

MAINE STATE LEGISLATURE

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DATE: March 25, 1996

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CRIMINAL JUSTICE

Reported by: Senator BENOIT of Franklin for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510, Bill, "An Act to Make Comprehensive Changes to the Sex Offender Laws"

Amend the bill by inserting after the title the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 15 MRSA §812, sub-§2, as enacted by PL 1981, c. 685, is amended to read:

2. Notification to victims and law enforcement officers. Before submitting a negotiated plea to the court, the attorney for the State shall advise the ~~victim or victims, if available,~~ and the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11 or 13 and shall advise victims of their rights under Title 17-A, section 1173.

Sec. 2. 15 MRSA §6101, as enacted by PL 1993, c. 675, Pt. A, §3, is amended to read:

§6101. Victim involvement in criminal proceedings

1. **Notice to victims.** Whenever practicable, prosecutors the attorney for the State shall make a good faith effort to inform the victims and families of victims of crimes of domestic violence and sexual assault and crimes in which the victim or the victim's family suffered serious physical trauma or serious financial loss of:

A. The victim advocate and ~~victim-compensation-programs~~ the victims' compensation fund pursuant to Title 5, chapter 316-A;

B. The victim's right to be advised of the existence of a negotiated plea agreement before that agreement is submitted to the court pursuant to ~~section 812~~ Title 17-A, section 1173;

C. The time and place of the trial, if one is to be held;

D. The victim's right to make a statement or submit a written statement at the time of sentencing pursuant to Title 17-A, section ~~1257,~~ 1174 upon conviction of the ~~person committing the crime~~ defendant; and

E. The final disposition of the charges against that defendant.

2. **Notice to court.** Whenever practicable, the prosecutor attorney for the State shall make a good faith effort to inform the court about the following:

A. If there is a plea agreement, the victim's or the victim's family's position on the plea agreement; and or

B. If there is no plea agreement, the victim's or the victim's family's position on sentencing.

Sec. 3. 17-A MRSA §15, as amended by PL 1995, c. 356, §20, is repealed and the following enacted in its place:

§15. Warrantless arrests by a law enforcement officer

1. Except as otherwise specifically provided, a law enforcement officer may arrest without a warrant:

A. Any person who the officer has probable cause to believe has committed or is committing:

(1) Murder;

- 2 (2) Any Class A, Class B or Class C crime;
- 4 (3) Assault while hunting;
- 6 (4) Any offense defined in chapter 45;
- 8 (5) Assault, criminal threatening or terrorizing if
10 the officer reasonably believes that the person may
cause injury to others unless immediately arrested;
- 12 (5-A) Assault or reckless conduct if the officer
14 reasonably believes that the person and the victim are
family or household members, as defined in Title 15,
16 section 321;
- 18 (6) Theft as defined in section 357, when the value of
20 the services is \$2,000 or less if the officer
reasonably believes that the person will not be
apprehended unless immediately arrested;
- 22 (7) Forgery, if the officer reasonably believes that
24 the person will not be apprehended unless immediately
arrested;
- 26 (8) Negotiating a worthless instrument if the officer
28 reasonably believes that the person will not be
apprehended unless immediately arrested;
- 30 (9) A violation of a condition of probation when
32 requested by an official of the Division of Probation
and Parole;
- 34 (10) Violation of a condition of release in violation
36 of Title 15, section 1026, subsection 3; Title 15,
section 1027, subsection 3; Title 15, section 1051,
38 subsection 2; and Title 15, section 1092;
- 40 (11) Theft involving a detention under Title 17,
section 3521;
- 42 (12) Harassment, as set forth in section 506-A;
- 44 (13) Violation of a protection order, as specified in
46 Title 5, section 4659, subsection 2; Title 15, section
321, subsection 6; Title 19, section 769, subsection 2;
48 and Title 19, section 770, subsection 5; or
- 50 (14) A violation of a sex offender registration
provision under Title 34-A, chapter 11 or 13; and

