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**STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR SESSION**

**Final Report
of the
Criminal Justice & Public Safety Committee
Study of Sex Offender Registration Laws**

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Executive Summary

The Joint Standing Committee on Criminal Justice and Public Safety, pursuant to Joint Order, S.P. 933, met three times over the interim after the Second Regular Session of the 123rd Legislature to study issues related to Maine's sex offender registration and notification laws. During its meetings the committee reviewed the current sex offender registration and notification system administered by the Department of Public Safety, State Bureau of Identification; heard from a number of experts in the field of sex offender management; educated itself about the status of pending litigation challenging the Maine Sex Offender Registration and Notification Act of 1999; and educated itself about the challenges and implications posed by additional federal registration requirements to which states have been asked to comply.

The Joint Standing Committee on Criminal Justice and Public Safety and the entire Legislature have repeatedly faced the challenges of creating a system that both better informs and protects the safety of the public and balances the rights of offenders. In its effort to find a proper balance, the committee has responded to the changes in the criminal justice system at the state and federal levels, as well as to events that define the landscape for victims and offenders here in Maine. Knowing that there may soon be direction from Maine's courts to further guide the Legislature in its development and revision of registration and notification policies and that additional decisions need to be made regarding the State's response to federal guidelines as well as to its people and what system is truly best for public safety, the committee makes the following recommendations for consideration by the First Regular Session of the 124th Legislature.

DEVELOP A REVISED SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA)

The committee finds that a more comprehensive revision that combines sex offenders' offense history as well as their risk of recidivism will better serve the true public safety purpose of the system. A combined offense and risk-based approach will provide the public with information that may more accurately define the level of dangerousness that an offender may truly pose.

The committee recommends that the Joint Standing Committee on Criminal Justice and Public Safety of the 124th Legislature develop a revised SORNA, using the following elements as a guide.

1. Create a 3-tiered system that categorizes offenders as:
 - A. Tier 1 – Lower risk of reoffense, which would place an offender on a website accessible only to law enforcement;
 - B. Tier 2 – Moderate or medium risk of reoffense, which would place an offender on a law enforcement only website, although law enforcement could provide offender information to members of the public if requested to do so; and

- C. Tier 3 – Higher risk of reoffense, which would place an offender on a public website accessible to all and for which there should also be some other method of public notification.
2. An offender’s initial classification or tier assignment should be offense-based using conviction data, including consideration of the seriousness of the offense and the existence of multiple offenses.
 3. The system should have various time periods for reporting and registering with incentives and opportunities to change tiers and therefore the duration of registration.
 4. Movement of offenders to new tiers could be accomplished by a petition initiated and paid for by the offender. Movement among tiers must be based on the offender’s risk of reoffense, using evidence-based risk assessment tools and evidence-based risk analysis. The prosecuting attorney, probation officer or court should also be provided the opportunity to petition the entity that determines classification for the purpose of enhancing an offender’s tier in a case where multiple allegations, a serious prior criminal history or other factors indicate that the offender may pose a higher risk of reoffending than that evidenced by a single conviction for a minor count.
 5. Application of risk assessment tools and analysis must be performed by trained professionals taking into consideration any Department of Corrections experience with the offender, the offender’s past criminal history and other relevant factors.
 6. Petition for assessment and potential movement among tiers may be made by an offender only after a certain defined period of time on the registry has been completed. Processes for request for reclassification, implementation and appeals to classifications must be put in place.

In addition to these suggested elements to a revised SORNA, the committee recommends that other provisions regarding registration and notification also be considered and that these issues be discussed further.

* Should certain offenders never entirely be removed from SORNA?

* Should juveniles, who are not bound over and tried as adults, be made part of the registry system in some manner?

* Although risk analysis costs are to be assumed by the offender, what other costs will there be for implementation of changes to the system, including costs to SBI and for hearings and appeals? How will these costs be paid?

* Should a registry accessible to the public include specific information gleaned from the application of risk assessment tools and analysis? If so, what level of detail should be made accessible?

**PREEMPTION IN THE FIELD OF SEX OFFENDER MANAGEMENT,
INCLUDING RESIDENCY RESTRICTIONS**

While the Maine Legislature has worked to maintain a consistent approach to the management and supervision of sex offenders in the community, some municipalities have adopted ordinances that impose residency restrictions on sex offenders in their specific communities. Over the years, the Legislature has heard and worked a number of bills dealing with residency restrictions. Hearing testimony on these bills and educating itself about other states' experiences with residency restrictions, the committee finds, and the research supports, that such restrictions do not increase public safety. Residency restrictions make it more difficult for sex offenders to successfully reenter society and find stability (living and work arrangements) and make it more challenging for law enforcement to find and monitor offenders. Based on these findings, the committee recommends that the Criminal Justice and Public Safety Committee of the 124th Legislature considers introducing legislation that would preempt the field of sex offender management and prohibit municipalities and other entities from adopting their own restrictions on sex offenders.

IMMEDIATE LEGISLATIVE CHANGES TO THE SORNA OF 1999

Although there are many issues related to sex offender registration and notification that may make it sensible to wait for legislative action, the committee finds that there are several provisions in the recent committee amendment to LD 446, "An Act to Improve the Use of Information Regarding Sex Offenders to Better Ensure Public Safety and Awareness," that should go forward as soon as possible. These provisions would improve the SBI's ability to administer the SORNA of 1999 and would clarify key points in the registration law. Specifically, the committee recommends that legislation be introduced to make the following changes.

1. Amend the crime of prohibited contact with a minor (Title 17-A, §261) by repealing the element of the crime that the person has a duty to register under the Sex Offender Registration and Notification Act of 1999 and by making the law applicable only to those persons convicted on or after June 30, 1992. Although a person would still have to be previously convicted of a Chapter 11 or Chapter 12 offense against a victim who had not attained 14 years of age, the fact that the person is required to register pursuant to the SORNA of 1999 or not is immaterial to the commission of the crime.
2. Repeal from the sentencing provisions (Title 17-A §1152, sub-§2-C) the directive that a court shall order a person convicted of a sex offense or a sexually violent offense to satisfy all requirements of the Sex Offender Registration and Notification Act of 1999. This change would clarify that the Legislature, by its prior actions, determined that a person's duty to register exists based on that person's conviction and sentence for a "sex offense" or "sexually violent offense," and that the court's duty is only to notify the person of that legislatively imposed registration responsibility. Also, clarify in the SORNA of 1999 that a duty to register is not triggered by a court determination, but by and upon notification by a court, the custodial entity, the SBI or a law enforcement

agency that a person has a duty to register under the Sex Offender Registration and Notification Act of 1999.

3. Repeal from the probation provisions (Title 17-A, §1204, sub-§1-C) the directive that a court attach as a condition of probation that a person convicted of a sex offense or a sexually violent offense must satisfy all requirements of the SORNA of 1999. The court has discretion to order any condition of probation reasonably related to the rehabilitation of the convicted person or the public safety or security, including satisfying registration requirements, if appropriate.
4. Amend the definition of “lifetime registrant” that pertains to persons classified as lifetime registrants due to having multiple convictions for sex offenses to clarify that the changes made by Public Law 2005, Chapter 423 operate prospectively. This means that for persons convicted and sentenced on or after September 17, 2005, the definition remains unchanged except for technical drafting changes; for persons convicted and sentenced before September 17, 2005, the amendment changes the definition of “another conviction” to mean an offense for which sentence was imposed prior to the occurrence of the new offense. This change would undo the expansion of 10-year registrants who became lifetime registrants with the 2005 change, including those registrants whose duty to register had ended prior to the change.

