

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1510

S.P. 551

In Senate, May 9, 1995

An Act to Make Comprehensive Changes to the Sex Offender Laws.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator PINGREE of Knox.

Cosponsored by Senators: BUSTIN of Kennebec, CAREY of Kennebec, LAWRENCE of York, PARADIS of Aroostook, Representatives: LINDAHL of Northport, SHIAH of Bowdoinham.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 4 MRSA c. 10-A** is enacted to read:

6 **CHAPTER 10-A**

8 **JUDICIAL CONFERENCE ON SEXUAL ABUSE**

10 **§481. Judicial Conference on Sexual Abuse**

12 At least annually, the Judicial Conference on Sexual Abuse
14 must be held to educate and foster discussion of sexual abuse and
16 the issues surrounding sexual abuse. All active justices and
18 judges shall attend the conference. The Chief Justice, with
20 assistance from the State Court Administrator and any other
22 necessary person, shall establish the agenda and method of
24 education.

26 **Sec. 2. 14 MRSA §752-C**, as amended by PL 1993, c. 176, §1, is
28 further amended to read:

30 **§752-C. Sexual acts toward minors**

32 Actions based upon sexual intercourse, as defined in Title
34 17-A, section 556, subsection 1-B, or a sexual act, as defined in
36 Title 17-A, chapter 11, with a person under the age of majority
38 must be commenced within 12 5 years after the ~~cause-of-action~~
40 ~~aerues,~~ person reaches the age of majority or within 6 years of
the time the person discovers or reasonably should have
discovered the harm, whichever occurs later.

42 **Sec. 3. 15 MRSA §1321** is enacted to read:

44 **§1321. Minors as witnesses**

46 Any trial for sexual exploitation of a minor, sexual abuse
48 of a minor or gross sexual assault, incest, promotion of
50 prostitution or aggravated promotion of prostitution or unlawful
sexual contact when the alleged victim is a minor at the time of
the offense charged must be conducted in a speedy fashion.

52 **Sec. 4. 17 MRSA §2922, sub-§2**, as enacted by PL 1977, c. 628,
54 §1, is amended to read:

56 **2. Penalty.** Sexual exploitation of a minor is a Class B
58 crime, except that any person convicted of this crime shall must
60 be sentenced by imprisonment for not less than 5 years. If the
State pleads and proves a prior conviction under this section,
then the crime is a Class A crime, except that any person
convicted of this 2nd crime shall must be sentenced by

1 imprisonment for ~~not--less--than--10--years~~ the maximum term
2 allowed. The court shall may not suspend either minimum term of
3 imprisonment unless it sets forth in detail, in writing, the
4 reasons for suspending the sentence. The court shall consider
5 the nature and circumstances of the crime, the physical and
6 mental wellbeing of the minor, and the history and character of
7 the defendant, and ~~shall--only~~ may suspend the minimum term only
8 if it is of the opinion that the exceptional features of the case
9 justify the imposition of another sentence.

10 **Sec. 5. 17 MRSA §2922, sub-§§3 and 4** are enacted to read:

11 **3. Counseling.** Notwithstanding any law to the contrary, a
12 person convicted under this section may not receive early release
13 from imprisonment unless the person first takes part in a sex
14 offender treatment and counseling program administered by the
15 Department of Corrections.

16 This subsection does not apply to persons convicted prior to the
17 creation and implementation by the Department of Corrections of
18 the treatment program.

19 **4. Restitution.** The court shall order a person convicted
20 under this section to pay the costs of counseling incurred by the
21 victim for treatment required due to the actions of the
22 offender. The court may order garnishment of up to 50% of the
23 offender's wages by the Department of Corrections.

24 **Sec. 6. 17-A MRSA §253, sub-§6**, as enacted by PL 1993, c. 432,
25 §1, is repealed.

26 **Sec. 7. 17-A MRSA §253, sub-§7 to 9** are enacted to read:

27 **7. Subsequent conviction.** If the State pleads and proves a
28 prior conviction under this section, then the court shall impose
29 the maximum sentence allowed under law.

30 **8. Counseling.** Notwithstanding any law to the contrary, a
31 person convicted under this section may not receive early release
32 from imprisonment unless the person first takes part in a sex
33 offender treatment and counseling program administered by the
34 Department of Corrections.

35 This subsection does not apply to persons convicted prior to the
36 creation and implementation by the Department of Corrections of
37 the treatment program.

38 **9. Restitution.** The court shall order a person convicted
39 under this section to pay the costs of counseling incurred by the
40 victim for treatment required due to the actions of the
41 offender.