2 **§1172. Victims to be notified**

4 1. When practicable, the attorney for the State shall make
6 a good faith effort to inform each victim of a crime of the
8 following:

10 A. The details of a plea agreement before it is submitted
12 to the court;

14 B. The right to comment on the plea agreement pursuant to
16 section 1173;

18 C. The time and place of the trial;

20 D. The time and place of sentencing; and

22 E. The right to participate at sentencing pursuant to
24 section 1174.

26 2. When providing notice under subsection 1, the attorney
28 for the State shall offer to provide the victim with a pamphlet
30 containing this chapter, Title 5, chapter 316-A and Title 15,
32 sections 812 and 6101.

34 **§1173. Plea agreement procedure**

36 When a plea agreement is submitted to the court pursuant to
38 the Maine Rules of Criminal Procedure, Rule 11A (b), the attorney
40 for the State shall disclose to the court any and all attempts
42 made to notify each victim of the plea agreement and any
44 objection to the plea agreement by a victim. A victim who is
46 present in court at the submission of the plea may address the
48 court at that time.

50 **§1174. Sentencing procedure**

1. The victim must be provided the opportunity to
participate at sentencing by:

A. Making an oral statement in open court; or

B. Submitting a written statement to the court either
directly or through the attorney for the State. A written
statement must be made part of the record.

2. The court shall consider any statement made under
subsection 1, along with all other appropriate factors, in
determining the sentence.

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2 3. Unlike victims defined under section 1171, family
3 members not within that definition, close friends of the victim,
4 community members and other interested persons do not have a
5 right to participate at sentencing. Participation by such
6 interested persons is a matter for the court's discretion in
7 determining what information to consider when sentencing.

8 **§1175. Notification of defendant's release**

10 Upon complying with subsection 1, a victim of a crime of
11 murder or of a Class A, Class B or Class C crime for which the
12 defendant is committed to the Department of Corrections or to a
13 county jail, or a victim of a crime of gross sexual assault who
14 had not in fact attained 16 years of age at the time of the crime
15 for which the defendant is found not criminally responsible by
16 reason of mental disease or defect and is placed in institutional
17 confinement under Title 15, section 103, must receive notice of
18 the defendant's unconditional release and discharge from
19 institutional confinement upon the expiration of the sentence or
20 upon discharge under Title 15, section 104-A and must receive
21 notice of any conditional release of the defendant from
22 institutional confinement, including probation, parole, furlough,
23 work release, intensive supervision, supervised community
24 confinement, home release monitoring or similar program or
25 release under Title 15, section 104-A.

26
27 1. A victim who wishes to receive notification must file a
28 request for notification of the defendant's release with the
29 office of the attorney for the State. The attorney for the State
30 shall forward this request form to the Department of Corrections,
31 to the state mental health institute or to the county jail to
32 which that defendant is committed.

33 2. The Department of Corrections, the state mental health
34 institute or the county jail to which the defendant is committed
35 shall keep the victim's written request in the file of the
36 defendant and shall notify the victim by mail of any impending
37 release as soon as the release date is set. This notice must be
38 mailed to the address provided in the request or any subsequent
39 address provided by the victim.

40
41 3. The notice required by this section must contain:

42
43 A. The name of the defendant;

44
45 B. The nature of the release authorized, whether it is a
46 conditional release, including probation, parole, furlough,
47 work release, intensive supervision, supervised community
48 confinement, home release monitoring or a similar program or
49 release under Title 15, section 104-A, or an unconditional
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release and discharge upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

C. The anticipated date of the defendant's release from institutional confinement and any date on which the defendant must return to institutional confinement, if applicable;

D. The geographic area to which the defendant's release is limited, if any;

E. The address at which the defendant will reside; and

F. The address at which the defendant will work, if applicable.

4. The notice requirement under this section ends when:

A. Notice has been provided of an unconditional release or discharge upon the expiration of the sentence or upon discharge under Title 15, section 104-A; or

B. The victim has filed a written request with the Department of Corrections, the state mental health institute or the county jail to which the defendant is committed asking that no further notice be given.

