



2011 SEXUAL ASSAULT LEGISLATION IN REVIEW



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Highlights of Key Legislation

The 125th First Regular Session was a successful one for MECASA. With our many partners we assisted in the passage of some significant improvements to Maine's laws and defeated bills which would have been detrimental to victims/survivors of sexual violence and to public safety. We are deeply grateful for the work of all of our partners and allied legislators which made these successes possible.

Of particular note this past session were important changes related to elder abuse. Two of those bills emerged from the work of an interdisciplinary group, of which we were a part, which focused on public policy roadblocks to creating safety for Maine's older residents. Changes included an expansion of mandated reporting of elder abuse which increased the list of mandated reporters, expanded the group of people for whom a report is required, and made improvements to the process. There were also changes to the protection from abuse statute which will allow access to these important protections for more elders. Finally, there were changes made to the criminal code and Maine's Sex Offender Registration and Notification Act which criminalized additional conduct between caregivers and incapacitated adults, as well as requiring those individuals to register as sex offenders. These changes resulted from the tireless advocacy of a granddaughter of a sexual assault victim and a law enforcement officer who was involved with the case. In that case, the offender was not required to register as a sex offender, which would have placed an important barrier to his future employment working with vulnerable people.

As usual, there were also a number of bills which we hoped would not become law. All of the bills about which we had the most concerns were unsuccessful. The most concerning was a law which would have reinstated parole in Maine. Parole would have placed an undue burden on victims while decreasing community safety. Maine already has a good time credit system, which reduces total length of stay in prison by rewarding good behavior, program participation, or exceptional deeds. We continue to believe that no further action is necessary within the corrections system to incentivize incarcerated individuals to prepare for earlier release.

The following pages include legislation, which passed, in which MECASA took an interest.

Bills Passed

L.D. 51/Public Law Ch. 39: An Act Regarding Access to Sexually Explicit Material

Sponsor: Rep. Anne Haskell

Public Law 2011, chapter 39 creates new guidelines for access to sexually explicit material in a criminal investigation or proceeding. This material is now accessible to defendants pursuant to Maine Rules of Criminal Procedure, Rule 16, which permits copying or photographing. Chapter 39 authorizes reasonable access for inspection of the sexually explicit material but prohibits any reproduction of the material and requires that it be inspected in a facility under the control of the attorney for the State. The custody, control, and care of the material must remain with the attorney for the State or the court.

Chapter 39 is consistent with the federal requirements of custody and treatment of evidence of child pornography pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248.

L.D. 580/Public Law Ch. 50: An Act to Protect Children from Sexual Predators

Sponsor: Sen. Bill Diamond

Public Law 2011, chapter 50 adds accessing with the intent to view sexually explicit material involving a child under 16 years of age to the offense of possession of sexually explicit material.

Public Law 2011, chapter 50 was enacted as an emergency measure effective April 25, 2011.

L.D. 592/Public Law Ch. 59: An Act Regarding Forensic Examination Kits

Sponsor: Rep. Gary Plummer

Public Law 2011, chapter 59 directs that forensic examination kits be retained by investigating law enforcement agencies rather than transported to the Maine State Police Crime Laboratory. Public Law 2011, chapter 59 also ensures that the text of the Maine Revised Statutes, Title 24, section 2986, subsection 3 is consistent with similar text located in Title 25, section 3821.

L.D. 624/Public Law Chapter 423: An Act to Require a Person who Commits a Sex Offense against a Dependent or Incapacitated Adult to Register under the Sex Offender Registration and Notification Act of 1999

Sponsor: Sen. Stan Gerzofsky

Public Law 2011, chapter 423 criminalizes sexual conduct between incapacitated adults and caregivers that is not already criminal. Specifically, Public Law 2011, chapter 423 creates new versions of gross sexual assault, unlawful sexual contact, and unlawful sexual touching. Public Law 2011, chapter 423 criminalizes conduct that is committed against a person who has a mental disability that is reasonably apparent or is known to the actor. Public Law 2011, chapter 423 codifies this misconduct in situations where the person with the mental disability either is cared for in a facility licensed or funded by the Department of Health and Human Services or is cared for by a person privately employed to do so. It also recognizes that there are other incapacitated adults who may not have mental retardation but are vulnerable to sexual abuse.