2 offender. The court may order garnishment of up to 50% of the
3 offender's wages by the Department of Corrections.

4 **Sec. 8. 17-A MRSA §254, sub-§§4 to 6** are enacted to read:

6 4. Subsequent conviction. If the State pleads and proves a
7 prior conviction under this section, then the court shall impose
8 the maximum sentence allowed under law.

10 5. Counseling. Notwithstanding any law to the contrary, a
11 person convicted under this section may not receive early release
12 from imprisonment unless the person first takes part in a sex
13 offender treatment and counseling program administered by the
14 Department of Corrections.

16 This subsection does not apply to persons convicted prior to the
17 creation and implementation by the Department of Corrections of
18 the treatment program.

20 6. Restitution. The court shall order a person convicted
21 under this section to pay the costs of counseling incurred by the
22 victim for treatment required due to the actions of the
23 offender. The court may order garnishment of up to 50% of the
24 offender's wages by the Department of Corrections.

26 **Sec. 9. 17-A MRSA §255, sub-§§4 to 6** are enacted to read:

28 4. Subsequent conviction. If the State pleads and proves a
29 prior conviction under this section, then the court shall impose
30 the maximum sentence allowed under law.

32 5. Counseling. Notwithstanding any law to the contrary, a
33 person convicted under this section may not receive early release
34 from imprisonment unless the person first takes part in a sex
35 offender treatment and counseling program administered by the
36 Department of Corrections.

38 This subsection does not apply to persons convicted prior to the
39 creation and implementation by the Department of Corrections of
40 the treatment program.

42 6. Restitution. The court shall order a person convicted
43 under this section to pay the costs of counseling incurred by the
44 victim for treatment required due to the actions of the
45 offender. The court may order garnishment of up to 50% of the
46 offender's wages by the Department of Corrections.

48 **Sec. 10. 17-A MRSA §556, sub-§§3 to 5** are enacted to read:

2 3. Subsequent conviction; incest with a minor. If the
State pleads and proves a prior conviction under this section,
4 and the victim of that crime and of the crime presently before
the court for sentencing was under 18 years of age at the time of
6 the offense, then the court shall impose the maximum sentence
allowed under law.

8 4. Counseling. Notwithstanding any law to the contrary, a
person convicted under subsection 3 may not receive early release
10 from imprisonment unless the person first takes part in a sex
offender treatment and counseling program administered by the
12 Department of Corrections.

14 This subsection does not apply to persons convicted prior to the
creation and implementation by the Department of Corrections of
16 the treatment program.

18 5. Restitution. The court shall order a person convicted
under subsection 3 to pay the costs of counseling incurred by the
20 victim for treatment required due to the actions of the
offender. The court may order garnishment of up to 50% of the
22 offender's wages by the Department of Corrections.

24 **Sec. 11. 17-A MRSA §852, sub-§§4 to 6** are enacted to read:

26 4. Subsequent conviction. If the State pleads and proves a
prior conviction under this section, then the court shall impose
28 the maximum sentence allowed under law.

30 5. Counseling. Notwithstanding any law to the contrary, a
person convicted under this section may not receive early release
32 from imprisonment unless the person first takes part in a sex
offender treatment and counseling program administered by the
34 Department of Corrections.

36 This subsection does not apply to persons convicted prior to the
creation and implementation by the Department of Corrections of
38 the treatment program.

40 6. Restitution. The court shall order a person convicted
under this section to pay the costs of counseling incurred by the
42 victim for treatment required due to the actions of the
offender. The court may order garnishment of up to 50% of the
44 offender's wages by the Department of Corrections.

46 **Sec. 12. 17-A MRSA §853, sub-§§3 to 5** are enacted to read:

48 3. Subsequent conviction. If the State pleads and proves a
prior conviction under this section, then the court shall impose
50 the maximum sentence allowed under law.

2 **4. Counseling.** Notwithstanding any law to the contrary, a
3 person convicted under this section may not receive early release
4 from imprisonment unless the person first takes part in a sex
5 offender treatment and counseling program administered by the
6 Department of Corrections.

7 This subsection does not apply to persons convicted prior to the
8 creation and implementation by the Department of Corrections of
9 the treatment program.

10 **6. Restitution.** The court shall order a person convicted
11 under this section to pay the costs of counseling incurred by the
12 victim for treatment required due to the actions of the
13 offender. The court may order garnishment of up to 50% of the
14 offender's wages by the Department of Corrections.