5. Neither the failure to perform the requirements of this chapter nor compliance with this chapter subjects the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Mental Health and Mental Retardation, the state mental health institute or the county jail or the employees or officers of the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Mental Health and Mental Retardation, the state mental health institute or the county jail to liability in a civil action.

Sec. 6. 17-A MRSA §1204, sub-§1-C is enacted to read:

1-C. The court shall attach as a condition of probation that the convicted sex offender, as defined under Title 34-A, section 11103, satisfy all responsibilities set forth in the Sex Offender Registration and Notification Act.

Sec. 7. 17-A MRSA §1257, sub-§1, as enacted by PL 1983, c. 352, §2, is amended to read:

1. In any case where a defendant has been convicted of any a crime either upon his the defendant's plea or after trial, the

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COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510

2 ~~prosecutor shall have~~ attorney for the State has the right to be
3 heard at the time of sentence. The ~~prosecutor~~ attorney for the
4 State may recommend a specific sentence or other disposition.
5 The court shall consider any statements made by the attorney for
6 the State, along with all other appropriate factors, in
determining the sentence.

8 **Sec. 8. 17-A MRSA §1257, sub-§2,** as enacted by PL 1983, c.
9 352, §2, is repealed and the following enacted in its place:

10 2. A victim has the right to participate in the sentencing
11 process pursuant to section 1174 and to receive notification of a
12 defendant's release pursuant to section 1175.

13 **Sec. 9. 17-A MRSA §1257, sub-§3,** as enacted by PL 1983, c.
14 352, §2, is repealed.

15 **Sec. 10. 17-A MRSA §1257-A,** as amended by PL 1995, c. 164,
16 §1, is repealed.

17 **Sec. 11. 34-A MRSA §11001-A** is enacted to read:

18 **§11001-A. Application**

19 This chapter applies to sex offenders sentenced on or after
20 June 30, 1992 and before September 1, 1996.

21 **Sec. 12. 34-A MRSA §11005** is enacted to read:

22 **§11005. Liability**

23 Neither the failure to perform the requirements of this
24 chapter nor compliance with this chapter subjects the
25 commissioner, the department, the Commissioner of Public Safety,
26 the Department of Public Safety, the county jail or any other law
27 enforcement agency or the employees or officers of the
28 commissioner, the department, the Commissioner of Public Safety,
29 the Department of Public Safety, the county jail or any other law
30 enforcement agency to liability in a civil action.

31 **Sec. 13. 34-A MRSA c. 13** is enacted to read:

32 **CHAPTER 13**

33 **SEX OFFENDER REGISTRATION AND NOTIFICATION ACT**

34 **SUBCHAPTER I**

35 **GENERAL PROVISIONS**

Red

2
3 §11101. Short title

4 This chapter may be known and cited as the "Sex Offender
5 Registration and Notification Act." The purpose of this chapter
6 is to protect the public safety by enhancing access to
7 information concerning sex offenders.

8 §11102. Application

9
10 This chapter applies to all sex offenders sentenced or
11 placed in institutional confinement under Title 15, section 103
12 on or after September 1, 1996.

13 §11103. Definitions

14
15 As used in this chapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

17
18 1. Conditional release. "Conditional release" means
19 supervised release of a sex offender from institutional
20 confinement for placement on probation, parole, intensive
21 supervision, supervised community confinement, home release
22 monitoring or release under Title 15, section 104-A.

23
24 2. Discharge. "Discharge" means unconditional release and
25 discharge of a sex offender from institutional confinement upon
26 the expiration of a sentence or upon discharge under Title 15,
27 section 104-A.

28
29 3. Law enforcement agency. "Law enforcement agency" means
30 the State Police, a municipal police department or a county
31 sheriff's department.

