructional, supervisory or disciplinary authority over another person, not the person's spouse, who has not attained 18 years of age and is a resident in or attending a children's home, day care facility, residential child 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;

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

(5) 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 for another person, not the person's spouse, who is a patient or client for mental health therapy. As used in this subparagraph, "mental health therapy"

means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse; or

(6) 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 person'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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Is a teacher, employee or other person having instructional, supervisory or disciplinary authority over another person, not the person's spouse, who is a minor and is a resident in or attending a children's home, day care facility, residential child 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;

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

E. 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 for another person, not the person's spouse, who is a patient or client for mental health therapy. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse; or

F. 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 person'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.

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

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

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

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

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

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

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

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

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

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

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.