



2018 NEW MAINE LAWS

Implications for Advocates

During the 2018 Legislative Session, the Maine Legislature considered many bills that have implications for your work. As always, there were many bills that did not become law, including a bill to create a named crime of female genital mutilation and one to send a Victims' Bill of Rights constitutional amendment to the ballot.

Below you will find a selection of laws resulting from this session, all of which became effective August 1, 2018 (with the exception of P.L.2017, Ch. 455, which will become effective at a later date). For a more complete list and the statutory language for each selection, please refer to our 2018 Legislative Session Review.

Public Law Chapter 336: An Act To Increase the Penalty for Visual Sexual Aggression against a Child

What does it do?

This law adds all of the Chapter 12 crimes (Sexual Exploitation of Minors) and most of the Chapter 35 crimes (Sex Trafficking, Prostitution, and Public Indecency) to the statute which allows a third offense within ten years to be charged as a class higher than the individual would otherwise be charged.

What does it mean for your work?

This law was created in response to an offender who had engaged in the crime of exposure several times. The sponsor and Legislative committee hoped to ensure greater accountability when there was a pattern of criminal behavior. When working with a victim navigating the criminal justice system they should know that the perpetrator could face a higher class crime if there is a history of certain convictions.

Engaging in prostitution was excluded from the crimes that can be used to elevate the class. This crime was excluded to prevent enhanced prosecution of those engaging in prostitution due to circumstance or coercion, based on the recognition that criminalization for anyone engaging in sex work limits their options and safety.

Public Law Chapter 354: An Act To Establish as a Class D Crime the Intentional Photographing of a Minor without Consent of the Minor's Parent or Guardian by an Individual Required To Register as a Sex Offender

What does it do?

This law adds a section 5 to §261, "Prohibited contact with a minor; sex offender restricted zone" which prohibits people convicted of Chapter 11/12 crimes against a child under 14 from photographing another person under 14 years after the person has been notified, in writing or otherwise, by a law enforcement officer, corrections officer or judicial officer not to engage in that conduct.

What does it mean for your work?

This change amends the definition of "indirect contact" in the crime that prohibits certain convicted offenders from intentionally or knowingly initiating direct or indirect contact with children under 14. This may come up during a safety planning meeting with a victim before a sex offender is released from prison.

It also may come up if someone reaches out to a local sexual assault support center because of concerns related to a known sex offender (such as photographing children in the neighborhood).

Public Law Chapter 386: An Act To Strengthen Crime Victims' Rights

What does it do?

This law adds escape to the list of reasons to provide victim notification and updates the language in that statute related to mental health facilities to reflect the range of places an offender might be released from.

What does it mean for your work?

It is already the practice of the Office of Victim Services (and likely the county jails) to notify victims when an offender has escaped, so there will be little, if any practical effect on your work. The change brings the statute in line with what should be, and often already is, the practice.

Public Law Chapter 397: An Act To Amend the Laws Governing Indecent Conduct To Include Distribution of Photographic Images

What does it do?

Brought forward in response to the Court's opinion in State v. Legassie, this law adds a section to §506, "Harassment by telephone or by electronic communication device," which creates a Class D crime for sending an image of a sexual act as defined in the Criminal Code or of the actor's or

Public Law Chapter 397, cont.

another person's genitals “with the intent to cause affront or alarm or for the purpose of arousing or gratifying sexual desire” and:

- (1) the victim is under 14;
- (2) the victim is 14 or 15 years of age and the actor is at least 5 years older, or
- (3) the person who is called or contacted “suffers from a mental disability that is reasonably apparent or known to the actor.”

It also creates a Class E crime for sending the images or video of sexual acts or genitalia to anyone who has notified the actor that they don't want to receive these images/videos.

What does it mean for your work?

This law makes sending unwanted explicit sexual photos under certain circumstances a crime. It is now against the law to send any unwanted explicit sexual images to people under 14, or to someone with a mental disability; or to send them to someone who is 14 or 15 years old, if the sender is five years older than the minor; or to send them to anyone (regardless of age) who has notified the sender that they don't want to receive them. Advocates can talk with individuals about whether the photos are wanted or unwanted, or how to consider notifying the sender that they are unwanted.

Public Law Chapter 416: An Act Regarding Criminal Forced Labor, Aggravated Criminal Forced Labor, Sex Trafficking and Human Trafficking

What does it do?

This law creates the new crimes of “forced labor” and “aggravated forced labor”. The new crimes provide that it is illegal for an employer to use force, fraud, or coercion to compel someone into labor or services, including using drugs or alcohol as a means of coercion. Before these crimes were established, Maine did not have a state law to prosecute trafficking that was not based on commercial sex.

This also adds an ‘affirmative defense’ for both the new labor trafficking laws, and also the misdemeanor (non-compelled) version of sex trafficking. Finally, it requires posting of human trafficking awareness signs in certain high-risk businesses (Maine Turnpike, Transportation Authority, and a range of business such as hospitals, career centers, etc.).

What does it mean for your work?

You need to know that some victims of human trafficking may be eligible for T-Visas, which can give victims benefits and legal status while a crime is being investigated and prosecuted. However, they need to report a crime that is mostly similar to the federal trafficking law. Because before these new state laws were established, Maine had no labor-specific trafficking law, only sex-specific. This new law may improve access to T-visas for victims who experience labor trafficking. Immigrant Legal Advocacy Project (ILAP) would be the best provider to explore this option.

The affirmative defenses mean that a victim/survivor may have a protection against being convicted of these crimes, if they can show that they were actually victims of these crimes. This situation might happen when, for example, a victim/survivor 'helps' the trafficker – by transporting another victim/survivor, setting up a date or meeting, by being part of a scheme to trick or coerce another victim/survivor, etc. If these behaviors took place as part of their own victimization, they may be eligible for this affirmative defense.

The Maine Department of Labor has already begun to distribute posters, and you may see them posted in public areas.

Public Law Chapter 455: An Act To Enhance Safety for Victims of Sexual Assault and Stalking and To Amend the Laws Governing Harassment and Protection from Abuse

What does it do?

This law allows all victims of Chapter 11 and 12 sex crimes, not just Gross Sexual Assault, to access PFHs, and allows minor victims of sexual exploitation, dissemination of sexually explicit material, and the new harassment section to access PFAs. It also allows victims who receive an image or video of a sexual act, sexual contact, or a person's genitals without consent to obtain a PFH directly, without seeking assistance from law enforcement.

Finally, it corrects a drafting error that omitted victims of sexual assault or stalking from a section of the law outlining housing protections for victims of sexual violence. This change allows these victims to provide a copy of a police report or criminal complaint as one option for documentation of victimization in order access housing protections.

What does it mean for your work?

Now more people have the option to access Protection from Abuse or Protection from Harassment Orders. As with all PFA and PFH orders it is not your responsibility to determine what crime was committed, but to be aware that those who have experienced sexual harassment, sexual exploitation, and non-consensual image distribution may have grounds for that remedy.

Sexual assault and stalking victim/survivors have specialized housing protections they can access, which include: protection of eviction due to sexual assault or stalking, having the locks changed at the property owner's expense, not being held responsible for property damage done by the perpetrator, and an ability to move out of a rental faster due to sexual violence or stalking. A full list of housing protections can be found on Pine Tree Legal Assistance's website and reach out to them with any intersecting housing and sexual assault issues.

If you have questions about any of these laws or what they mean for your work, please contact a MECASA staff member.