I. INTRODUCTION

A. STUDY CREATION AND CHARGE

The Joint Standing Committee on Criminal Justice and Public Safety, pursuant to Joint Order, S.P. 933, which superseded H.P. 1665, was authorized to meet up to 3 times during the interim following the Second Regular Session of the 123rd Legislature to study issues related to sex offender registration and notification. The committee's duties included:

1. Using other states' models for tiered systems based on risk and other examples of sex offender classification and assessment and creating a system of classification based on risk to be applied to each person required to register under the Sex Offender Registration and Notification Act of 1999 in order to classify registrants based on their risk of reoffending and the degree of likelihood that they pose a danger to the community;
2. Creating processes to apply the risk assessment and evaluate its use so that due process concerns are met and each risk assessment analysis provides useful information to those in the criminal justice system and others who receive that information; and
3. Reviewing the current list of registerable sex offenses and determining if changes to the current Maine sex offender registry and to the Maine sex offender registry website should be made.

The committee met three times, holding two work sessions and one public forum that featured experts in the sex offender management field and was entitled: "Sex Offender Management: A Briefing for Policy Makers in Maine."

B. COMMITTEE PROCESS

At the committee's first meeting, Attorney General G. Steven Rowe gave an update on the status of pending sex offender registration and notification litigation that includes both civil and criminal cases for which the State is a party and about which policy makers are hoping to receive some guidance from the courts in the near future. Public Safety Commissioner Anne Jordan offered to organize a one-day summit or forum, working in cooperation with the Department of Corrections, to provide the committee with a balanced overview of different states' approaches to sex offender registration and management.

The second meeting the committee held was the public forum: "Sex Offender Management: A Briefing for Policy Makers in Maine," which was organized primarily by Lars Olsen, the Director of Treatment and Intervention Programs of the Department of Corrections, and Madeline Carter, the Project Director of the Center for Sex Offender Management, a Project of the Office of Justice Programs, U.S. Department of Justice. Presenters at the forum included the following experts.

1. **Kurt Bumby, Ph. D., Senior Manager for the Center of Sex Offender Management**, provided the committee with a general overview of the diversity of needs, risks and criminogenic factors of the sex offender population and the difficulties treating and managing such a variety poses to states and providers. Dr. Bumby outlined a summary of the policies and practices that states are currently employing to manage sex offenders, and he stressed the need to increase and focus interventions on higher risk sex offenders, indicating that incrementally longer sentences of incarceration alone have not been shown to reduce recidivism. Specialized risk assessment tools can differentiate higher and lower risk sex offenders, and promising results have been seen in integrated and collaborative approaches that recognize and relate to sex offenders' risk factors, both static and dynamic. Combining interventions and blended supervision approaches for sex offenders appear to provide the greatest promise in reducing recidivism.
2. **Detective Robert Shilling of the Sexual Assault and Child Abuse Unit of the Seattle Police Department** expressed that all people have an interest in sex offenders' succeeding as they return to society. Detective Shilling advocated holding sex offenders accountable for their actions, including using a victim-centered approach because victim safety is paramount. He also encouraged collaboration of all stakeholders in the process of sex offender management, because no single entity can alone manage sex offenders. An important lesson that Detective Shilling learned from Kansas' experience was that educating a community prior to public notification of sex offenders reentering that community is much more effective than responding to community concerns that are raised after the offender has reentered. Communities that are informed and understand the process prior to an offender's arrival know what to expect and what role law enforcement will serve.
3. **Erin Rosen, J.D., General Counsel in the Ohio Law Enforcement Gateway, Office of the Ohio Attorney General**, communicated her experience from the perspective of Ohio's effort to amend its laws and practices to seek compliance with the Adam Walsh Child Safety and Protection Act. Ohio is partially offense-based and partially risk-based in its classification of sex offenders; the court considers factors of any kind that are not based on scientific findings or medical recommendations. Using this existing system, Ohio created a program to automatically convert sex offenders into one of 3 tiers based upon existing conviction information or status, and remaining sex offenders were reclassified manually using information from conviction data from journals and information from sheriffs, clerks of courts and other states. A number of offenders have filed challenges to the new law, arguing that the provision for retroactivity violates constitutional guarantees by imposing punishments beyond those originally handed down by courts. However, the Ohio Attorney General's Office, which helped craft the state's version of the Adam Walsh Act, has stood by its law, claiming that registration is not criminal punishment but a civil regulatory measure that enhances public safety. Ohio is waiting to hear whether its compliance package, which was submitted to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), meets

the standards of the Adam Walsh Act, while it also deals with the challenges to its law.

4. **Roger Werholtz, Secretary of the Kansas Department of Corrections** explained the approach Kansas took in developing sex offender management policies. In 2006 the Kansas Legislature created the Sex Offender Policy Board, which looked at issues related to treatment, sentencing, rehabilitation, reintegration and supervision of sex offenders. This board's recommendations to the Legislature stressed the importance of establishing an ongoing Sex Offender Management Board to continuously research strategies and revise state policies regarding sex offenders. Another step that the Kansas Legislature took in the management of sex offenders was to prohibit cities and counties from adopting residency restriction ordinances.
5. **Chris Lobanov-Rostovsky, Program Director for the Colorado Sex Offender Management Board (CSOMB)**, stressed the importance of boards like Colorado's in informing and educating legislators and other policy makers. The CSOMB is a 25-member board that represents all stakeholders, is administered by a neutral agency, approves service providers and researches and makes recommendations to the Legislature on all sex offender-related public policy issues. The board also has a technical assistance team that helps local law enforcement carry out community notification using protocols and policies developed by the board. The guiding principles of Colorado's sex offender management program include: prevention of future victimization (the primary mission of sex offender management); management strategies should be based on research and evaluated for their effectiveness; a continuum of management strategies should be available and utilized, since no single strategy is effective for all offenders; and management strategies should correspond to each offender's risk and offense characteristics.

Although these experts' recommendations and experiences are very helpful to the committee, the committee noted that, like any sex offender research, conclusions that are drawn must be viewed in the context of the fact that sex offenses are hugely underreported. Patterns and results are based on a small number of actual reported sex offenses; therefore, it is difficult to deduce what really works most effectively for the population as a whole. Using the experiences from other states, while considering Maine's own unique characteristics, the committee at its third and final interim meeting developed a list of recommendations to help guide the 124th Legislature as it moves forward in refining Maine's Sex Offender Registration and Notification Act (SORNA).

II. BACKGROUND AND HISTORY

Before reviewing the Criminal Justice and Public Safety Committee's recommendations, it is helpful to look at the legislative history of sex offender registration and notification laws. Over the past 14 years, Maine has enacted and amended a number of laws regarding sex offender registration and notification. Registration began as a tool to better inform law enforcement, but legislative changes have since been made in response to the public's desire to be more aware of

sex offenders living in the community¹ and to comply with requirements imposed on states by the federal government.

A. SEX OFFENDER REGISTRATION ACT (SORA OF 1992)²

Maine's first law requiring the registration of sex offenders was the Sex Offender Registration Act (SORA) of 1992. The SORA applied to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996. Under the act, only persons convicted of gross sexual assault³ against victims who were less than 16 years of age at the time of the offense had to register as "sex offenders." Pursuant to the SORA of 1992, a sex offender had to register his or her address with the Department of Public Safety, State Bureau of Identification (SBI) for 15 years. The sentencing court could waive an offender's duty to register for "good cause shown," or the Superior Court could waive registration after 5 or more years if the offender could show that registration was no longer necessary.⁴ Registration could also be waived if the offender's conviction was vacated or the offender was granted a full and free pardon. An offender who failed to register or update registration information as required by the statute committed a Class E crime.

B. SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA OF 1996)⁵

The Sex Offender Registration and Notification Act (SORNA) of 1996 changed the SORA of 1992 by slightly expanding the definition of "sex offender" to include persons found not criminally responsible for committing gross sexual assault by reason of mental disease or defect if the victim had not attained 16 years of age at the time of the crime. The SORNA of 1996 applied to sex offenders sentenced on or after September 1, 1996 and before September 18, 1999. As in the SORA of 1992, the SORNA of 1996 required a sex offender to register his or her address with the SBI for 15 years after the offender's release. A sex offender who failed to register or update registration information as required by the act committed a Class D crime, except that an offender who committed a registration violation when the offender had two or more prior convictions for registration violations committed a Class C crime. The waiver from registration provisions enacted in the SORA remained in effect.

The most significant policy change made by the SORNA of 1996 was the addition of the element of notification, which gave those who work in the criminal justice system, including local law enforcement agencies, additional information and new responsibilities. When a sex

¹ "The purpose of this chapter (SORNA of 1999) is to protect the public from potentially dangerous registrants by enhancing access to information concerning those registrants." 34-A MRSA, §11201

² 34-A MRSA, Chapter 11, enacted by Public Law 1991, chapter 809, was repealed by Public Law 2001, chapter 439.

³ See 17-A MRSA §253.

⁴ See former 34-A MRSA, §11003, sub-§4, ¶¶C & D, of Chapter 11. Initially, a certificate of rehabilitation issued by a licensed counselor certified by the Forensic Evaluation Unit at the Maine Department of Mental Health and Mental Retardation who dealt with sex offenders was required to show the offender no longer needed to register. That option was repealed by Public Law 1993, chapter 193 and replaced with the opportunity for an offender to annually petition the Superior Court for removal from the registry.

⁵ See 34-A MRSA, Chapter 13, which was repealed by Public Law 2001, chapter 439.

offender was conditionally released or discharged, the Department of Corrections was required to notify the SBI of the address where the sex offender would reside, the address where the sex offender would work, the geographic area to which the sex offender's release was limited and the status of the sex offender when released as determined by a risk assessment instrument⁶ used by the Department of Corrections. Upon receiving this information, the SBI forwarded the information to all law enforcement agencies having jurisdiction in those areas where the sex offender worked or resided. The Department of Corrections and law enforcement agencies that received registration information then notified members of the public who they determined "appropriate to ensure public safety."⁷

C. SEX OFFENDER REGISTRATION AND NOTIFICATION ACT OF 1999 (SORNA OF 1999)⁸

The SORNA of 1999 expanded the definition of "sex offender" and created the new category "sexually violent predator." The SORNA of 1999 also required the State to provide registration information to the Federal Bureau of Investigation (FBI) to be included in a national database. The adoption of this act put Maine in compliance with the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act,⁹ which ensured that Maine would not receive a reduction in its federal Byrne Formula Grant funding.

The SORNA of 1999 applied to all persons who committed sex offenses or sexually violent offenses and who were sentenced on or after September 18, 1999.¹⁰ Under the SORNA of

⁶ The Department of Corrections used a risk assessment tool to determine the level of community supervision required for an offender who was released or discharged. The SORNA of 1996 also required the department to provide technical assistance concerning risk assessment to law enforcement agencies. See former 34-A MRSA, §11144.

⁷ See 34-A MRSA, §11255. There was, and still is, no other statutory guidance regarding how that notification should be made to the public.

⁸ See 34-A MRSA, Chapter 15 enacted by Public Law 1999, chapter 437.

⁹ See 42 U.S.C. §14071. (Pub. L. No. 103-322, 108 Stat. 1796 (1994))

¹⁰ Pursuant to 34-A MRSA, §11203, sub-§6 as enacted by Public Law 1999, chapter 437, "sex offense" included:

A. A violation under Title 17, section 2922, 2923 or 2924;

B. A violation under Title 17-A, section 253, subsection 2, paragraph E, F, G, H, I or J; Title 17-A, section 254; Title 17-A, section 255-A, subsection 1, paragraph A, B, I, J, K, L, M, N, Q, R, S or T; Title 17-A, section 256; Title 17-A, section 258; Title 17-A, section 301, unless the actor is a parent of the victim; Title 17-A, section 302; Title 17-A, section 511, subsection 1, paragraph D; Title 17-A, section 556; Title 17-A, section 852, subsection 1, paragraph B; or Title 17-A, section 855; or

C. A violation of an offense in another jurisdiction, including, but not limited to, a state, federal, military or tribal court, that includes the essential elements of an offense listed in paragraph A or B.

Pursuant to 34-A MRSA, §11203, sub-§7 as enacted by Public Law 1999, chapter 437, "sexually violent offense" included:

A. A conviction for one of the offenses or for an attempt to commit one of the offenses under Title 17-A, section 253, subsection 1; Title 17-A, section 253, subsection 2, paragraph A, B, C or D; or Title 17-A, section 255-A, subsection 1, paragraph C, D, E, F, G, H, O or P; or

1999, a “sex offender” was required to register his or her address with the SBI for 10 years after release, and a “sexually violent predator” was required to register for the duration of the offender’s life. If the sex offender or sexually violent predator moved out of the State or traveled to another state to attend school or work for a period of time, the sex offender or sexually violent predator was required to register the new address with the SBI and with a designated law enforcement agency in the new state, if that state had a registration requirement. The SORNA of 1999 also established an annual \$25 registration fee to be paid by the offender.

Under the SORNA of 1999, the penalties for an offender violating registration requirements and the public notification process, both as enacted by Public Law 1999, Chapter 437, were the same as under the SORNA of 1996. In addition to entering registration information in its database, the SBI was directed to forward the registration information to the FBI to be entered in the national sex offender database from which law enforcement agencies from other states could access information. The SBI’s duties included verifying the domicile of a sex offender on each anniversary of the sex offender’s initial registration date and verifying the domicile of a sexually violent predator every 90 days after the offender’s initial registration date.

In addition to the new requirement of public notification to those necessary to ensure public safety, the other differences in the SORNA of 1999 included no option to waive registration¹¹ and that all offenders provide photographs and fingerprints and comply with in-person verification of registration information. The requirements must be met on annual basis for persons convicted and sentenced for “sex offenses” and on a quarterly basis for persons convicted and sentenced for “sexually violent offenses.”

When first enacted, the SORNA of 1999 applied prospectively only to persons sentenced on or after its effective date of September 18, 1999.

D. AMENDMENTS TO THE SORNA OF 1999 MADE BY THE 120th LEGISLATURE

Since its initial enactment, the SORNA of 1999 has been amended in some manner during each legislative session. The highlights of the amendments follow.

1. **Public Law 2001, chapter 439** repealed both of the two prior acts governing sex offender registration and notification that applied before 1999 and applied the requirements of the SORNA of 1999 retroactively to all sex offenders and sexually violent predators sentenced on or after June 30, 1992. This was a significant change in the application of the act.

B. A conviction for an offense or for an attempt to commit an offense of the law in another jurisdiction, including, but not limited to, a state, federal, military or tribal court, that includes the essential elements of an offense listed in paragraph A.

¹¹ Although an overturned conviction or full and free pardon would still be a basis to remove an offender from the registry, the option to petition the court for removal or waiver of registration for “good cause shown” were not incorporated into the SORNA of 1999.

2. **Public Law 2001, chapter 553** made additional changes to the SORNA of 1999 by clarifying the definition of “sentence” and specifying how to calculate registration deadlines and time periods of those offenders sentenced at different times, since the requirements were now applied retroactively.