32
33 4. Risk assessment instrument. "Risk assessment
34 instrument" means an instrument created and modified as necessary
35 by reviewing and analyzing precursors to a sex offense, victim
36 populations of a sex offender, living conditions and environment
37 of a sex offender and other factors predisposing a person to
38 become a sex offender or to become a repeat sex offender, used
39 for the ongoing purpose of identifying risk factors used to
40 provide notification of a sex offender's conditional release or
41 discharge from a state correctional facility to law enforcement
42 agencies and to the public.

43
44 5. Sex offender. "Sex offender" means an individual
45 convicted of gross sexual assault if the victim had not in fact
46 attained 16 years of age at the time of the crime or an
47 individual found not criminally responsible for committing gross
48 sexual assault by reason of mental disease or defect if the

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2 victim had not in fact attained 16 years of age at the time of
3 the crime.

4 **§11104. Access to records**

6 Sex offender registration information under section 11142,
7 subsection 1 in the possession or custody of the Department of
8 Public Safety, State Bureau of Identification or any other
9 criminal justice agency is criminal history record information,
10 and its dissemination is governed by Title 16, chapter 3,
11 subchapter VIII.

12 **§11105. Liability**

14 Neither the failure to perform the requirements of this
15 chapter nor compliance with this chapter subjects the
16 commissioner, the department, the Commissioner of Public Safety,
17 the Department of Public Safety, the county jail, any other law
18 enforcement agency or the Commissioner of Mental Health and
19 Mental Retardation or a state mental health institute or the
20 employees or officers of the commissioner, the department, the
21 Commissioner of Public Safety, the Department of Public Safety,
22 the county jail, any other law enforcement agency, the
23 Commissioner of Mental Health and Mental Retardation or the state
24 mental health institute to liability in a civil action.

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28 **SUBCHAPTER II**

29
30 **SEX OFFENDER REGISTRATION**

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32 **§11121. Registration of sex offenders**

34 1. Notice of duty to register. The department, the state
35 mental health institute or the county jail that has custody of a
36 sex offender required to register under this subchapter shall
37 inform the sex offender, prior to discharge or conditional
38 release, of the duty to register. If no period of institutional
39 confinement is to be served, the court shall inform the sex
40 offender at the time of sentencing of the duty to register under
41 this subchapter.

42 2. Duty to register. At least 15 days before discharge or
43 conditional release from a state correctional facility, a state
44 mental health institute or a county jail, a sex offender shall
45 register that person's intended address after conditional release
46 or discharge with the Department of Public Safety, State Bureau
47 of Identification or, if no period of institutional confinement
48 is to be served, a sex offender shall register that person's
49 intended address within 5 calendar days of sentencing.
50

2 This registration requirement remains in effect for 15 years from
3 the date of:

4 A. Sentencing if no period of institutional confinement is
5 to be served; or

6 B. Discharge or conditional release from a state
7 correctional facility, a state mental health institute or a
8 county jail.

9 If a sex offender on conditional release violates a condition of
10 that release and is returned to institutional confinement, the
11 sex offender's duty to register terminates. The registration
12 requirement begins again and remains in effect for 15 years from
13 the date of the sex offender's new conditional release or
14 discharge.

15 3. Change of address. If a sex offender required to
16 register under this subchapter changes address, that person shall
17 register the new address with the Department of Public Safety,
18 State Bureau of Identification at least 5 days before moving to
19 the new address.

20 4. When address unknown. If a sex offender required to
21 register under this subchapter does not have an intended address
22 in time to comply with the notification requirements in
23 subsections 2 and 3, the sex offender shall provide, at the time
24 of registration, to the Department of Public Safety, State Bureau
25 of Identification the intended municipality of residence and
26 shall provide an address as soon as it becomes known.