Public Law 2011, chapter 423 also expands the list of sex offenses for which a person must register under the Sex Offender Registration and Notification Act of 1999. Specifically, it directs persons to register for 10 years if convicted and sentenced on or after October 1, 2011 of a sex offense, which includes, in addition to the offenses listed in the Title 34-A, section 11203, subsection 6, a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses, without regard to the age of the victim: Title 17-A, section 253, subsection 2, paragraphs J, K, and L and Title 17-A, section 255-A, subsection 1, paragraphs C, G, Q, R, R-1, R-2, W, and X.

L.D. 787/Public Law Ch. 241: An Act to Establish and Elder Victims Restitution Fund

Sponsor: Rep. David Burns

Public Law 2011, chapter 241 establishes the Elder Victims Restitution Fund to compensate elder victims of financial crimes who are entitled to receive restitution from offenders but who are not receiving that restitution. The fund receives money from estates passing to the State of people who received restitution. Chapter 241 prohibits a person convicted of any crime of which the decedent was a victim from benefiting to the extent the convicted person owes restitution to the decedent.

L.D. 939/Public Law Ch. 291: An Act to Enhance Mandated Reporting and Prosecution of Elder Abuse, Neglect and Exploitation

Sponsor: Rep. Joan Nass

Public Law 2011, chapter 291 modifies several provisions in the Adult Protective Services Act mandated reporting requirements to expand who is a mandated reporter and when a report must be made. In addition, several provisions have been added to enhance prosecution of elder

abuse, neglect, and exploitation, including requirements that photographic evidence of abuse be secured when possible in relation to an incapacitated or dependent adult and that the Department of Health and Human Services notify the district attorney when it receives a report of suspected abuse, neglect, or exploitation. Chapter 291 clarifies that "dependent adults" includes adults who are not institutionalized but who are dependent upon others for their day-to-day care. Chapter 291 increases the penalty a court may impose for a person's failure to report elder abuse, neglect, or exploitation as required under the Adult Protective Services Act.

L.D. 1025/Public Law Ch. 307: An Act to Amend the Laws Governing the Sex Offender Registry

Sponsor: Sen. Bill Diamond

Public Law 2011, chapter 307 amends the law regarding distribution of sex offender registrant information to the public by directing that the Department of Public Safety, State Bureau of Identification include on its Internet posting of registrant information the offender's designation as a 10-year registrant or a lifetime registrant.

L.D. 1027/Resolve 76: Resolve, To Coordinate Stakeholders to Review Best Practices in the Management of Strangulation and Determine Methods to

Address the Issue in Maine

Sponsor: Rep. Sara Stevens

Resolve 2011, chapter 76 directs the Maine Commission on Domestic and Sexual Abuse to invite stakeholders to participate in studying strangulation in order to determine the presence and patterns of strangulation in domestic and sexual violence in Maine and the current management of strangulation within Maine's criminal law. The review must include a study of model practices and research in other states, including the impacts of other states' legislation, public awareness activities, and changes in policy. The commission shall invite at a minimum the following stakeholders to participate: representatives from state and local law enforcement, prosecutors, the judicial branch, the Criminal Law Advisory Commission, the Maine Coalition to End Domestic Violence, the Maine Coalition Against Sexual Assault, first responders, and other emergency care providers.

The commission shall submit a report by February 15, 2012 to the Joint Standing Committee on Criminal Justice and Public Safety. The report must include the commission's findings and recommendations regarding methods to deal with strangulation in Maine, including, as it determines necessary, proposed legislation; proposed education and training for law enforcement, prosecutors, and the judiciary; and proposed programs and outreach for public awareness and advocacy. Upon receipt of the commission's report and recommendations, the committee may report out legislation to the Second Regular Session of the 125th Legislature. Resolve 2011, chapter 76 was enacted as an emergency measure effective June 13, 2011.

L.D. 1310/Public Law Ch. 195: An Act Amend the Laws Governing the Address Confidentiality Program

Sponsor: Sen. Roger Sherman

Public Law 2011, chapter 195 makes the following changes to the laws governing the Address Confidentiality Program administered by the Secretary of State.

1. It adds geographically specific descriptions or coordinates that identify a residential address to the definition of "address."
2. It adds the Address Confidentiality Program's e-mail account to the information that must be kept confidential.