E. AMENDMENTS TO THE SORNA OF 1999 MADE BY THE 121st LEGISLATURE

1. **Public Law 2003, chapter 371 made a number of technical and substantive changes** to the act. Some of those changes included: expanding the definition of “sex offense” to include crimes involving sexual exploitation of minors¹²; clarifying that a sex offender or sexually violent predator must notify the SBI in writing when that person’s place of employment or college or school changes, as a sex offender or sexually violent predator is required to do for a change in domicile; and adding county jails and state mental health institutes to the list of entities required to provide notification to the SBI of a sex offender's or sexually violent predator’s conditional release or discharge from that entity’s facility.

A major substantive change to the SORNA of 1999 also appears in **Public Law 2003, chapter 371**, which clarified both the public’s and the registrant’s access to registrant information. That access included directing the SBI to maintain certain information about every registrant on a State Internet site accessible to the public. Information posted on the Internet includes registrant’s photograph, town of residence, place of employment and the sex offenses for which the registrant was convicted and sentenced.¹³

2. **Resolve 2003, chapter 75** established the “Commission to Improve Community Safety and Sex Offender Accountability,” which was comprised of members representing the Legislature, law enforcement, the Departments of Public Safety and Corrections, victims’ advocates, prosecutors, defense attorneys and sex offender treatment providers. The commission reported its findings and recommendations to the Second Special Session of the 122nd Legislature. The commission introduced two bills. The first was enacted as **Public Law 2003, chapter 656** establishing a directive to all law enforcement agencies to adopt a model sex offender public notification policy. The second bill was incorporated into LD 1903¹⁴ and was enacted as **Public Law 2003, chapter 711**. Provisions in this law:

- a. Renamed “sexually violent predators” and “sex offenders” to “lifetime registrants” and “10-year registrants, respectively;”

¹² See former Title 17 MRSA, Chapter 93-B; now Title 17-A, Chapter 12.

¹³ See Title 34-A, §11221, sub-§§8-10. The website for the Internet registry is at <http://sor.informe.org/sor/>.

¹⁴ The provisions of the commission’s bill were made part of Committee Amendment “A” to LD 1903: “An Act to Further Implement the Recommendations of the Commission to Improve Sentencing, Supervision, Management and the Incarceration of Prisoners and the Recommendations of the Commission to Improve Community Safety and Sex Offender Accountability.”

- b. Moved the two Class D unlawful sexual contact offenses that required lifetime registration to the 10-year registration category;
- c. Amended the definition of “domicile” and created the new definition “residence” for the purpose of better tracking and verifying the location of persons who must register;
- d. Amended the definitions of “sex offense” and “sexually violent offense” to more accurately comply with the federal registration guidelines by adding to the list of registerable offenses the former crime of rape and the former crimes of unlawful sexual contact and solicitation of a child by computer to commit a prohibited act, and by moving from the definition of “sex offense” to “sexually violent offense” the crimes of unlawful sexual contact that involve penetration;
- e. Specified that for purposes of registration, criminal restraint and kidnapping committed by a parent are not registerable offenses;
- f. Added the following new definitions: “another state,” “registrant,” “jurisdiction,” and “tribe” to be more consistent with federal law;
- g. Decreased the time period that registrants must register or update registration information with the SBI from 10 days to five and added the requirement that a registrant must notify the law enforcement agency having jurisdiction where the person must register or update registration information within 24 hours; and
- h. Authorized the State to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State.

F. AMENDMENTS TO THE SORNA OF 1999 MADE BY THE 122nd LEGISLATURE

1. The SORNA of 1999 was again amended by **Public Law 2005, chapter 423** with the most significant change made to the application section of the act. Public Law 2005, chapter 423 again applied registration requirements retroactively. This time the application of the act was made to persons sentenced for sex offenses or sexually violent offenses on or after January 1, 1982. Penalties for failure to comply with registration requirements were also increased so that a person who failed to comply with a requirement of the act committed a Class D crime for a first offense; a Class C crime for a second offense; and a Class B crime for a third or greater offense.
2. **Public Law 2005, chapter 545** amended the SORNA of 1999 by specifying that only the SBI may maintain a State sex offender registry on the Internet, but law enforcement agencies may maintain their own websites for internal and public use if the websites are frequently updated, have a link to the State’s official Internet registry

and include information that the posting agency is solely responsible for the website and that it is not the official State Internet registry.

G. LEGISLATIVE ACTION BY THE 123rd LEGISLATURE

Another law was recently passed by the Legislature that, although it does not directly amend the SORNA of 1999, includes as an element of the offense the fact that a person is required to register under Title 34-A, Chapter 15. In an effort to better provide safety to children in those areas where there is an expectation that they are safest, and to balance the right of registrants and not prohibit where they may live or work, the Legislature enacted Title 17-A, §261 in **Public Law 2007, chapter 393**. Title 17-A, §261 prohibits a person from intentionally or knowingly having direct or indirect contact with another person who is less than 14 years of age if that person has previously been convicted of an offense under Title 17-A, Chapter 11 or 12¹⁵ against another person who was less than 14 years of age, and if that person has a duty to register as a 10-year or lifetime registrant under Title 34-A, Chapter 15. The crime of prohibited contact with a minor is enhanced from a Class E crime to a Class D crime if the contact occurs in a “sex offender restricted zone,” which means: the real property comprising a public or private elementary or middle school; the real property comprising a child care center, a child care facility, a day care operated by a family child care provider, a nursery school or a small child care facility as defined under Title 22, §8301-A; or an athletic field, park, playground, recreational facility, children’s camp or other place where children are the primary users.

Because an element of both of these new crimes includes that the person has a duty to register under Title 34-A, chapter 15, once a person no longer has a duty to register, a person cannot be guilty of these new crimes of prohibited contact with a minor or prohibited contact with a minor in a sex offender restricted zone. It is also an affirmative defense to prosecution that the parent, foster parent, guardian or other similar person responsible for the person who was less than 14 years of age knowingly granted the defendant permission to initiate, have or continue direct or indirect contact. Another affirmative defense to prosecution is that the contact was incidental to and directly related to employment.

H. EFFECT OF ADDITIONAL LEGISLATIVE AND POLICY ISSUES ON SEX OFFENDER REGISTRATION AND NOTIFICATION

A number of additional legal and policy issues have influenced legislative discussions related to registration and notification laws over the past few years. The Committee on Criminal Justice and Public Safety has deliberated over concerns raised by constituents, revisited the purpose of establishing and maintaining a registry and educated itself about other states’ approaches to sex offender management and about pending litigation challenging the constitutionality of Maine’s SORNA.¹⁶ The Committee on Criminal Justice and Public Safety has met during each legislative interim for the past five years to discuss these issues and determine how best to ensure public safety and balance the rights of offenders. The committee’s

¹⁵ 17-A MRSA, Chapter 11 is “Sexual Assaults” and Title 17-A, Chapter 12 is “Sexual Exploitation of Minors.”

¹⁶ Currently, the Maine Office of the Attorney General is appealing two criminal cases and defending more than 30 civil cases (*John Does*) that challenge the constitutionality of the SORNA of 1999, as amended.

most recent attempt at finding this balance was put forth in **LD 446, “An Act to Improve the Use of Information Regarding Sex Offenders to Better Ensure Public Safety and Awareness.”** This bill, as amended, was enacted by the First Special Session of the 123rd Legislature, but the bill was not signed into law. The bill proposed a number of changes to the SORNA of 1999.

