

123RD LEGISLATURE – SECOND REGULAR SESSION



SEXUAL ASSAULT LEGISLATION IN REVIEW 2008



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Highlights of Key Legislation

The second half of the two part 123rd legislative session convened on January 2, 2008 and adjourned March 31, 2008. The Maine Legislature went into “Special Session” on April 1, 2008 to allow the 2008-2009 Budget to take effect. They officially adjourned on April 18, 2008.

Advocates working to end sexual violence in our communities will remember this past session as the one which posed the most significant threat to sexual assault funding in many years. The state budget proposals put forth by the Baldacci administration called for elimination of “new” funding appropriated in the first half of the session. This was further compounded in the supplemental budget with a proposal to eliminate virtually all state funding for sexual assault, which would have resulted in the elimination of many services for victims of sexual assault. In the end, due to the hard work of the Legislature, MECASA, our lobbyists and partners, all of the money was restored.

The Criminal Justice and Public Safety Committee continued to struggle with changes to the Sex Offender Registry which ultimately resulted in a bill (L.D. 446) enacted by the Legislature but which was vetoed by the Governor in early May. While MECASA believes that the registry can be a useful tool, we are also aware that there is no research which shows that a public registry improves community safety. What is known, is that for a certain proportion of sex offenders, a stable job, housing and community supports improve their chances of not reoffending. These protective factors can be complicated by the registry. That being said, we also believe that some offenders are going to reoffend regardless of the protective factors available to them.

Two bills of particular importance to MECASA were enacted: updating of our antiquated stalking laws (L.D. 1873) and strengthening our Gross Sexual Assault law (L.D. 372). In addition, the requirement that visual surveillance has to occur in a private place to be a crime was removed, making it possible to prosecute these crimes if they occurred in a public place (L.D. 2079).

Compliance with the most recent version of the Violence Against Women Act required that Maine pass a law to make sexual assault and domestic violence advocates mandated reporters (L.D. 2243). This will not change current practice, as sexual assault advocates have long considered themselves mandated reporters.

123rd Maine Legislature 2nd Regular Session: Sexual Assault Legislation in Review

The State Budget

Advocates working to end sexual violence in our communities will remember this past session for facing the most significant threat to sexual assault funding in the history of these services. The state budget proposals put forth by the Baldacci administration called for elimination of “new” funding appropriated in the first half of the session. This was further compounded by a proposal in the supplemental budget to eliminate virtually all state funding for sexual assault service providers, which would have resulted in the elimination of many services for victims of sexual violence. In the end, due to the hard work of the Legislature, MECASA, our lobbyists and partners, all of the money was restored.

L.D. 372, Public Law 474: An Act to Strengthen the Crime of Gross Sexual Assault as it Pertains to Persons Who Furnish Drugs to Victims

In order to improve the ability to prosecute certain gross sexual assaults, this law amends the crime of gross sexual assault by adding the element of furnishing drugs or intoxicants to a victim in order to substantially impair the victim's power to appraise or control the victim's sexual acts. Currently, a prosecutor must meet a higher standard by proving that the actor employed or administered the drugs or intoxicants to the victim. The bill also specifies that an actor cannot raise as a defense to gross sexual assault that the victim voluntarily consumed or allowed the administration of the drugs or intoxicants if the victim was 14 or 15 years of age.

L.D. 446, Vetoed: An Act to Amend the Sex Offender Registration and Notification Law

This bill which, among other things, would have reduced the number of people required to register under the Sex Offender Registration and Notification Act, was vetoed by the Governor. The Legislature’s Criminal Justice and Public Safety Committee will meet this summer (2008) to consider how to move forward with this issue.

L.D. 461, Public Law 684: An Act to Implement the Recommendations of the Human Trafficking Task Force

This law is based on the work of the Human Trafficking Task Force and establishes the crimes of causing involuntary servitude, human trafficking and aggravated human trafficking. It also provides that certain circumstances cannot be used as defenses to prosecutions.

It creates a new chapter that provides for civil remedies for human trafficking. It allows a trafficked person to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those remedies and any other appropriate relief. A prevailing plaintiff is entitled to attorney's fees and costs. The statute of limitations for bringing the action is 10 years from the trafficking act, although the time limitation does not run while the trafficked person is under the age of 18, mentally ill, imprisoned, outside the United States or otherwise incapacitated or incompetent when the cause of action accrues. This is similar to the tolling statute of the Maine Revised Statutes, Title 14, section 853. It also provides that the defendant cannot assert the defense of expiration of the statute of limitations if the running of the time is due to conduct by the defendant's inducing the plaintiff to delay the filing of the action or preventing the plaintiff from filing the action, or because of threats made by the defendant.

The law provides for the civil forfeiture of property used in involuntary servitude and human trafficking offenses. It also corrects a formatting error in the current law.

It also gives the human trafficking victim the right to collect damages and compensation through criminal restitution law and the Victims' Compensation Fund. It requires rulemaking by the Department of Labor for the purposes of victim restitution.

It directs the Attorney General to convene a broad working group to address human trafficking issues. Monitoring international matchmaking organizations is added to the list of tasks, as is whether a special statute of limitations tolling provision is appropriate because of victims' cultural and linguistic isolation. The working group will report to the Legislature by January 15, 2010.

It provides an effective date of January 1, 2009, except that the provisions establishing the Attorney General's working group on human trafficking and the definition of "work loss" and rulemaking in the Department of Labor regarding work loss take effect 90 days after adjournment of the Second Regular Session of the 123rd Legislature.