15 **Sec. 13. 19 MRSA §765, sub-§4,** as amended by PL 1993, c. 475,
16 §9, is amended to read:

17 **4. Interim relief.** The court, in an ex parte proceeding,
18 may make an order concerning the care and custody of any minor
19 children residing in the household and. If the court determines
20 that a minor residing in the household has been a victim of abuse
21 by the defendant or that there is an immediate and present danger
22 of abuse of the minor by the defendant, then the court shall
23 order the defendant to vacate the household. Unless the court
24 determines that, after the defendant is enjoined from entering
25 the household, the safety of the minor is still at risk, the
26 court may not order the minor removed from the household. The
27 court may enjoin the defendant from engaging in any of the
28 following:

29 A. Imposing any restraint upon the person or liberty of the
30 plaintiff;

31 B. Threatening, assaulting, molesting, harassing, attacking
32 or otherwise disturbing the peace of the plaintiff;

33 C. Entering the family residence or the residence of the
34 plaintiff;

35 C-1. Repeatedly and without reasonable cause:

36 (1) Following the plaintiff; or

37 (2) Being at or in the vicinity of the plaintiff's
38 home, school, business or place of employment; or

2 D. Taking, converting or damaging property in which the
plaintiff may have a legal interest.

4 If the court enjoins the defendant under this subsection, and the
enjoined conduct constitutes harassment under Title 17-A, section
6 506-A, the court shall include in the order a warning in
conformity with Title 17-A, section 506-A.

8

10 **Sec. 14. 19 MRSA §766, sub-§1**, as amended by PL 1993, c. 475,
§10, is further amended by adding at the end a new blocked
12 paragraph to read:

14 If the court determines that a minor residing in the household
has been a victim of abuse by the defendant or that there is an
16 immediate and present danger of abuse of the minor by the
defendant, then the court shall order the defendant to vacate the
18 household. Unless the court determines that, after the defendant
is enjoined from entering the household, the safety of the minor
20 is still at risk, the court may not order the minor removed from
the household.

22

Sec. 15. 34-A MRSA c. 11, as amended, is repealed.

24

Sec. 16. 34-A MRSA c. 11-A is enacted to read:

26

CHAPTER 11-A

28

SEX OFFENDER REGISTRATION ACT

30

§11011. Short title

32

This chapter may be known and cited as the "Sex Offender
34 Registration Act."

36

§11012. Definitions

38

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

42

1. Conviction or convicted. "Conviction" or "convicted"
42 means to plead guilty or nolo contendere or to be found guilty in
a court of law.

44

2. Law enforcement agency or agency. "Law enforcement
46 agency" or "agency" means a county sheriff.

48

3. Moving or move. "Moving" or "move" means the intent to
50 change residence, either permanently or for more than 30 days.

2 4. Sex offender. "Sex offender" means an individual
3 convicted of a sex offense. "Sex offender" includes an
4 individual who has been convicted of violating a law in another
5 state that is substantially equivalent to the offenses listed in
6 subsection 5.

7 5. Sex offense. "Sex offense" means sexual abuse of a
8 minor, unlawful sexual contact, promotion of prostitution or
9 aggravated promotion of prostitution, incest with a minor, sexual
10 exploitation of a minor or gross sexual assault, or an attempt to
11 commit any of these crimes.

12 **§11013. Registration requirement**

13 1. Duty to register. Within 15 days of moving into any
14 county, a sex offender shall register with the law enforcement
15 agency of that county.

16 2. Change of address. If a sex offender who is required to
17 register under this chapter changes address, that person shall
18 register the new address with the law enforcement agency of the
19 county to which the sex offender moves.

20 3. Central registry. Each law enforcement agency shall
21 forward all information obtained under this chapter to the
22 Department of Public Safety, State Bureau of Identification,
23 which shall maintain a central registry of sex offenders.

24 4. Verification. Annually, the Department of Public
25 Safety, State Bureau of Identification shall mail a
26 nonforwardable verification form to the last reported address of
27 the sex offender. The sex offender shall return the form within
28 10 days, verifying that the sex offender still resides at the
29 address last reported to the agency. Failure to return the form
30 is a violation of section 11018.

31 **§11014. Manner of registering**

32 In order to comply with this chapter, a sex offender shall
33 provide the following information when registering:

34 1. Name. The name and all aliases under which the sex
35 offender has been known;

36 2. Description. A complete description of the offender
37 including date of birth, social security number, photograph and
38 fingerprints;

2 3. Offense committed. The type and date of conviction of
each sex offense of the sex offender and the county and state
where the offense and conviction occurred; and

4
6 4. Address. The sex offender's current address and place
of employment.