- It would have removed certain registrants from the registry by repealing and replacing the application section to specify that those persons sentenced in Maine for a sex offense or sexually violent offense on or after January 1, 1982 but before June 30, 1992 must continue to register only if: they remained in execution of their sentence on September 1, 1998; they had more than one conviction for a Class A sex offense or Class A sexually violent offense; at the time of offense, they had been previously sentenced in this State for a sex offense or a sexually violent offense; or, at the time of offense, they had been previously sentenced in another jurisdiction for an offense that contains the essential elements of a sex offense or a sexually violent offense. The application section proposed to continue to require all persons sentenced on or after June 30, 1992 for a sex offense or a sexually violent offense to comply with the registration requirements. The application section also proposed to continue to require persons to register for a conviction, regardless of the date, if registration is required in the jurisdiction of conviction pursuant to that jurisdiction’s sex offender registration laws or would have been required pursuant to those laws had the person remained there.
- It would have amended the definition of “sex offense” by removing the crime of “criminal restraint” and all forms of “kidnapping,” except kidnapping for which the actor knowingly restrains another person with the intent to inflict bodily injury upon the other person or subject the other person to sexual assaults prohibited pursuant to Title 17-A, chapter 11.
- It would have amended the definition of “lifetime registrant” that pertains to persons classified as lifetime registrants due to having multiple convictions for sex offenses to clarify that the changes made by Public Law 2005, chapter 423 operate prospectively. For persons convicted and sentenced on or after September 17, 2005, the definition would have remained unchanged except for technical drafting changes. As used in that definition, the term “another conviction” would have included a conviction that occurred at any time. Convictions that occur on the same day could have been counted as other offenses for the purposes of classifying a person as a lifetime registrant if there were more than one victim or the convictions are for offenses based on different conduct or arising from different criminal episodes. Multiple convictions that result from, or are connected with, the same act or that result from offenses committed at the same time against one person would have been considered one conviction. For persons convicted and sentenced before September 17, 2005, the amendment would have changed the definition of “another conviction” to mean an offense for which sentence was imposed prior to the occurrence of the new offense.

- It would have clarified that an affirmative defense provided in the SORNA of 1999 may be raised for just cause, which could include that the offender was not aware of the duty to register.
- It would have clarified that a duty to register is not triggered by a court determination, but instead by and upon notification by a court, the Department of Corrections, the SBI or a law enforcement agency that a person has a duty to register under the Sex Offender Registration and Notification Act of 1999. In response to *State v. Johnson*, 2005 ME 46, the amendment would have specified that the SBI may correct the term of a registration erroneously assigned to an offender or registrant, since registration is not part of a criminal sentence. In such instances, the SBI would have notified the offender or registrant, the district attorney and court in the jurisdiction where the conviction occurred and the law enforcement agency having jurisdiction where the offender or registrant was domiciled, resided, was employed or attended college or school, if applicable.
- It would have made these proposed changes to the SORNA of 1999 retroactive to January 1, 1982.

LD 446 also proposed to make relevant changes to the Maine Criminal Code.

- It would have amended the crime of prohibited contact with a minor by repealing the element of that crime that the person has a duty to register under the SORNA of 1999 and by making the law applicable only to those persons convicted on or after June 30, 1992, when the State first began registering sex offenders.
- It would have repealed from the sentencing provisions the directive that a court order a person convicted of a sex offense or a sexually violent offense to satisfy all requirements of the SORNA of 1999. This change would have clarified that it is the Legislature that determines that a duty to register exists based on the conviction, and that the court's duty is only to notify the person of that legislatively established duty to register.
- It would have repealed from the probation provisions the directive that a court attach as a condition of probation that a person convicted of a sex offense or a sexually violent offense satisfy all requirements of the SORNA of 1999. The court already has discretion to order any condition of probation reasonably related to the rehabilitation of the convicted person or the public safety or security, including satisfying registration requirements, if appropriate.

Although some of the proposed changes in LD 446 were of a substantive nature and would have removed certain persons from the registry, other proposed changes were intended to improve the ability of the SBI to administer the SORNA, to clarify the civil nature of the registry and to clarify the fact that it is the Legislature by statute who determines who must register based currently on a person's sentence for a "sex offense" or "sexually violent offense." The

committee feels strongly that some of these intended changes should be carried forward and can be seen later in this report. (See **IV. FINDINGS AND RECOMMENDATIONS.**)

In addition to the most recent legislative efforts to amend the SORNA of 1999, the committee has also been discussing the implications of the newest federal law that repeals and replaces federal sex offender requirements, the **Adam Walsh Child Protection Safety Act of 2006 (AWA)**.¹⁷ The act replaces prior federal sex offender registration policies and directs states to adopt uniform sex offender registration requirements to ensure consistency in registration across the country and penalizes states that do not substantially comply by once again withholding certain federal Byrne Grant Program funding. The AWA sets minimum national standards for registration. States are directed to model their registries using federal minimum standards as a floor, not a ceiling; states can be stricter, but not less strict, than the requirements put forth in the AWA. Specific required elements pursuant to the AWA include the following.

- Juveniles must register and be posted on a state's public Internet registry, if a juvenile is prosecuted as an adult or if the juvenile is 14 years of age or older and commits and is adjudicated for a serious sexually assault crime, including engaging in a sexual act with another by force or the threat of serious violence or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.¹⁸ (Maine does not require juveniles to register.)
- States must define and, if necessary to comply with the act, expand the definitions/categorizations of registered sex offenders to include three tiers.¹⁹ As defined in the AWA, the most serious offenses are Tier-III offenses. These include conduct punishable by imprisonment for more than one year and are comparable to or more severe than the following federal offenses or an attempt or conspiracy to commit the following offenses: aggravated sexual abuse or sexual abuse; abusive sexual contact against a person who has not attained 13 years of age; kidnapping of a minor (unless committed by a parent or guardian); or occurs after the offender becomes a tier II sex offender. A Tier-II offense includes conduct punishable by imprisonment for more than one year and is comparable to or more severe than the following federal offenses when committed against a minor or an attempt or conspiracy to commit the following offenses against a minor: sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, abusive sexual contact; or involves use of a minor in a sexual performance, solicitation of a minor to practice prostitution or production or distribution of child pornography; or occurs after the offender becomes a tier I sex offender. (Maine currently categorizes

¹⁷ Pub. L. No. 109-248, 128 Stat. 587.

¹⁸ See 42 U.S.C. §16911(8).

¹⁹ Registered offenders are placed in three tiers:

1. Tier III - lifetime registration with quarterly verification.
2. Tier II - 25 year registration with biannual verifications.
3. Tier I - 15 year registration with annual verification.

offenders as 10-year registrants and lifetime registrants based on the offense for which the offender is convicted.)²⁰

- An offender must register where the offender resides, where the offender is an employee and where the offender attends school. For initial registration, the offender must also register in the jurisdiction in which convicted if that jurisdiction is different from the jurisdiction of residence. Registration must be completed before an offender completes a term of imprisonment or not later than three days after being sentenced, if no term of imprisonment is imposed. An offender must appear in person in one of the jurisdictions listed above within three days after each change of address. (An offender in Maine who changes a residence, work or school address must notify the SBI in writing within five days and must notify the law enforcement agency having jurisdiction within 24 hours of the change in address.)²¹
- A penalty of greater than one year of imprisonment must be imposed for failure to comply with registration requirements. (In Maine a first offense is a Class D crime punishable by less than one year, a second offense is a Class C crime punishable by up to five years, and a third or greater offense is a Class B crime punishable by up to 10 years of incarceration. There is no mandatory minimum sentencing alternative imposed for a violation.)²²
- Periods of required registration are: 15 years of registration for a tier I offender, 25 years of registration for a tier II offender and lifetime registration for a tier III offender. The act authorizes states to allow a Tier I offender who maintains a “clean record” to have that offender’s registration reduced to 10 years, and a Tier III offender adjudicated delinquent as a juvenile who maintains a “clean record” to have that offender’s registration reduced to 25 years. A “clean record” means no conviction for any sex offense, for any offense for which a period of more than one year of imprisonment may be imposed, successful completion of supervised release or probation and completion of a sex offender treatment program certified by the United State Attorney General (USAG) or the jurisdiction. The act does not speak to Tier II offenders on this issue.
- Offenders must appear in person to verify registration information and take a photograph every three months for Tier III offenders, every six months for Tier II offenders and at least annually for Tier I offenders. (Maine requires 10-year registrants to verify information annually and lifetime-registrants to verify every 90 days. Registrants must provide a photograph and fingerprints to the law enforcement agency of jurisdiction verifying the registrant’s identity.)²³

²⁰ See 34-A MRSA, §11203, sub-§§5-8.