27 5. Duties of the State Bureau of Identification. Upon
28 receiving notice of a sex offender's conditional release or
29 discharge and the sex offender's address or change in address,
30 the Department of Public Safety, State Bureau of Identification
31 shall notify all law enforcement agencies having jurisdiction in
32 the municipality where a sex offender registers an address.

33 6. Waiver of registration. Registration may be waived only
34 if:

35 A. The conviction is vacated;

36 B. A full and free pardon is granted;

37 C. The Superior Court, upon the petition of the sex
38 offender, waives the registration requirement.

A sex offender may not petition for waiver of the registration requirement until at least 5 years after the sex offender is first required to register.

A sex offender may petition once a year for waiver of the registration requirement.

Before waiving the registration requirement, the court must determine that the sex offender has shown a reasonable likelihood that registration is no longer necessary and waiver of the registration requirement is appropriate. The court shall consider the sex offender's progress in treatment and may request an independent forensic evaluation provided through the State Forensic Service. If the court orders an independent forensic evaluation, the court shall reimburse the State Forensic Service for the cost of the evaluation and order the sex offender to reimburse the court for the cost of the evaluation; or

D. The sentencing court, for good cause shown, waives the registration requirement.

7. Violation. A sex offender who fails to register or update the information required under this section commits a Class D crime, except that a violation of this section when the sex offender has 2 or more prior Maine convictions for violations of this section or 2 or more prior Maine convictions for violations of section 11003 is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 10 years, although both prior convictions may have occurred on the same day. The date of the conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of a prior offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent. It is an affirmative defense that the failure to register or update information resulted from just cause.

SUBCHAPTER III

NOTIFICATION

§11141. Risk assessment

The department shall establish and apply a risk assessment instrument to each sex offender under its jurisdiction for the purpose of notification to law enforcement agencies and to the public.

2 §11142. Mandatory notification of conditional release or
4 discharge of sex offenders

6 The department and the Department of Public Safety, State
8 Bureau of Identification are governed by the following notice
provisions when a sex offender is conditionally released or
discharged.

10 1. Duties of the department. The department shall give the
12 Department of Public Safety, State Bureau of Identification
notice of the following:

14 A. The address where the sex offender will reside;

16 B. The address where the sex offender will work, if
applicable;

18 C. The geographic area to which a sex offender's
20 conditional release is limited, if any; and

22 D. The status of the sex offender when released as
24 determined by the risk assessment instrument.

26 2. Duties of the Department of Public Safety, State Bureau
of Identification. Upon receipt of the information concerning
28 the conditional release or discharge of a sex offender pursuant
to subsection 1, the Department of Public Safety, State Bureau of
30 Identification shall forward the information in subsection 1 to
all law enforcement agencies that have jurisdiction in those
areas where the sex offender may reside or work.

32 §11143. Public notification

34 1. Department. Upon the conditional release or discharge
36 of a sex offender from a state correctional institution, the
department shall give notice of the information under section
38 11142, subsection 1 to members of the public who the department
determines appropriate to ensure public safety.

40 2. Law enforcement agencies. Upon receipt of the
42 information concerning the conditional release or discharge of a
sex offender pursuant to section 11142, subsection 2, a law
44 enforcement agency shall notify members of that municipality who
the law enforcement agency determines appropriate to ensure
46 public safety.

48 §11144. Risk assessment assistance

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2 Upon request, the department shall provide to law
3 enforcement agencies technical assistance concerning risk
4 assessment for purposes of notification to the public of a sex
5 offender's conditional release or discharge.

6 **Sec. 14. Report.** The Department of Corrections shall report
7 its findings and recommendations regarding the implementation and
8 application of the risk assessment and relapse prevention program
9 for sex offenders, including the department's work assisting law
10 enforcement agencies with risk assessment for the purpose of
11 public notification, to the joint standing committee of the
12 Legislature having jurisdiction over criminal justice matters no
13 later than January 1, 1998.

14 **Sec. 15. Allocation.** The following funds are allocated from
15 the Federal Expenditure Fund to carry out the purposes of this
16 Act.