L.D. 1317/Public Law Ch. 299: An Act Concerning Sex Offender Registry Information

Sponsor: Rep. Gary Plummer

Public Law 2011, chapter 299 provides that sex offender registry information created, collected, or maintained by the Department of Public Safety, Bureau of State Police, State Bureau of Identification, except for the basic information about registrants that is posted on the Internet or provided to requestors by the Bureau pursuant to law or any information maintained relating to applications and decisions that are related to the process to seek relief from the duty to register, is confidential. Registry information that is designated as confidential includes, but is not limited to, information relating to the identity of persons accessing the registry. Information listed in the Title 34-A, section 11221, subsection 9 remains public.

Public Law 2011, chapter 299 revises the law concerning a registrant's ability to access the registrant's own information. Information listed in Title 34-A, section 11221, subsection 1, paragraphs A to F about the registrant must be provided to the registrant upon request. The process for accessing and reviewing the information is governed by Title 16, section 620.

Public Law 2011, chapter 299 also prohibits the dissemination in electronic form of information about a registrant that is created, collected, or maintained by or for the State Bureau of Identification or a law enforcement agency, with the exception of information made available to the public through an Internet website maintained by the Bureau or by the law enforcement agency.

L.D. 1374/Public Law Ch. 201: An Act to Protect Seniors and Incapacitated Adults from Abuse

Sponsor: Rep. Joan Nass

Public Law 2011, chapter 201 allows an adult who is 60 years of age or older or an incapacitated or dependent adult to seek a protection from abuse order if that adult is a victim of abuse by an extended family member or an unpaid care provider.

L.D. 1399/Public Law Ch. 464: An Act to Implement the Recommendations of the Criminal Law Advisory Commission Relative to the Maine Criminal Code and Related Statutes

Public Law 2011, chapter 464 makes a number of changes to the Criminal Code and related statutes. Specifically, it enacts the following changes.

1. It amends the Title 15, section 101-D, subsection 5, paragraph A in four regards: it precludes the Commissioner of Health and Human Services from commencing involuntary commitment proceedings following a court finding of incompetency and the dismissal of all criminal charges against the defendant when that defendant is subject to an undischarged term of imprisonment; it requires the court dismissing the criminal charges to order the defendant into execution of the undischarged term of imprisonment; it imposes on the correctional facility to which the defendant must be transported the duty to do the transporting; and it corrects a reference to the Department of Health and Human Services, and replaces the word "procedures" with the word "proceedings."
2. It amends Title 15, section 101-D, subsection 9 by requiring that, if a post-sentencing examination must take place outside the correctional facility, that correctional facility has the duty to provide transportation and security for the examination.
3. It authorizes a warrantless arrest based on probable cause for a violation of a condition of release from a community confinement monitoring program pursuant to Title 30-A, section 1659-A, subsection A.
4. It amends each of the forms of the Maine Criminal Code crimes of gross sexual assault, unlawful sexual contact, and unlawful sexual touching in which the actor is a psychiatrist, psychologist, or licensed social worker, or a person purporting to be a psychiatrist, psychologist, or licensed social worker, by deleting the current elemental requirement that the patient or client be receiving "mental health therapy" from the actor. It clarifies that for purposes of relationships between patients and providers, the relationship must be current, therefore not criminalizing conduct after the patient-provider relationship has concluded, and it properly places the violation dealing with sexual contact in Title 17-A, section 255-A, which deals with unlawful sexual contact offenses, not sexual acts.

5. It amends the Maine Criminal Code crime of sexual abuse of minors by repealing current Title 17-A, section 254, subsection 1, paragraph F and moving its substance into a new Title 17-A, section 254, subsection 1, paragraph A-3 for purposes of clarity. It also replaces the current reference in Title 17-A, section 254, subsection 2 to paragraph F with a reference to paragraph A-3.

6. It amends Title 17-A, section 284, subsection 5 by striking the term "dissemination," which has no relevance to the crime of possession of sexually explicit material, and by adding the terms "transporting," "exhibiting," and "purchasing," which, like the term "possession," constitute the alternative prohibited conduct elements regarding the sexually explicit visual image or material.