L.D. 1873, Public Law 585: An Act to Amend the Laws Governing Stalking

This law updates and strengthens Maine's stalking laws by acknowledging the use of new technologies and a range of conduct in stalking, recognizing that someone might be stalked by a person other than a member of that person's "immediate family," and making it clear that "stalking is criminal whether or not the victim knows about the stalking conduct." Because there were so many small, but significant changes to the statute, the public law follows.

§ 210-A. Stalking

1. A person is guilty of stalking if:

A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would ~~in fact cause both a reasonable person and that other specific person:~~

(1) To suffer ~~intimidation or~~ serious inconvenience, ~~annoyance or alarm~~ or emotional distress;

(2) To fear bodily injury or to fear bodily injury to a ~~member of that person's immediate family~~ close relation; or

(3) To fear death or to fear the death of a ~~member of that person's immediate family.~~ close relation;

(4) To fear damage or destruction to or tampering with property; or

(5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

Violation of this paragraph is a Class D crime. ~~The court shall impose a sentencing alternative involving a term of imprisonment of at least 60 days, of which 48 hours may not be suspended, and may order the person to attend an abuser education program approved by the court; or~~

C. The actor violates paragraph A and has 2 or more prior convictions in this State or another jurisdiction.

Violation of this paragraph is a Class C crime. ~~The court shall impose a sentencing alternative involving a term of imprisonment of at least 6 months, of which 14 days may not be suspended, and may order the person to attend an abuser education program approved by the court.~~

For the purposes of this paragraph, "prior conviction" means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence.

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. ~~"Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying oral or written threats, threats implied by conduct or a combination of threats and conduct directed at or toward a person. For purposes of this section, "conveying oral or written threats" includes, but is not limited to, communicating or causing a communication to be initiated by mail or by mechanical or electronic means 2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. For purposes of this section, "course~~ "Course of conduct" also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information ; including access by computer network, mail, telephone or written communication. "Course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or by state or federal statute.

B. ~~"Immediate family"~~ "Close relation" means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent or , grandparent, any person who regularly resides in the household or who within the prior 6 months regularly resided in the household or any person with a significant personal or professional relationship.

C. ~~"Repeatedly" means on 2 or more occasions.~~

D. "Emotional distress" means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.

E. "Serious inconvenience" means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.

Sec. 2. 17-A MRSA §1252, sub-§5-D is enacted to read:

5-D. In using a sentencing alternative involving a term of imprisonment for a person convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that person, a court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum period of incarceration in the 2nd step in the sentencing process.

Sec. 3. **Legislative intent.** The Legislature finds that stalking is a serious problem in Maine and nationwide. Stalking can lead to death, sexual assault, physical assault and property damage. Stalking can involve persons who have had an intimate relationship as well as persons who have had no past relationship. Stalking can result in great stress and fear in the victim and often involves severe intrusions on the victim's personal privacy and autonomy. Stalking can have immediate and long-lasting impact on the quality of life and safety of the victim and persons close to the victim.

By enacting these amendments, the Legislature intends to better protect victims from being intentionally harassed, terrified, threatened or intimidated by individuals who use a wide variety of methods to track, threaten and harass their victims. The goal is to authorize effective criminal intervention before stalking behavior results in serious physical and emotional harm and to increase penalties for escalating stalking behavior. One amendment is intended to make clear that stalking is criminal whether or not the victim knows about the stalking conduct.

The new provisions are drafted broadly to capture all stalking activity, including a stalker's use of new technologies. Presently, some stalkers use Global Positioning Satellite technology to monitor actions, disposable cell phones to make untraceable calls and keyloggers to capture private information from computers. In the future, new technologies not currently imagined will be used to the same ends. The Legislature intends that the use of such new technology be covered by this legislation.

L.D. 2079, Public Law 688: An Act to Strengthen the Crime of Visual Sexual Aggression Against a Child

This law removes the requirement that visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person occur in a private place to be a crime. Instead, it specifies that a person who, for the purpose of arousing or gratifying sexual desire, 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 is guilty of visual sexual aggression regardless of where the surveillance occurs. Surveillance may occur either in a public or private place.

It also clarifies the definition of “private place” in the Maine Revised Statutes, Title 17-A, section 511.

L.D. 2243, Public Law 577: An Act to Increase the Number of Mandated Reporters of Abuse, Neglect, or Exploitation

This law adds sexual assault counselors and family or domestic violence victim advocates to this list of mandated reporters.

It also corrects the probation statutes to delete the reference to whether a Class D crime was committed against a victim of sexual assault or stalking. Public Law 2007, chapter 340 expanded the list of persons eligible to apply for and obtain protection from abuse orders beyond family and household members to include dating partners and victims of sexual assault or stalking. A parallel change was made to the probation statutes to authorize probation when a Class D crime is committed against a family or household member, a dating partner or a victim

of sexual assault or stalking. This expansion is too broad because it is not always clear who had been a victim of sexual assault or stalking when dealing with a subsequent crime. Whether the victim and perpetrator are family or household members or dating partners is an easy factual question to answer; whether the victim was ever a victim of sexual assault or stalking is not necessarily as easy to show. It makes clear that probation is available for all violations of protection orders that are Class D crimes; therefore, probation will be available when the basis for issuing the protection order had been that the petitioner was a victim of sexual assault or stalking.

It also clarifies the statutes under which a defendant has violated a protective order to specifically list those statutes.