17 **1996-97**

18
19
20 **CORRECTIONS, DEPARTMENT OF**

21 **Correctional Services**

22
23 All Other \$200,000

24
25 Provides for the allocation of funds to
26 provide relapse prevention training and sex
27 offender treatment services to Department of
28 Corrections' clients.'

29
30 Further amend the bill by inserting at the end before the
31 statement of fact the following:

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33
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35 **FISCAL NOTE**

36 **1996-97**

37
38 **APPROPRIATIONS/ALLOCATIONS**

39 Other Funds \$200,000

40
41 This bill may increase prosecutions for Class C and Class D
42 crimes. Sentences of more than 9 months imposed for Class C
43 crimes must be served in a state correctional institution. The
44 cost to the State per sentence is \$55,711 based upon an average
45 length of stay of one year and 10 months. The State also must

COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510

reimburse counties for sentences served in county jails of 9 months or less for Class C crimes.

If a jail sentence is imposed for Class D crimes, the additional costs to the counties are estimated to be \$83.70 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these new cases. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

This bill includes a Federal Expenditure Fund allocation of \$200,000 for fiscal year 1996-97 for the Department of Corrections to provide sex offender treatment services if the federal revenue is received.

The additional costs associated with risk assessments and selected notification can be absorbed by the Department of Corrections utilizing existing budgeted resources.

The Department of Public Safety will incur some minor additional costs to provide sex offender notification to law enforcement agencies. These costs can be absorbed within the department's existing budgeted resources.

This bill requires municipal police and county sheriff departments to provide notification to victims of certain crimes and to members of the community. The additional costs of these state mandates can not be determined at this time. Pursuant to the Mandate Preamble, the 2/3 vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.'

STATEMENT OF FACT

This amendment replaces the bill and does the following.

1. It clarifies the rights of victims to participate in the criminal justice process and creates a victims' rights chapter in the Maine Criminal Code.

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COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510

2 It states that neither the failure to perform the
requirements of the victims' rights chapter nor compliance with
4 the victims' rights chapter subjects the attorney for the State,
the Commissioner of Corrections, the Department of Corrections,
6 the Commissioner of Mental Health and Mental Retardation, a state
mental health institute or a county jail or the employees or
8 officers of the attorney for the State, the Commissioner of
Corrections, the Department of Corrections, the Commissioner of
10 Mental Health and Mental Retardation, a state mental health
institute or a county jail to liability in a civil action.

12 3. It specifies that a law enforcement officer may arrest
without a warrant a person who the officer has probable cause to
14 believe has violated or is in violation of the sex offender
registration requirements as established in the Maine Revised
16 Statutes, Title 34-A, chapters 11 or 13.

18 4. It directs the court at sentencing to order every
convicted sex offender, as defined under Title 34-A, section
20 11103, to satisfy all requirements set forth in the Sex Offender
Registration and Notification Act.

22 5. It clarifies that, upon request, the Department of
24 Corrections shall notify victims of the conditional release or
discharge of defendants convicted of murder or of a Class A,
26 Class B or Class C crime who are committed to the department's
custody. Notice must include the name of the defendant; the
28 nature of the release authorized; whether it is a conditional
release, including probation, parole, furlough, work release,
30 intensive supervision, supervised community confinement, home
release monitoring or similar program, or an unconditional
32 release and discharge upon the expiration of a sentence; the
anticipated date of the defendant's release from institutional
34 confinement and any date on which the defendant must return to
institutional confinement, if applicable; the geographic area to
36 which the defendant's release is limited, if any; the address at
which the defendant will reside; and the address at which the
38 defendant will work, if applicable. The amendment requires
county jails to give the same notice to victims when a defendant
40 convicted of murder or a Class A, Class B or Class C crime who is
committed to a county jail is conditionally released or
42 discharged. The amendment also requires state mental health
institutes to give the same notice to victims when a defendant,
44 who is committed to an institute's custody, has been found not
criminally responsible by reason of mental disease or defect for
46 gross sexual assault and the victim had not in fact attained 16
years of age at the time of the crime.