²¹ See 34-A MRSA, §11222.

²² See 34-A MRSA, §11227.

²³ See 34-A MRSA, §11222, sub-§4.

- A registry must include at least the registrant's license plate number and Social Security number (provided by the offender), and criminal history, palm prints and a photocopy of license or identification card (provided by the jurisdiction).²⁴
- Each state must require the appropriate official to inform an offender of the duty to register, require the offender to sign a statement that the offender understands the requirements and require that one official ensures that the offender is registered.
- Each state must make registration information available on the Internet in a manner that is readily accessible to all jurisdictions and to the public, including public access by a single query for any given zip code or geographic radius. Jurisdictions must also include in Internet design field search capabilities for full participation in the National Sex Offender Public Website. Public websites must include: name, photo, physical description, current offense and prior sex offenses, employer address, residence address, school address, vehicle license plate number and description. Jurisdictions must exempt from disclosure on the Internet: the identity of any victim, the Social Security number of the offender and references to arrests that did not result in conviction. Jurisdictions may exempt from disclosure: any information about a Tier I offender convicted of an offense other than a specified offense against a minor, the name of an employer of an offender, the name of a school of an offender. Internet sites must also include links to sex offender safety and education resources, instructions regarding how to correct erroneous information and warnings about misuse of registration information.

States have three years from the date of enactment or one year after the date the USAG issues uniform registry and Internet software to implement the statutory changes required by the AWA. By April 27, 2009 states must file substantial compliance information or a request for an extension for a one-year period. A second one-year extension may also be requested. The deadline for substantial compliance is July 27, 2009. States that fail to implement the new federal changes pursuant to this act will lose 10% of their federal Byrne Grant Program funds. At this point, the exact amount of funds that Maine would receive is unknown, and there are only

²⁴ 34-A MRSA, §11221, sub-§1 specifies that the SBI shall establish and maintain a registry that includes the following information for each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence;
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location;
- C. Offense history;
- D. Notation of any treatment received for a mental abnormality or personality disorder;
- E. A photograph and set of fingerprints;
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- G. Any other information the bureau determines important.

estimates to determine the actual cost of substantial compliance and implementation of the AWA.

In addition to the state registration requirements listed above, the AWA also mandates the following regarding notification, training and education:

- A comprehensive national system for the registration of sex offenders maintained by the USAG (database will be called “National Sex Offender Registry”) must be created. Integration of the information in state sex offender registry systems will provide law enforcement with access to the same information across the United States. Data drawn from this comprehensive registry will also be made available to the public via single query for any zip code or geographical radius (“Dru Sjodin National Sex Offender Website”);²⁵
- There must be established a community notification program that requires all registration information be provided to the USAG; appropriate law enforcement agencies, schools and public housing agencies in the offender’s jurisdiction; jurisdictions where the offender resides, works and attends school; agencies responsible for conducting employment-related background checks; social service entities responsible for protecting minors in the child welfare system; volunteer organizations in which contact with minors or other vulnerable individuals might occur; any organization, company or individual who requests such notification (the latter two groups may opt to receive information no less frequently than every five business days). (“Megan Nikole Kanka and Alexandra Nicole Zapp Community Notification Program”);
- States are required to notify the USAG when an offender fails to comply with registration requirements; USAG and law enforcement will take appropriate action;
- The USAG must provide software, within the first two years after enactment, so states can establish and operate uniform registries and Internet sites;
- The USAG is required to establish and implement Sex Offender Management Assistance Program (“SOMA”) under which grants may be awarded to jurisdictions to offset implementation costs;
- The USAG, in consultation with the Secretary of State and the Secretary of Homeland Security, is required to establish and maintain a system for informing the relevant jurisdictions about persons entering the U.S. who are required to register;
- The USAG is required to expand training and technology efforts with federal, state, and local law enforcement agencies and prosecutors to effectively respond to the

²⁵ Website may be accessed at <http://www.nsopr.gov/>.

threat to children and the public by sex offenders who use the Internet to solicit and exploit children;

- Federal mandatory minimum penalties must be imposed for the most serious crimes against children, and there must be increased penalties for crimes such as sex trafficking of children and child prostitution. Grants are to be provided to states to help them institutionalize sex offenders who have shown they cannot change their behavior and are about to be released from prison;
- The USAG has the authority to apply the law retroactively;
- A national database must be established that will incorporate the use of DNA evidence collection and tracking of convicted sex offenders with Global Positioning System technology. Other grants and study programs may be established to assist states in the management of sex offenders; and
- A National Child Abuse Registry is created to protect children from being adopted by convicted child abusers.

The AWA also established the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking Office (“SMART Office”). The SMART Office provides jurisdictions with guidance regarding the implementation of the AWA and provides technical assistance to the states, territories, Indian tribes, local governments and to public and private organizations. The SMART Office also tracks important legislative and legal developments related to sex offenders and administers grant programs related to the registration, notification, tracking and monitoring of sex offenders.

I. EFFECT OF LITIGATION ON SEX OFFENDER REGISTRATION AND NOTIFICATION

There currently are a number of court cases challenging the constitutionality of the SORNA of 1999, and this issue has played a part in legislative deliberations regarding the SORNA. At least 30 civil cases have been filed by persons who have a duty to register, and there are two criminal appeals pending as well. The Legislature anticipates that the criminal appeal, *State of Maine v. Eric Letalien*,²⁶ will be scheduled for oral argument before the Maine Law Court in January 2009.

The State charged Eric Letalien with violating the SORNA of 1999 for failure to verify his registration information. Mr. Letalien moved to dismiss the charge on the basis that the SORNA is unconstitutional. The District Court agreed, finding that “...by the ‘clearest proof’ that despite the civil intent, the effect of SORNA is so punitive as to overcome its civil characterization. Therefore, this court holds that 34-A MRSA §11201 et seq. violates the Ex Post Facto Clause of the Constitutions of the United States and of the State of Maine.”²⁷ In this case, both the court and Mr. Letalien relied in part on *John Doe v. District Attorney*, which was

²⁶ Law Docket No. AND-08-358.