7. It amends Title 17-A, section 506 to clarify that current electronic communication devices and those to be developed in the future are included within section 506. A new subsection 2-A is added that defines "electronic communication device" to mean any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending or receiving communication, allowing a person to electronically engage in the conduct prohibited under section 506. Changes regarding electronic communications do not become effective until July 1, 2012.

8. It adds a new subsection to Title 17-A, section 755 to comprehensively address the crime of escape from a community confinement monitoring program. Currently, this form of escape, unlike escape from supervised community confinement granted pursuant to Title 34-A, section 3036-A, is not defined in section 755, but instead is defined only in Title 30-A, section 1659-A. To eliminate confusion, it amends escape to incorporate this version by relying in part on escape as defined in Title 17-A, section 755 and by replacing Title 30-A, section 1659-A, subsection 5 with a cross-reference to the new provision in escape.

9. It amends the definition of "contraband" in Title 17-A, section 757, subsection 2 to include any tool or other item that may be used to facilitate a violation of section 755. This form of contraband was unintentionally omitted when sections 756 and 757 were amended by Public Law 2009, chapter 608, sections 5 and 6.

10. It amends the name of the crime "trafficking in dangerous knives" to "possession or distribution of dangerous knives" in order to more accurately describe the crime.

11. It amends Title 17-A, section 1107-A, subsection 4, providing for an affirmative defense based on a valid prescription to the crime of unlawful possession of scheduled drugs, by adding the schedule W drugs containing methamphetamine, hydrocodone, or hydromorphone.

12. It amends Title 17-A, section 1111-A in the following ways: it amends the title of the section from "sale and use of drug paraphernalia" to "use of drug paraphernalia" to more accurately describe the crime; for clarity, it deletes subsection 4 and replaces it with a new subsection 4-A that addresses the crime of "use of drug paraphernalia" and a new subsection 4-B that addresses

civil violations; and it repeals existing exclusion language and instead converts it to an exception under the protections afforded to persons pursuant to the Maine Medical Use of Marijuana Act.

13. It amends Title 17-A, section 1253, subsection 2 to allow for a detention credit to be awarded for any portion of a day a person is detained short of 24 hours for a person who has previously been detained for the conduct for which the person is sentenced to a term of imprisonment or an initial unsuspended portion of a split sentence of 96 hours or less. It limits the application of the partial day credit to persons whose crime is committed after October 15, 2011 to avoid an unconstitutional application.

14. It amends Title 17-A, section 1326-A to allow a court to determine the time and method of restitution payment, even if the person is a client of the Department of Corrections. It also adds language to specify that income withholding orders remain effective and enforceable until restitution is paid in full, even after an offender is no longer in the custody or under the supervision of the Department of Corrections.

15. It amends work program release restitution for clarification and to add another circumstance in which the requirements imposed under Title 17-A, section 1330 apply.

16. It amends the Maine Criminal Code sentencing alternative of unconditional discharge addressed in Title 17-A, section 1346 to allow the Class D and Class E crimes not eligible for a sentencing alternative involving probation pursuant to Title 17-A, section 1201, subsection 1 to nonetheless be eligible for an unconditional discharge.

**L.D. 1537/Public Law Ch. 257: An Act to Amend Licensing and Certification Laws
Administered by the Department of Health and Human Services
Sponsor: Rep. Meredith Strang Burgess**

Public Law Chapter 257 expands the Maine Registry of Certified Nursing Assistants to include Direct Care Workers as well. The following definition applies (additions to the law are underlined):

"Unlicensed assistive person" or "direct care worker" means an individual employed to provide hands-on assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct care settings. "Unlicensed assistive person" and "direct care worker" include but are not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct care workers as described in rules adopted by the department. "Unlicensed assistive person" ~~does~~ and "direct care worker" do not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

L.D. 1576/Public Law Ch. 303: An Act to Clarify the Awarding of Fees in Domestic Violence

Sponsor: Rep. David Burns

Public Law 2011, chapter 303 limits the award of court costs and reasonable attorney's fees to a defendant in a protection from abuse matter to cases when a judgment is entered against the plaintiff after a hearing where both parties are present and the court finds that the complaint is frivolous.

Public Law 2011, chapter 303 was enacted as an emergency measure effective June 10, 2011.