48 6. It directs the court to attach as a condition of
50 probation that a convicted sex offender, as defined under Title

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510

34-A, section 11103, satisfy all requirements set forth in the Sex Offender Registration and Notification Act.

7. It adds an application section to the Sex Offender Registration Act, Title 34-A, chapter 11 that specifies that chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996.

8. It enacts Title 34-A, chapter 13, the Sex Offender Registration and Notification Act. The Act applies to sex offenders sentenced or placed in institutional confinement under Title 15, section 103, on or after September 1, 1996. The purpose of this Act is to protect the public safety by enhancing access to information concerning sex offenders. The Act does the following:

A. Defines "risk assessment instrument," which the Department of Corrections shall use for the ongoing purpose of identifying risk factors predisposing a person to become a sex offender or a repeat sex offender. This information will be used to provide notification of a sex offender's conditional release or discharge from a state correctional facility to law enforcement agencies and to the public;

B. Defines "sex offender" as a person who is convicted of gross sexual assault if the victim had not in fact attained 16 years of age at the time of the crime or an individual found not criminally responsible for committing gross sexual assault by reason of mental disease or defect if the victim had not in fact attained 16 years of age at the time of the crime;

C. States that neither the failure to perform the requirements of this chapter nor compliance with this chapter subjects the Commissioner of Corrections, the Department of Corrections, the Commissioner of Public Safety, the Department of Public Safety, a county jail or any other law enforcement agency or the Commissioner of Mental Health and Mental Retardation or a state mental health institute or its employees or officers to liability in a civil action;

D. Explains the process for registering as a sex offender and increases the penalty for failure to register or update information as required from a Class E to a Class D crime, unless the sex offender has 2 or more prior convictions for failure to register, which enhances the offense to a Class C crime; and

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E. Explains the process for notification when a sex offender is conditionally released or discharged from institutional confinement as follows:

(1) The Department of Corrections shall give the Department of Public Safety, State Bureau of Identification notice of the address where the sex offender will reside; the address where the sex offender will work, if applicable; the geographic area to which a sex offender's conditional release is limited, if any; and the status of the sex offender when released as determined by the risk assessment instrument;

(2) The Department of Public Safety, State Bureau of Identification shall forward the information in subparagraph (1) to all law enforcement agencies that have jurisdiction in those areas where the sex offender may reside or work;

(3) The Department of Corrections shall notify members of the public whom the department determines appropriate to ensure public safety; and

(4) The law enforcement agencies that receive information concerning the registration of a sex offender shall notify members of that municipality who the law enforcement agency determines appropriate to ensure public safety.

Upon request, the Department of Corrections shall provide to law enforcement agencies technical assistance concerning risk assessment for purposes of public notification of a sex offender's release.

This notification process is not intended to affect or limit the current ability of a member of the public to call the Department of Public Safety, State Bureau of Identification to inquire whether a person is a registered sex offender. The notification process is instead a method of enhancing public notification for the purpose of public safety.

9. It allocates \$200,000 to the Department of Corrections from the Federal Expenditure Fund for the fiscal year ending June 30, 1997. The federal funds will be used to train probation officers and to otherwise carry out the purposes of this Act.

10. It directs the Department of Corrections to report back to the joint standing committee having jurisdiction over criminal justice matters regarding the implementation and application of

COMMITTEE AMENDMENT "A" to S.P. 551, L.D. 1510

2 the risk assessment and relapse prevention program for sex
3 offenders, including the department's work assisting law
4 enforcement agencies with risk assessment for the purpose of
5 public notification, no later than January 1, 1998.

6 11. It adds a mandate preamble, 2 application sections, an
7 allocation section, an effective date and a fiscal note.

8