²⁷ *State of Maine v. Eric Letalien*, Docket No. CR-07-3082 (June 2, 2008) (Def.’s M. Dismiss).

decided by the Maine Law Court on September 25, 2007.²⁸ In its appeal, the State's Statement of Issues in its brief to the Law Court sets out four major issues that exist in the *Letalien* case:

- I. Whether the Court is bound by the decision in *Doe v. District Attorney*.
- II. *Ex Post Facto*
 - A. Whether the ex post facto protections of the Constitutions of Maine and the United States are coextensive.
 - B. Whether the Internet aspects of SORNA violate *ex post facto*.
 - C. Whether SORNA's failure to afford a hearing violates *ex post facto*.
 - D. Whether in-person verification violates *ex post facto*.
 - E. Whether section 261[Title 17-A MRSA] causes SORNA to violate *ex post facto*.
- III. Whether SORNA violates procedural or substantive due process.
- IV. Whether SORNA contravenes Maine's Declaration of Rights.²⁹

What the Law Court does with these arguments is of great interest to the Criminal Justice and Public Safety Committee, as it is hoped that the Court's decision will provide clear guidance regarding which provisions, if any, of the current SORNA of 1999 will pass constitutional muster. Knowing which combination of factors in the SORNA meets the public safety purpose of registration and notification and does not tip the scale so as to be considered punitive will go far in aiding future policy makers.

²⁸ See 932 A.2d 552 (Me. 2007). In this case, the Law Court remanded the case to the Superior Court for further factual development since the issue of whether amendments to SORNA changed the effect of SORNA from civil to punitive, such that retroactive application of SORNA to Doe violated the Ex Post Facto Clause, could not be resolved. The Law Court in its conclusions noted a number of amendments to the current SORNA that have been applied retroactively to registrants, including: increasing a 15 year registration requirement to lifetime registration for some; removing the opportunity for waiver from registration for rehabilitation or good cause shown; placing registrants on the Internet for public access; requiring lifetime registrants to report in person and be fingerprinted every 90 days; and restricting registrants' liberties by effectively barring them from being in certain places.

²⁹ See Appellant's Brief, p. 21 (September 21, 2008) in *State of Maine v. Eric Letalien*, Law Docket No. AND-080-358.

III. FINDINGS AND RECOMMENDATIONS

The Joint Standing Committee on Criminal Justice and Public Safety, in its study of sex offender registration and notification, has repeatedly faced the challenges of creating a system that both better informs and protects the safety of the public and balances the rights of offenders. In the effort to find a proper balance, the committee has responded to the changes in the criminal justice system at the state and federal levels, as well as to events that define the landscape for victims and offenders here in Maine. With this background and awaiting direction from Maine's courts to further guide the development of these registration and notification policies, the committee makes the following findings and recommendations to the 124th Legislature.

A. DEVELOP A REVISED SORNA

Although there have been multiple and significant amendments to the registration and notification laws in Maine, the committee finds that a more comprehensive revision that combines sex offenders' offense history with their risk of recidivism will better serve the true public safety purpose of the system. The committee finds that a combined offense and risk-based approach will provide the public with information that should more accurately define the level of danger that an offender poses.

The committee recommends that the Joint Standing Committee on Criminal Justice and Public Safety of the 124th Legislature develop a revised SORNA, using the following elements as a guide.

1. Create a 3-tiered system that categorizes offenders as:
 - A. Tier 1 – Lower risk of reoffense, which would place an offender on a website accessible only to law enforcement;
 - B. Tier 2 – Moderate or medium risk of reoffense, which would place an offender on a law enforcement only website, although law enforcement could provide offender information to members of the public if requested to do so; and
 - C. Tier 3 – Higher risk of reoffense, which would place an offender on a public website accessible to all and for which there should also be some other method of public notification.
2. An offender's initial classification or tier assignment should be offense-based using conviction data, including consideration of the seriousness of the offense and the existence of multiple offenses.
3. The system should have various time periods for reporting and registering with incentives and opportunities to change tiers and therefore the duration of registration.

4. Movement of offenders to new tiers could be accomplished by a petition initiated and paid for by the offender. Movement among tiers must be based on the offender's risk of reoffense, using evidence-based risk assessment tools and evidence-based risk analysis.
5. Application of risk assessment tools and analysis must be performed by trained professionals taking into consideration any Department of Corrections experience with the offender, the offender's past criminal history and other relevant factors.
6. Petition for assessment and potential movement among tiers may be made by an offender only after a certain defined period of time on the registry has been completed. Processes for request for reclassification, implementation and appeals to classifications must be put in place.

(See **Appendix B for Proposed Model of a 3-Tier Registry System** created by Rep. Anne Haskell.)

In addition to these suggested elements to a revised SORNA, the committee recommends that other provisions regarding registration and notification also be considered and that these issues be discussed further. Issues include the following.

- * Should certain offenders never entirely be removed from SORNA?
- * Should juveniles, who are not bound over and tried as adults, be made part of the registry system in some manner?
- * Although risk analysis costs are to be assumed by the offender, what other costs will there be for implementation of changes to the system, including costs to SBI and for hearings and appeals? How will these costs be paid?
- * Should a registry accessible to the public include specific information gleaned from the application of risk assessment tools and analysis? If so, what level of detail should be made accessible?

B. PREEMPTION IN THE FIELD OF SEX OFFENDER MANAGEMENT, INCLUDING RESIDENCY RESTRICTIONS

While the Maine Legislature has worked to maintain a consistent approach to the management and supervision of sex offenders in the community, some municipalities have adopted ordinances that impose residency restrictions on sex offenders in their specific communities. Over the years, the Legislature has heard and worked a number of bills dealing with residency restrictions. Hearing testimony on these bills and educating itself about other states' experiences with residency restrictions, the committee finds, and the research supports, that such restrictions do not increase public safety. Residency restrictions make it more difficult for sex offenders to successfully reenter society and find stability (living and work arrangements) and make it more challenging for law enforcement to find and monitor offenders. Based on these

findings, the committee recommends that the Criminal Justice and Public Safety Committee of the 124th Legislature considers introducing legislation that would preempt the field of sex offender management and prohibit municipalities and other entities from adopting their own restrictions on sex offenders.

C. IMMEDIATE LEGISLATIVE CHANGES TO THE SORNA OF 1999

Although there are many issues related to sex offender registration and notification that may make it sensible to wait for legislative action, the committee finds that there are several provisions in the recent committee amendment to LD 446, “An Act to Improve the Use of Information Regarding Sex Offenders to Better Ensure Public Safety and Awareness,” that should go forward as soon as possible. These provisions would improve the SBI’s ability to administer the SORNA of 1999 and would clarify key points in the registration law. Specifically, the committee recommends that legislation be introduced to make the following changes.

1. Amend the crime of prohibited contact with a minor (Title 17-A, §261) by repealing the element of the crime that the person has a duty to register under the Sex Offender Registration and Notification Act of 1999 and by making the law applicable only to those persons convicted on or after June 30, 1992. Although a person would still have to be previously convicted of a Chapter 11 or Chapter 12 offense against a victim who had not attained 14 years of age, the fact that the person is required to register pursuant to the SORNA of 1999 or not is immaterial to the commission of the crime.
2. Repeal from the sentencing provisions (Title 17-A §1152, sub-§2-C) the directive that a court shall order a person convicted of a sex offense or a sexually violent offense to satisfy all requirements of the Sex Offender Registration and Notification Act of 1999. This change would clarify that the Legislature, by its prior actions, determined that a person’s duty to register exists based on that person’s conviction and sentence for a “sex offense” or “sexually violent offense,” and that the court’s duty is only to notify the person of that legislatively imposed registration responsibility. Also, clarify in the SORNA of 1999 that a duty to register is not triggered by a court determination, but by and upon notification by a court, the custodial entity, the SBI or a law enforcement agency that a person has a duty to register under the Sex Offender Registration and Notification Act of 1999.
3. Repeal from the probation provisions (Title 17-A, §1204, sub-§1-C) the directive that a court attach as a condition of probation that a person convicted of a sex offense or a sexually violent offense must satisfy all requirements of the SORNA of 1999. The court has discretion to order any condition of probation reasonably related to the rehabilitation of the convicted person or the public safety or security, including satisfying registration requirements, if appropriate.
4. Amend the definition of “lifetime registrant” that pertains to persons classified as lifetime registrants due to having multiple convictions for sex offenses to clarify that the changes made by Public Law 2005, Chapter 423 operate prospectively. This means that for persons convicted and sentenced on or after September 17, 2005, the definition remains

unchanged except for technical drafting changes; for persons convicted and sentenced before September 17, 2005, the amendment changes the definition of “another conviction” to mean an offense for which sentence was imposed prior to the occurrence of the new offense. This change would undo the expansion of 10-year registrants who became lifetime registrants with the 2005 change, including those registrants whose duty to register had ended prior to the change.

