

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 6, 2021

LD: 877 An Act To Expand the Definition of Unlawful Sexual Touching

Summary

This bill expands the definition of "sexual touching" in Title 17-A, section 251, sub-§1, ¶B to include kissing on the mouth. Unlawful sexual touching, which requires the actor to intentionally subject the victim to any sexual touching, is prohibited in Title 17-A, §260 (Ferdico page 55-56), ranging from Class D to Class E crimes depending on the circumstances. The most inclusive variant is in paragraph A, when the victim has not expressly or impliedly acquiesced in the sexual touching.

Testimony

Proponents:

1. Senator Diamond presented the bill, testified in support and provided information on unlawful sexual touching and the crime of groping.
2. Elizabeth Ward Saxl, representing the Maine Coalition Against Sexual Assault (MECASA), testified in support and provided written testimony. Ms. Saxl stressed the need to match the prohibited conduct to the nature of the assault, which is sexual in nature. Ms. Saxl also stated that unlawful sexual touching, although the act is sexual, does not require registration on the Sex Offender Registry under Title 34-A, chapter 17.
3. District Attorney Jonathan Sahrbeck, Cumberland County, testified in support of the bill, agreeing with Ms. Saxl that kissing on the mouth is a sexual assault, not a simple assault.

Opponents:

Neither for nor against: 1. Walter McKee, representing the Maine Association of Criminal Defense Lawyers (MACDL), testified in opposition to the bill and submitted written testimony. Mr. McKee noted that kissing on the mouth is already the Class D crime of assault since the actor is causing offensive physical contact, under Title 17-A, section 207, sub-§1, ¶A (Ferdico page 37). Mr. McKee noted that the sexual nature of the conduct could be considered at sentencing by the court.

2. John Pelletier, representing the Criminal Law Advisory Commission, testified against the bill, stressing that the proposed prohibited conduct is already criminalized as assault in Title 17-A, section 207, sub-§1, ¶A. In response to a question Mr. Pelletier stated that all of the conduct already prohibited as unlawful sexual touching under section 260 is prohibited as assault under section 207, sub-§1, ¶A.

Neither for nor against:

None