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Legislative Document

No. 651

S.P. 244

In Senate, March 3, 2015

An Act To Amend Maine's Sex Trafficking and Prostitution Law

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.
Cosponsored by Representative DION of Portland and
Senators: BREEN of Cumberland, BURNS of Washington, DIAMOND of Cumberland,
GERZOFSKY of Cumberland, ROSEN of Hancock, Representatives: FOWLE of Vassalboro,
GUERIN of Glenburn, HOBBS of Saco.

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

2 **Sec. 1. 17-A MRSA §259-A, sub-§1, ¶A**, as enacted by PL 2011, c. 597, §3, is
3 repealed.

4 **Sec. 2. 17-A MRSA §259-A, sub-§1, ¶B**, as enacted by PL 2011, c. 597, §3, is
5 amended to read:

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

9 (1) Is at least 16 years of age;

10 (2) Knows or believes that the other person is less than ~~12~~ 18 years of age; and

11 (3) Is at least 3 years older than the age expressed by the other person.

12 Violation of this paragraph is a Class C crime.

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

14 3. It is not a defense to prosecution under this section that the minor gave consent to
15 an activity under subsection 1.

16 **Sec. 4. 17-A MRSA §284, sub-§1, ¶A**, as amended by PL 2011, c. 50, §1, is
17 further amended to read:

18 A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses
19 with intent to view any book, magazine, newspaper, print, negative, slide, motion
20 picture, computer data file, videotape or other mechanically, electronically or
21 chemically reproduced visual image or material that the person knows or should
22 know depicts another person engaging in sexually explicit conduct, and:

23 (1) The other person has not in fact attained ~~16~~ 18 years of age; or

24 (2) The person knows or has reason to know that the other person has not
25 attained ~~16~~ 18 years of age.

26 Violation of this paragraph is a Class D crime;

27 **Sec. 5. 17-A MRSA §284, sub-§4**, as amended by PL 2005, c. 345, §2, is further
28 amended to read:

29 **4.** Any material that depicts a person who has not attained ~~16~~ 18 years of age
30 engaging in sexually explicit conduct is declared to be contraband and may be seized by
31 the State.

32 **Sec. 6. 17-A MRSA §852, sub-§4** is enacted to read:

33 4. It is not a defense to a violation of subsection 1, paragraph B that the person
34 promoted to engage in prostitution consented to engaging in the prostitution.

1 **Sec. 7. 17-A MRSA §853, sub-§1, ¶B**, as enacted by PL 2013, c. 407, §3, is
2 amended to read:

3 B. The person violates paragraph A and has 2 or more prior convictions in this State
4 for any combination of the Maine offenses listed in this paragraph or for engaging in
5 substantially similar conduct to that of the Maine offenses listed in this paragraph in
6 another jurisdiction. The Maine offenses are any violation of this section or section
7 852, 853-A, 853-B or 855 or attempts to commit any of these crimes. Section 9-A
8 governs the use of prior convictions when determining a sentence. Violation of this
9 paragraph is a Class C crime.

10 **Sec. 8. 17-A MRSA §853, sub-§3** is enacted to read:

11 3. If the person promoted to engage in the prostitution is less than 18 years of age, it
12 is not a defense to prosecution under this section that the person consented to engaging in
13 the prostitution.

14 **Sec. 9. 17-A MRSA §853-A, sub-§4**, as enacted by PL 2013, c. 537, §5, is
15 amended to read:

16 4. It is an affirmative defense to prosecution under this section that the person
17 engaged in prostitution because the person was less than 18 years of age or was
18 compelled to do so as described in section 852, subsection 2.

19 **Sec. 10. 17-A MRSA §855, sub-§4** is enacted to read:

20 4. It is not a defense to a violation of subsection 1 that the person who has not
21 attained 18 years of age and whose prostitution is sought gave consent to the prostitution.

22 **Sec. 11. 22 MRSA §4002, sub-§1**, as amended by PL 2007, c. 304, §10, is
23 further amended to read:

24 **1. Abuse or neglect.** "Abuse or neglect" means a threat to a child's health or welfare
25 by physical, mental or emotional injury or impairment, sexual abuse or exploitation
26 including under Title 17-A, sections 282, 852, 853 and 855, deprivation of essential needs
27 or lack of protection from these or failure to ensure compliance with school attendance
28 requirements under Title 20-A, section 3272, subsection 2, paragraph B or section
29 5051-A, subsection 1, paragraph C, by a person responsible for the child.

30 **Sec. 12. 22 MRSA §4055, sub-§1-A, ¶B**, as amended by PL 1995, c. 481, §3, is
31 further amended to read:

32 B. The victim of any of the following crimes was a child for whom the parent was
33 responsible or the victim was a child who was a member of a household lived in or
34 frequented by the parent and the parent has been convicted of:

- 35 (1) Murder;
- 36 (2) Felony murder;
- 37 (3) Manslaughter;

- 1 (4) Aiding or soliciting suicide;
- 2 (5) Aggravated assault;
- 3 (6) Rape;
- 4 (7) Gross sexual misconduct or gross sexual assault;
- 5 (8) Sexual abuse of minors;
- 6 (9) Incest;
- 7 (10) Kidnapping;
- 8 (11) Promotion of prostitution, sexual exploitation of a minor, sex trafficking or
- 9 aggravated sex trafficking; or
- 10 (12) A comparable crime in another jurisdiction;

11 **SUMMARY**

12 This bill revises the criminal laws regarding sexual exploitation, prostitution and sex
13 trafficking of minors by increasing the maximum age of the minors in various provisions
14 to 18 years of age, clarifying under various provisions that it is not a defense that the
15 minor gave consent and adding the crime of aggravated sex trafficking to the list of prior
16 offenses that are used to enhance a charge of sex trafficking from a Class D to a Class C
17 crime if a defendant has been convicted of 2 or more of the offenses. The bill also
18 amends the Child and Family Services and Child Protection Act by adding to the
19 definition of "abuse and neglect" various criminal offenses relating to sexual exploitation,
20 prostitution and sex trafficking of minors and creating a rebuttable presumption of a
21 parent's unwillingness or inability to protect a child from jeopardy in considering the
22 termination of parental rights if a child for whom the parent was responsible is the victim
23 of sexual exploitation, sex trafficking or aggravated sex trafficking.