APPENDIX A

Joint Order, S.P. 933

STATE OF MAINE

In Senate _____

ORDERED, the House concurring, that the Legislature intends that this order supercede House Paper 1665; and be it further

ORDERED, the House concurring, that the Joint Standing Committee on Criminal Justice and Public Safety, referred to in this order as "the committee," shall meet to study issues related to sex offender registration laws as follows.

1. Convening of committee; meetings. The chairs of the committee shall call and convene the first meeting of the committee, which may be no later than June 15, 2008. The committee may meet 3 times.

2. Duties. The committee's duties include:

A. Using other states' models for tiered systems based on risk and other examples of sex offender classification and assessment and creating a system of classification based on risk to be applied to each person required to register under the Sex Offender Registration and Notification Act of 1999 in order to classify registrants based on their risk of reoffending and the degree of likelihood that they pose a danger to the community;

B. Creating processes to apply the risk assessment and evaluate its use so that due process concerns are met and each risk assessment analysis provides useful information to those in the criminal justice system and others who receive that information; and

C. Reviewing the current list of registerable sex offenses and determining if changes to the current Maine sex offender registry and to the Maine sex offender registry website should be made.

3. Staff assistance. The Legislative Council shall provide staffing services to the committee.

4. Compensation. Pursuant to Joint Rule 353, members of the committee are entitled to receive the legislative per diem and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the committee.

5. Report. No later than November 5, 2008, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, for the consideration of the First Regular Session of the 124th Legislature. Pursuant to Joint Rule 353, the committee is not authorized to introduce legislation. The joint standing committee of the 124th Legislature having jurisdiction over criminal justice and public safety matters may, pursuant to Joint Rule 353, introduce a bill during the First Regular Session of the 124th Legislature to implement the recommendations on matters relating to the study.

SPONSORED BY: _____

(Senator MARTIN)

COUNTY: Aroostook

APPENDIX B

Proposed Model of a 3-Tier Registry System

RISK OF REOFFENSE

HIGHER:

MODERATE:

LOWER:

Public Website

L/E Website

Public by request

L/E only Website

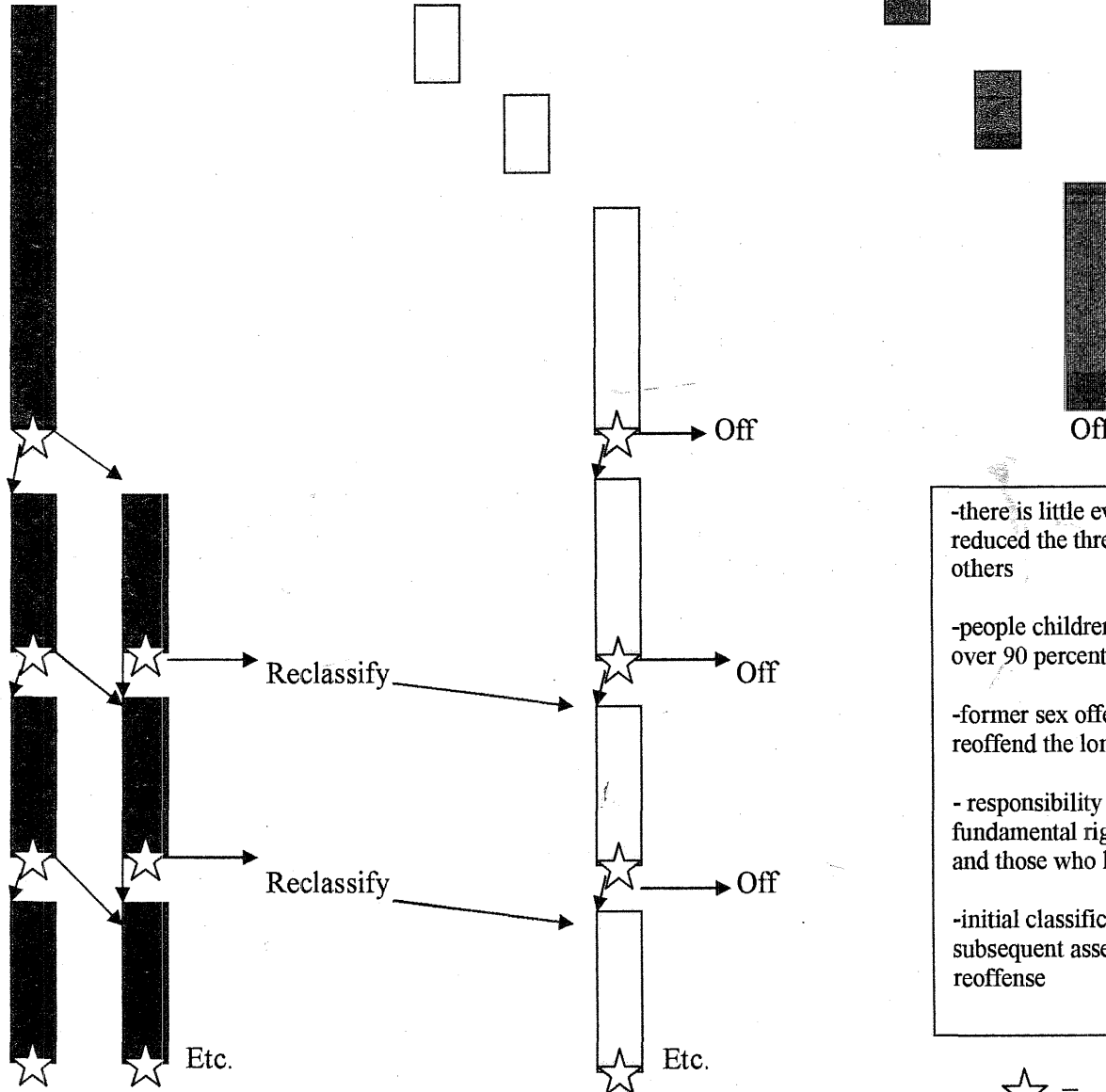
Registration Interval

3 mos. 6 mos.

3 mos. 6 mos. 12 mos.

3 mos. 6 mos. 12 mos.

1 year
2 years
3 years
4 years
5 years
6 years
7 years
8 years
9 years
10 years
11 years
12 years
13 years
14 years
15 years
16 years
17 years
18 years
19 years
20 years
21 years
22 years
23 years
24 years
25 years



Reclassify

Reclassify

Off

Off

Off

Off

-there is little evidence that the laws have in fact reduced the threat of sexual abuse to children or others

-people children know and trust are responsible for over 90 percent of sex crimes against them

-former sex offenders are less and less likely to reoffend the longer they live offense-free

- responsibility to protect the wellbeing and fundamental rights of all residents—including victims and those who have been convicted of crimes

-initial classification is based on conviction data, but subsequent assessments will be based on likelihood of reoffense

Rep. Anne Haskell 3/2/08

☆ = Assessment