8 **§11015. Notice of duty to register**

10 1. Duty of court. At the time of sentencing the court
shall provide to a defendant who is convicted of a sex offense
12 written notification of the duty to register required by this
chapter.

14
16 2. Duty of Department of Corrections. Prior to release
from confinement or supervision of a sex offender committed or
18 accepted to its custody, the Department of Corrections shall
provide written notification to that sex offender of the duty to
register required by this chapter.

20
22 3. Duty of Secretary of State. The Secretary of State
shall provide written notification of the registration
24 requirements of this chapter to any person who enters this State
from another jurisdiction and applies for a license to operate a
motor vehicle in this State.

26 **§11016. Duration of registration requirements**

28 The duty to register terminates at the following times.

30
32 1. Class A crime. A person convicted of a Class A sex
offense may apply to the sentencing court for an order relieving
34 the sex offender of the duty to register. The court shall hold a
hearing on the application, at which the sex offender and any
36 interested persons may present witnesses and other evidence. If,
following the hearing, the court is satisfied that the sex
38 offender is rehabilitated, the court shall grant an order
relieving the sex offender of the duty of further registration.

40 2. Class B crime. The duty to register of a person
convicted of a Class B sex offense terminates 15 years after the
42 last date of release from confinement, if any, or entry of the
judgment and sentence, if the sex offender has spent 15
44 consecutive years in the State without being convicted of any new
offense.

46
48 3. Class C crime. The duty to register of a person
convicted of a Class C sex offense terminates 10 years after the
last date of release from confinement, if any, or entry of the
50 judgment and sentence, if the sex offender has spent 10

2 consecutive years in the State without being convicted of any new
3 offense.

4 **§11017. Release of information**

6 **1. Public protection.** Public agencies are authorized to
7 release relevant and necessary information regarding sex
8 offenders to the public when release of the information is
9 considered necessary for public protection. Information may be
10 released concerning only those sex offenders with a high
11 potential for repeat offenses.

12 **2. Immunity.** A public agency or official of a public
13 agency is immune from civil liability for any discretionary
14 decision to release or withhold information unless the public
15 agency or official of a public agency acted with gross negligence
16 or in bad faith.

18 **§11018. Penalty**

20 A sex offender who fails to register as required by this
21 chapter is guilty of a Class C crime if the sex offense the
22 person was convicted of was a Class A crime or an equivalent
23 offense in another state. If the sex offense the person was
24 convicted of is other than a Class A crime or its equivalent in
25 another state, then the sex offender is guilty of a Class D crime
26 for failure to register.

28 **Sec. 17. Education and prevention of sexual abuse.** The Department
29 of Education and the Department of Public Safety shall jointly
30 develop a curriculum for use in elementary and middle schools
31 that teaches children how to avoid becoming victims of sexual
32 abuse and abduction. The curriculum must contain the following
33 elements:

36 1. Comprehensive safety instruction geared to the
37 developmental level and the cognitive abilities of the children
38 being instructed;

40 2. Education for all children regarding healthy sexuality
41 and appropriate displays of affection; and

42 3. Comprehensive training programs for all professionals
43 who work with children.

46 The program must be developed and implemented no later than
47 school year 1996-97.

2 court may also order the garnishment of up to 50% of an
3 offender's wages to pay for the counseling of the victim.

4 5. In an action involving sexual abuse by a person against
5 a minor who is a resident of the same household, the court is
6 required to order the defendant to vacate the household. The
7 court may not remove the child from the household unless it finds
8 that the child is in danger.

10 6. The Sex Offender Registration Act is repealed and
11 reenacted to make the following changes.

12 A. The application of the Act is expanded to apply to
13 persons convicted of sex offenses, as defined.

16 B. A sex offender is under a continuing obligation to
17 report any change of address and to register with the
18 sheriff of the county in which the sex offender plans to
19 reside.

20 C. The sheriff is required to report all information
21 received from a sex offender to a central registry
22 maintained by the Department of Public Safety.

24 D. A schedule is established for duration of registration
25 based upon the class of the crime.

28 E. Penalties for failure to register are established.

30 7. The Department of Education and the Department of Public
31 Safety are directed to develop and implement a program of
32 education and prevention of sex abuse for use in elementary and
33 middle schools.

34 8. The Department of Corrections is required to develop and
35 administer a program for the treatment and counseling of inmates
36 convicted of sex offenses. The department is also directed to
37 study alternative sentencing options for persons convicted of sex
38 offenses and to report back to the Legislature.